

Mountain Line Transit Authority

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Morgantown, WV 26501
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CONTRACT DOCUMENTS

FOR

LEASE OF TRANSIT VEHICLE TIRES

CONTRACT NO. MLTA 2010-1

BID OPENING DATE: 11:00 a.m., Monday, March 8, 2010

INDEX

Advertisement

**General Conditions of Lease, Information and
Instructions for Bidders**

Section I

Required Clauses

Section II

Tires Specifications

Section III

Bidding Documents & Required Certifications

Section IV

ADVERTISEMENT FOR BIDS

Notice is hereby given that the Mountain Line Transit Authority will receive sealed bids at the Purchasing Office at 420 Dupont Rd., Morgantown, WV 26501 for the Lease or Purchase of Transit Vehicle Tires, Bid Opening 11:00 a.m. Monday, March 8, 2010. All bids must be received by 5:00 p.m. Wednesday, March 24, 2010.

All bids shall be directed to the Director of Purchasing, 420 Dupont Rd., Morgantown, WV 26501 securely sealed and plainly marked. Bids shall be opened and publicly read aloud on the date and place previously stated.

Bid proposal forms and specifications may be obtained from the Purchasing Department at 420 Dupont Rd., Morgantown, WV 26501, (304) 296-3680, Fax (304) 291-7429, or email Heather Lemansky at lemansky@busride.org.

The award will be subject to a financial assistance grant between the MLTA and the U.S. Department of Transportation and will be made to the lowest responsive and responsible bidder. Funds--80% Federal and 20% Local.

Disadvantaged Business Enterprises will be encouraged and afforded full opportunity to actively solicit information concerning this project and to submit bids and/or proposals and will not be subjected to discrimination on the basis of race, color, sex, or national origin in consideration for an award.

Bidders will be required to comply with all applicable equal opportunity laws and regulations and to certify that they are not on the Comptroller General's list of ineligible contractors.

MLTA reserves the right to accept any bid or reject any and all bids and to waive any informality on such basis as the MLTA deems to be in its best interest to do so subject to the rules and regulations issued by the Federal Transit Administration of the United States Dept. of Transportation.

SECTION I

GENERAL CONDITIONS OF LEASE AND/OR PURCHASE

AND INSTRUCTIONS FOR BIDDING

INDEX

1.0	General Terms and Instructions
1.1	Scope
1.2	Proposal Submission
1.3	Changes
1.4	Addendum Acknowledgement
1.5	Rejection of Proposals
1.6	Unintended Omission
1.7	Bidder's Responsibility
1.8	Experience
1.9	Proposal Acceptance
1.10	Term of Contract
1.11	Delivery
1.12	Payment
1.13	Security - Bid Bond
1.14	Withdrawal of Contract Proposals
1.15	Tax Exemption
1.16	Contract Award
1.17	Patent Rights
1.18	Prohibited Interest
1.19	Single Bid Procedures
1.20	Tires to Be Furnished
1.22	Projected Annual Miles
1.23	Record Keeping
1.24	Storage of Spare Leased Tires
1.25	Disposition of Tires
1.26	Title to Tires
1.27	Safety Certifications
1.28	Warranty
1.29	Tire Run Out from Previous Contract
1.30	Tire Run Out
1.31	Loss and Abuse of Leased Tires
1.32	Additional Buses on Leased Tires
1.33	Possession and Cancellation
1.34	Damage to Persons or Property
1.35	DBE
1.36	Protest Procedures

1.0 GENERAL TERMS AND INSTRUCTIONS FOR BIDDERS

These instructions and the contract proposal provide detailed legal and technical requirements for the Leasing and/or Purchase of Transit Vehicle Tires for the Mountain Line Transit Authority (MLTA).

Where the word "Purchaser" is used in these instructions or the contract proposal, reference is made to MLTA. The words "Bids", "Offer", "Contract Proposal" and "Proposal" are synonymous and it is understood that once the Purchaser accepts the same, the documents will constitute the contract contemplated by these instructions. The words "Bidder", "Contractor", "lessee", "lesser" and "Manufacturer" are also synonymous.

1.1 SCOPE

These instructions, contract proposal and specification set forth performance criteria to be used in providing the Purchaser with a high grade and continuous supply of transit vehicle tires for a period of five (5) years. The tires described will provide an efficient supply of transit tires to support and enhance the operation of the Purchaser's bus system. The Authority currently purchases from Appalachian Tire.

MLTA is seeking proposals for the following:

- a. For the leasing of transit tires per mile.
- b. For the outright purchase of regroovable transit tires.

The decision as to which option is to be used will be determined after bid opening and bid evaluation.

1.2 PROPOSAL SUBMISSION

Proposal shall be submitted on the bidding documents provided. Bidding on all items is encouraged, however is not mandatory. All certifications located in the Section IV, Bidding Document section must be completed and returned with bid.

Bid forms may be accompanied by a detailed proposal. The contract proposal and all other accompanying documents or materials submitted by the Bidder will be deemed to constitute part of the bid. Bidders will be allowed to submit their form of contract with the bid package. However, MLTA contract documents will govern. Conditional bids or those which take exception to the specifications may be rejected.

The proposal must be delivered in a securely sealed and plainly marked "MLTA 2010-1 Tire Bid" on or before 5:00p.m., Wednesday, March 24, 2010.

Any proposal received after the bid opening date and time will not be considered and will be held unopened, unless opened for identification, until after award and then retained with other unsuccessful bids. However, any bid bond or guaranty shall be returned.

All bids will remain in effect for sixty (60) days from the bid opening date.

If it becomes necessary for the deadline for submittal of bids to be changed, MLTA will inform all offerors who have received a copy of the procurement packet by issuing a written addendum.

1.3 CHANGES

Any proposed change in this contract shall be submitted to the Purchaser for prior approval.

Any changes made to the bidding documents will be made by written addendum. Any changes or request for changes in the specifications will not be recognized after sealed bids are opened.

1.4 ADDENDUM ACKNOWLEDGEMENT

Bidders must use the space provided on the Bidding Documents and additional sheets as necessary to acknowledge all amendments to this Solicitation.

1.5 REJECTION OF PROPOSALS

MLTA reserves the right to reject any and all bids or to waive any informality affecting the form, as opposed to the substance, of the proposal and selection process if MLTA determines that doing so is in its best interest.

1.6 UNINTENDED OMISSIONS

The prices quoted on a proposal for any item listed shall include materials, equipment, tool, delivery and all costs necessary for the complete purchase pursuant to the specifications. Any items omitted from the specifications, which are clearly necessary for the complete acquisition, and operation of project shall be considered, although not directly specified or called for in the specifications.

1.7 BIDDER'S RESPONSIBILITY

Bidders are responsible for furnishing satisfactory transit vehicle tires to operate in MLTA's business. Bidders shall familiarize themselves with operating conditions of the Purchaser and with all facilities and equipment in which proposed tires are to be used. Failure to do so shall not relieve bidders of their responsibility for performance. Prospective bidders may make arrangements to inspect the system by contacting the Director of Purchasing.

1.8 EXPERIENCE

Bidder shall submit evidence that it has the necessary qualified personnel, tools, experience and financial capabilities to complete the contract and holds any necessary licenses in accordance with federal, state, and local laws and regulations.

1.9 PROPOSAL ACCEPTANCE

Each contract proposal is to be submitted with the understanding that the acceptance in writing by the Purchaser, of the offer to furnish the leased/purchased transit vehicle tires described therein, shall constitute a contract between the Bidder and the Purchaser who shall bind the bidder on its part to furnish and deliver at the prices given and in accordance with the terms and conditions of said accepted proposals and these instructions. The contract shall be considered as made in Charleston and the construction and enforcement of it shall be in accordance with the laws of the State of West Virginia.

1.10 TERM OF CONTRACT

Upon acceptance in writing from MLTA this contract shall become effective upon the date specified in the acceptance letter. The contract shall remain effective for five (5) years, and in addition to the Termination Clause in Section II, the MLTA reserves the right to cancel this contract for non-performance, change in market conditions, funding, and substantial changes in MLTA's operation. This cancellation notice shall be in writing with a thirty days notice sent by fax, email, certified mail, federal express or other industries standard means of communications.

1.11 DELIVERY

The bidder shall make delivery at MLTA garage located at 420 Dupont Rd., Morgantown, WV 26501. Delivery shall be made within 30 days after receipt of purchase order, (mail, email, fax, or telephone). FOB: Morgantown, WV.

The contractor shall be excused from deliveries or delay in deliveries if such failure to deliver or delay shall be caused by war, strikes, lockouts, fires, interruptions of transportation facilities, accidents, inability to obtain merchandise, shortage of energy source or raw material, or other similar causes beyond contractor's control. This contract is expressly subject to applicable restrictions imposed by any Federal agency or by any other governmental authority.

If the contractor encounters any of the above delays the contractor shall provide MLTA with a quick and proper notice of such delay.

1.12 PAYMENT

Purchaser shall pay the Contractor on or before the twenty-fifth of each month for the mileage run on leased tires furnished during the month immediately preceding at the effective rate per tire mile for vehicles as shown in the schedule in this contract bidding documents or Net 30 Days on purchased tires. Invoices are to be submitted to MLTA between the 1st and 15th of each month.

1.13 SECURITY - BID BOND

As security for the acceptance of the contract, each bid shall be accompanied by a certified check, bid bond or bank cashier's check in the amount of One Thousand Dollars (\$1,000.00), drawn payable to MLTA. Such bid deposits of all bidders will be held by MLTA until all proposals submitted have been canvassed and the bids have either been rejected or the awards of the contract or contracts have been made. The deposit of successful bidder will be held until the contract is duly executed. Bid deposits will be returned to the unsuccessful bidders within two (2) weeks after the award of the contract.

If the successful bidder to whom the contract shall have been awarded refuses to execute the contract and to furnish the performance bond hereinafter prescribed within two (2) weeks after the award of the contract, the amount of the bid deposit shall be forfeited to and retained by the Purchaser as liquidated damage for such neglect or refusal.

1.14 WITHDRAWAL OF CONTRACT PROPOSALS

Bids may be withdrawn on written request received by MLTA prior to the time fixed for bid opening. No bid will be withdrawn for a period of sixty (60) days after the time set herein for bid opening.

1.15 TAX EXEMPTION

MLTA is exempt from payment of federal and state taxes; such taxes must not be included in the proposal price. The Authority will furnish the successful bidder the necessary tax exemption certificate. If MLTA is not exempt from all taxes the taxes will be noted as a separate invoice item.

1.16 CONTRACT AWARD

In determining the successful bidder consideration will be given to the price, bidders financial responsibility, bidder experience, credentials, and responsiveness to the specifications. The Authority will consider all factors that it believes to be in the best interest of the Authority. These factors may include, but not be limited to, base bid price and maintenance.

Contract award will be made pending approval by MLTA's Board of Directors. Bid opening results will be reviewed by the Board in their April 14, 2010 meeting.

1.17 PATENT RIGHTS

Successful bidder must agree to save, keep, bear harmless, and fully indemnify the Purchaser and any of its officers or agents from all damages, costs or expenses in law and equity that may at any time arise, or be set up, for any infringement of the patent rights of any person or persons in consequence of the use by the Purchaser or by any of its officers or agents; of articles supplied under the contract, arising from bids submitted and of which the contractor is not lawfully entitled to sell, provided the Purchaser gives the contractor prompt notice in writing of any suit and all information necessary to defend same.

1.18 PROHIBITED INTEREST

No member, Officer, or employee of the Public Body or of a Local Public body during his tenure or one-year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

1.19 SINGLE BID PROCEDURES

In the event a single bid is received, the Purchaser will conduct a price and/or cost analysis of the bid. A price analysis is the process of examining the bid and evaluating the separate cost elements. It should be recognized that a price analysis through comparison to other similar procurement must be based on an established or competitive price of all of the elements used in the comparison. The comparison must be made to a purchase of similar quantity and involving similar specifications. Where a difference exists, a detailed analysis must be made of this difference and costs attached thereto. Where it is impossible to obtain a valid price analysis, it may be necessary for the Purchaser to conduct a cost analysis of the bid price. Proprietary cost information is except from any cost analysis, however at a minimum a price analysis must be done.

The price and/or cost analysis shall be made by competent and experienced auditors or price analysis.

If the Purchaser does not have the capabilities to perform the needed analysis, FTA will lend support in obtaining the services of the defense contract audit agency.

1.20 TIRES TO BE FURNISHED

- A. All new tires
- B. Tires and appurtenances (valve stems & etc.)
- C. 225/75 R16
- D. 245/75 R 16
- E. 275/80 R 22.5
- F. 245/70 R 19.5
- G. 225/70 R 19.5
- H. 12 R 22.5

1.22 PROJECTED ANNUAL MILEAGE

225/75 R16
245/75 R 16
275/80 R 22.5
245/70 R 19.5
225/70 R 19.5
12 R 22.5

The estimated annual mileage for the fleet is 1,213,876.031

1.23 RECORD KEEPING

The Lessee shall keep all records of tire transfers, tire mileage, and such other records necessary or required. Bidder shall state the nature of any such other records, which may be necessary or required on lease tires.

The Purchaser will keep the mileage record of each bus and shall furnish lessor with a list of each vehicle together with the monthly mileage for each vehicle, at the end of every calendar month during the term of the contract. The lessor in computing the monthly statement will use such report or record. The successful bidder will uniquely and individually brand all tires, leased and new tires, and prior to delivery for accuracy in record keeping.

Record Keeping Requirements on Leased Tires

The Contractor shall provide the lessee, by tire group, detailed monthly reports that shall include, at a minimum:

1. Original tread and regrooved accumulated mileage performance by tire group for tires removed from service during that period.
2. Complete mileage history of each tire on each bus in lessee's fleet or in spare stock.
3. The average tire mileage for each specific type of tire in lessee's fleet.

1.24 STORAGE OF SPARE TIRES FOR LEASED TIRES

MLTA agrees to provide a safe and suitable place in an enclosed building for the storage of spare tire and tires unfit for further service so that such tires shall not be subject to damage by the elements; to either keep each bus equipped with at least one properly inflated spare tire or provide adequate road service for this fleet; and to pay contractor the amount of any damage or loss resulting from accident, fire, adverse mechanical conditions, improper or negligent use, loss, theft, or fraudulent conversion of said tires, or from the operation of a bus with under inflated or flat tire.

The value of original tread and regrooved tires shall be determined by multiplying the number of 32nds of an inch of tread rubber remaining on each tire, plus current casing value. If unavailable for inspection, or if otherwise unable to accurately measure tread rubber remaining, any used tire's value shall be based on 50% of the number of original 32nds of an inch of tread rubber by subtracting the mileage revenue received on a tire from the established value above.

1.25 DISPOSITION OF TIRES

Bidder shall state completely the provisions for disposal of tires and appurtenances, rendered unfit for service and permanently removed from vehicles and core value (credit).

1.26 TITLE TO TIRES

Ownership and title to leased tires (and appurtenances, if applicable) shall remain with the lessor on leased tires.

On any new tire purchased outright, MLTA will obtain title once full payment is made under the terms of this agreement. If MLTA so chooses, the title of loss and damaged tires shall be same as outright purchase.

1.27 SAFETY CERTIFICATIONS

The bidder will furnish written certification that the tires furnished under the contract will comply with all federal, state and local laws and regulations.

1.28 WARRANTY

Lessor shall assume responsibility for all material, appurtenances, and warranty used in the furnishing of tires, whether the same are manufactured by the lessor or purchased, ready made, from a source outside the lessor's company. The bidder agrees to replace any and all tires unfit for transit service due to deficiencies in material or workmanship for the life of the tire. Bidders must supply a warranty statement.

1.29 TIRE RUN OUT ON EXISTING TIRES

MLTA is now operating with Appalachian Tire. Arrangements will be made to terminate any existing contract.

1.30 TIRE RUN OUT

Notwithstanding any provision to the contrary set forth in this contract, as extended and amended, the bidder agrees to the following:

- a. Upon the expiration of the term of the contract, as extended and amended, MLTA has the right to further extend said contract and continue to use all tires furnished by bidder under such contract in MLTA's possession on the expiration date for a period of 36 months from said expiration date.
- b. All terms, conditions and provisions of said contract, as previously amended and extended, shall remain in full force and effect during said 36-month period, except that bidder shall be relieved of any requirement to furnish MLTA with tires, tubes, flaps, repair material, equipment, or tire service during the said 36-month period unless requested by MLTA and agreed to by bidder.
- c. The rate or rates per tire mile in effect during such 36-month period shall be the rate or rates in effect for the six-month period immediately preceding the commencement date of such 36-month period.
- d. It is understood that MLTA shall continuously use such tires insofar as practicable on its highest mileage runs until such tires are rendered permanently unfit for service during said 36-month period.
- e. Upon the expiration of said 36-month period, MLTA shall pay for any then unused mileage remaining in such tires at the rate of cost per 32nd unused tread that is left on the tire. MLTA will acquire each such used tire as is, and bidder makes no warranties as to the condition of fitness for continued use of such tires.

The amount of the unused mileage shall be determined by the cost per 32nd inch of tread depth.

The run out is exercisable by MLTA upon thirty 30-day notice prior to the expiration date of the term of the contract, as extended and amended.

1.31 LOSS AND ABUSE OF LEASED TIRES

If any tires are lost or stolen from buses or garage or are damaged or destroyed by fire, collision, or accidents (other than cuts, bruises, etc. encountered in normal operation), the purchaser will reimburse the lessor for such tires by paying cost per 32nd unused tread that is left on the tire.

If the lessee injures or abuses tires through carelessness, curbing, running flat, improper use or application of tire chains, improper wheel alignment, improper adjustment of brakes, defective rims or defective wheels, or otherwise: lessee will reimburse lessor by paying for any mileage at the rental rate then in effect for that tire. The un-run mileage will be computed as set forth in the above paragraph.

1.32 ADDITIONAL BUSES ON LEASED TIRES

If additional buses are acquired by purchase or otherwise, MLTA agrees to acquire such buses less tires giving contractor ample notice of such acquisition. MLTA further agrees to arrange to have such buses equipped with contractor's tires of sufficient carrying capacity to conform to the approved standards of the Tire & Rim Association of America, Inc. Upon delivery of the tires by contractor to the OE Manufacturer, refurbisher, or other outside source designated by MLTA, MLTA agrees to assume responsibility for such consigned tires in accordance with all terms of this agreement.

If such buses equipped with tires furnished by contractor shall be driven overland during delivery, contractor shall receive payment at the rate specified for use of the tire in accordance with the Loss and Abuse of Tires paragraph found in this section.

However, if MLTA purchases new buses, MLTA reserves the right to instruct the bus manufacturer to purchase the tire for these buses from the contractor and add the cost to the bus contract.

If MLTA instructs the bus manufacturer to purchase tires from the contractor, MLTA will replace these tires with leased tires when they are removed from service.

1.33 POSSESSION AND CANCELLATION

Should MLTA breach the terms of this contract through non-payment, non-payment on total amount due at termination, impaired credit standing, assignment for the benefit of creditors, non or erroneous reporting of miles run, or in placed in receivership or adjudicated bankrupt, then under each or all of the above conditions, contractor shall have the right, at its option, without prejudice to any other rights and remedies, to stop shipping tires, take possession of inventory, whether or not they are applied on vehicles, without being deemed guilty of trespass, and bill

MLTA for all costs removing tires and /or terminate this contract in accordance with Loss and Abuse of Tires paragraph found in this section.

Should contractor exercise any of the above options, contractor shall be relieved from any further obligation under this contract. However, the above shall not relieve MLTA from its obligation to pay for the use of the tires furnished or from his liability for all damages caused by such breach. MLTA specifically agrees that it shall be responsible for and pay any and all attorney fees, court and other expenses incurred by contractor in collecting amounts owed by MLTA or in enforcing any other right under this contract.

Failure on the part of contractor to exercise any or all of the above options upon default by MLTA as herein provided shall not constitute a waiver by contractor of its right to exercise any or all of the above options upon any subsequent default by MLTA.

1.34 DAMAGE TO PERSONS OR PROPERTY

MLTA will indemnify and hold contractor harmless against all claims, action or causes of action for damage or injury arising out of the use of or possession of any tires furnished hereunder, except for any claims, action, or causes of action arising solely out of a defect in material or workmanship of any tire manufactured and furnished by contractor under this contract.

1.35 DBE GOOD FAITH EFFORTS

MLTA has developed a DBE Program in accordance with the DOT regulations at 49CFT Part 26. A copy of the DBE Program is available upon request. The Authority has set a 2.25% goal for its DBE program.

The bidder shall include the following information in their bid package:

1. The name and addresses of DBE firms that will participate in the contract.
2. A description of the work that each DBE will perform.
3. The dollar amount of the participation of each DBE firm participation.
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal.
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor commitment.
6. If the contract goal is not met, evidence of good faith efforts shall be submitted.

1.36 PROTEST PROCEDURES

A. In General

1. All protests shall be filed, handled, and resolved in a manner consistent with the requirements of FTA Circular 4220.1E and the procedures set forth in Section 3.4.7 of MLTA's Procurement Manual and reproduced below.
2. Protests will only be considered if they are submitted by an interested party: an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

3. All protests shall be filed in writing with the Director of Purchasing and shall:
 - a. Contain the protestor's name, address, and phone number;
 - b. Identify the procurement at issue;
 - c. State the factual and legal grounds for the protest;
 - d. Include copies of any supporting documents; and
 - e. Describe the relief requested.
4. The office of the Director of Purchasing shall document the date and time of receipt of any protest in the procurement file.
5. MLTA shall give all known potential offerors timely notice of any protest filed and the basis therefore by addendum.
6. The procurement committee shall respond in detail in writing to each substantive issue raised in the protest.
7. A protestor may withdraw its protest at any time before MLTA issues a final decision.
8. All protest decisions shall:
 - a. Be made within fifteen (15) working days of the date the protest is received by MLTA;
 - b. Be made in writing by the General Manager;
 - c. Clearly state the decision and grounds on which it is based;
 - d. Be final.
9. The protestor may file a request for reconsideration within five (5) working days of the issuance of MLTA's decision, but only if:
 - a. New information becomes available that was not previously known; or
 - b. There has been an error in law or regulation.
 - c. When it receives any protest relating to a contract required to comply with FTA Circular 4220.1E, MLTA shall, at a minimum, informally notify its FTA regional office of that protest and thereafter keep that office apprised of the status of the protest.
10. MLTA protest procedures must be exhausted before an actual or potential protestor may pursue a protest with FTA.
11. A copy of the protest rules and procedures shall be included in every Procurement Packet.

B. Pre-Bid Protests

1. Pre-Bid Protests are received prior to the bid opening or proposal due date.
2. Pre-bid protests relating to the contents of the Procurement Packet must be filed not less than three (3) working days before the bid opening or proposal due date. Thereafter, all issues relating to the contents of the Procurement Packet are deemed waived by all interested parties. After it is received by MLTA, the pre-bid / pre-solicitation protest shall be handled in accordance with this Section B and the general protest rules and procedures set forth in Section A above.
3. If a pre-bid protest is not timely received, the procurement process shall continue in the normal manner unless the procurement committee, upon investigation, finds that remedial action is desirable, in which event such action shall be taken.
4. The procurement committee shall respond in writing to each pre-bid protest within ten (10) working days of the date it is received by MLTA.

5. If a pre-bid written protest is received, bids or proposals submitted to MLTA shall not be opened prior to the resolution of the protest unless the procurement committee determines in writing that proceeding to open bids or proposals is justified for urgent and compelling reasons or is in the best interest of MLTA because failure to proceed would otherwise unduly delay delivery or performance or otherwise cause undue harm to MLTA or the state or federal government. A memorandum documenting any such determination and the reasons therefore must be placed in the procurement file.

C. Pre-Award Protests

1. Pre-Award Protests are protests against making an award and are received after the bid opening or proposal due date but before the award of a contract.
2. The procurement committee shall respond in writing to each pre-award protest within ten (10) working days of the date it is received by MLTA. After it is received by MLTA, the pre-award protest shall be handled in accordance with this Section C and the general protest rules and procedures set forth in Section A above.
3. If a pre-award protest is received, MLTA shall not award the contract at issue until five (5) calendar days after the resolution of the protest unless MLTA determines in writing that proceeding to award the contract is justified for urgent and compelling reasons or is in the best interest of MLTA because failure to proceed would otherwise unduly delay delivery or performance or otherwise cause undue harm to MLTA or the state or federal government. A memorandum documenting any such determination and the reasons therefore must be placed in the procurement file.
4. If MLTA withholds the award of the contract at issue pending the resolution of the protest, the offerors whose bids might become eligible for award shall be requested, before expiration of any bid acceptance period, to extend that period (with consent of sureties, if any) to avoid the need for starting the procurement over.
5. If MLTA determines that the award of the contract at issue should be made during the pendency of a protest, it shall:
 - a. Notify FTA prior to making such award (the FTA reserves the right not to participate in the funding of any contract awarded during the pendency of a protest to FTA); and
 - b. Provide written notice of the decision to proceed with the award to the protestor and, as appropriate, to other concerned parties.

D. Post-Award Protests

1. Post-award protests are received after the award of a contract.
2. Post-award protests must be filed within five (5) working days of contract award. Thereafter, all issues relating to the award of the contract are deemed waived by all interested parties.
3. The procurement committee shall respond in writing to each post-award protest within twenty (20) working days of the date it is received by MLTA. After it is

received by MLTA, the post-award protest shall be handled in accordance with this Section D and the general protest rules and procedures set forth in Section A above.

4. Upon receipt of a post-award protest, MLTA shall suspend performance of the contract at issue until five (5) calendar days after the resolution of the protest unless MLTA determines in writing that proceeding to award the contract is justified for urgent and compelling reasons or is in the best interest of MLTA because failure to proceed would otherwise unduly delay delivery or performance or otherwise cause undue harm to MLTA or the state or federal government.
 5. The contractor/awardee shall be notified of the protest and the basis therefore within one working day after its receipt by MLTA.
 6. The contractor/awardee may, at its option, submit a written response to the protest within twenty (20) working days of the date the protest was received by MLTA.
 7. In order to prevent the improper disclosure of confidential business information, unredacted copies of the protest shall be provided solely to attorneys or other appropriate representatives of the contractor/awardee who have signed and are subject to a confidentiality agreement designed to prevent such disclosure.
- E. Appeals to FTA
1. FTA reviews of protests are limited to:
 - a. MLTA's failure to have or follow its own protest procedures or its failure to review a complaint or protest; or
 - b. Violations of Federal law or regulation.
 2. An appeal to FTA must be received by the cognizant FTA regional or headquarters office within five (5) working days of the date that the protestor learned or should have learned of an adverse decision by MLTA or other basis of appeal to FTA.
 3. An appeal to the FTA must be filed in accordance with FTA Circular 4220.1E, a copy of which is available upon request from MLTA.

SECTION II

Mountain Line Transit Authority

REQUIRED CLAUSES

Federal Required Contract Provisions

- 2.1 Assignment of Claims
- 2.2 Changes
- 2.3 Impact of Taxes
- 2.4 Inspection
- 2.5 Payment
- 2.6 Termination
- 2.7 Order of Precedence
- 2.8 Incorporation of FTA Terms
- 2.9 Notice of Federal Requirements
- 2.10 Federal Changes
- 2.11 Access to Records
- 2.12 Disputes
- 2.13 Civil Rights Requirements
- 2.14 Disadvantaged Business Enterprise
- 2.15 Debarment and Suspension
- 2.16 Energy Conservation
- 2.17 Geographic Restrictions
- 2.18 Lobbying Restrictions
- 2.19 No Government Obligations to Third Parties
- 2.20 Program Fraud and False or Fraudulent Statements Act
- 2.21 Excusable Delays
- 2.22 Warranties
- 2.23 Fly America
- 2.24 Buy America
- 2.25 Cargo Preference
- 2.26 Clean Water
- 2.27 Bonding
- 2.28 Clean Air Act
- 2.29 Recycled Products
- 2.30 Federal Privacy Act
- 2.31 Options

2.1 Assignment of Claims

- (a) The Contractor, upon written approval from MLTA, may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.
- (c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract unless and until MTLA authorizes such action in writing.

2.2 Changes

- (a) MTLA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:
 - (1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
 - (2) Method of shipment or packing.
 - (3) Place of delivery.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, MTLA shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.
- (c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.
- (d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, MTLA shall have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

2.3 Impact of Taxes

- (a) As used in this clause-

"After-imposed Federal tax" means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax" means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

"All applicable Federal, State, and local taxes and duties" means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"Contract date" means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"Local taxes" includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

- (b) The contract price includes all applicable Federal, State, and local taxes and duties.
- (c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.
- (d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

2.4 Inspection

(a) *Definition.* "Supplies," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

(b) The Contractor shall provide and maintain an inspection system acceptable to MTLA covering supplies under this contract and shall tender to MTLA for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to MTLA during contract performance and for as long afterwards as the contract requires. MTLA may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under the contract.

(c) MTLA has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. MTLA shall perform inspections and tests in a manner that will not unduly delay the work. MTLA assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.

(d) If MTLA performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, MTLA shall bear the expense of MTLA inspections or tests made at other than the Contractor's or subcontractor's premises; provided, that in case of rejection, MTLA shall not be liable for any reduction in the value of inspection or test samples.

(e)(1) When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor the additional cost of inspection or test.

(2) MTLA may also charge the Contractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.

(f) MTLA has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. MTLA may reject nonconforming supplies with or without disposition instructions.

(g) MTLA shall remove supplies rejected or required to be corrected. However, MTLA may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

(h) If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, MTLA may either (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Contractor or (2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, MTLA may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

(i)(1) If this contract provides for the performance of MTLA quality assurance at source, and if requested by MTLA, the Contractor shall furnish advance notification of the time-

(i) When Contractor inspection or tests will be performed in accordance with the terms and conditions of the

contract; and

(ii) When the supplies will be ready for MTLA inspection.

(2) MTLA 's request shall specify the period and method of the advance notification and the MTLA representative to whom it shall be furnished. Requests shall not require more than 2 workdays of advance notification if the MTLA representative is in residence in the Contractor's plant, nor more than 7 workdays in other instances.

(j) MTLA shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. MTLA failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability on MTLA, for nonconforming supplies.

(k) Inspections and tests by MTLA do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, MTLA, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at MTLA's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and MTLA; provided, that MTLA may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the contract as is equitable under the circumstances if MTLA elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in paragraph (l)(1) or (l)(2) of this clause and does not cure such failure within a period of 10 days (or such longer period as MTLA may authorize in writing) after receipt of notice from MTLA specifying such failure, MTLA shall have the right by contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned MTLA thereby.

2.5 Payment

MTLA shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by MTLA if-

(a) The amount due on the deliveries warrants it; or

(b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

2.6 Termination

(a) *Termination for Convenience* MTLA may terminate this contract, in whole or in part, at any time if MTLA determines doing so is in its best interest. Termination shall be effected by serving the Contractor with a notice of termination for convenience stating the extent of the termination.

(1) The Contractor shall be paid its costs, including contract close-out costs, and profit on accepted goods and/or work performed up to the date of termination notice. The settlement of the Contractor's termination claim shall be governed by the cost principles set forth in Part 49 of the Federal Acquisition Regulations. The Contractor shall promptly submit its termination claim to MTLA to be paid the Contractor.

(b) *Termination for Default* If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, MTLA may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in breach or default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract prior to the date of the termination notice.

(1) The Contractor and its sureties shall be liable for any damage to MTLA resulting from the Contractor's default, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any procurement costs incurred by MTLA.

(2) If it is later determined by MTLA that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, MTLA, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

(3) MTLA, in its sole discretion may, in the case of a termination for default, allow the Contractor a short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to MTLA 's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within the stated amount of time after receipt by Contractor of written notice from MTLA setting forth the nature of said breach or default, MTLA shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude MTLA from also pursuing all available remedies against Contractor and its sureties for said breach or default.

(c) *Post-Termination Obligations* After receipt of a notice of termination, and except as directed by MTLA, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to MTLA, as directed by MTLA, all right, title, and interest of the Contractor under the subcontracts terminated, in which case MTLA shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by MTLA, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by MTLA, transfer title and deliver to MTLA (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to MTLA.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that MTLA may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which MTLA has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by MTLA, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the

Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, MTLA. The proceeds of any transfer or disposition will be applied to reduce any payments to be

made by MTLA under this contract, credited to the price or cost of the work, or paid in any other manner directed by MTLA.

(d) *Waiver of Remedies for any Breach* In the event that MTLA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by MTLA shall not limit MTLA 's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

2.7 Order of Precedence

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

(a) Procurement document and contract schedule;

(b) General instructions and conditions, representations, and certifications;

(c) Contract clauses;

(d) Other documents, exhibits, and attachments; and

(e) Technical specifications or statement of work.

2.8 Incorporation of FTA Terms

The clauses in this contract include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any MTLA requests, which would cause MTLA to be in violation of the FTA terms and conditions.

2.9 Notice of Federal Requirements

Pursuant to Federal, State, and Local Law, in the performance of its obligations pursuant to this contract, the contractor agrees to comply with all applicable clauses and provisions of Federal, State, and Local Laws, Regulations, and FTA directives. The contractor understands and agrees that Federal Laws, Regulations, Policies, and related administrative practices in force and made applicable to this contract on the date of execution may be modified from time to time, and that the most recent of such clauses and provisions will govern administration of this contract at any particular time, except if there is sufficient evidence in the contract of a contrary intent. Such contrary intent might be evidenced by express language in the notification of Grant or Assistance Approval between FTA and the Purchaser, which language modifies or otherwise conditions the language of a particular provision of contract. Likewise, new federal laws, regulations, policies and administrative practices may be established after the date of execution and thereafter be applied to this contract, as may necessary to achieve compliance with these requirements, the contractor shall include notice of such requirement in all contracts, subcontracts, and other sub assistance agreements financed with FTA assistance. All limits or standards set forth in this contract to be observed in the performance of the project are minimum requirements. If there is a conflict between federal and state-or local requirements, the purchaser shall inform the FTA in order that an appropriate resolution may be arranged. Contractor's failure to so comply shall constitute a material breach of this contract.

2.10 Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA(10) dated October, 2003) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

2.11 Access to Records

The following access to records requirements apply to this Contract:

- (a) The Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- (b) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (c) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three 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 Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

2.12 Disputes

- (a) *Disputes* - Disputes arising in the performance of this Contract that are not resolved by agreement of the parties

shall be decided in writing by MTLA's General Manager. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy of the decision, the Contractor mails or otherwise furnishes a written appeal to MTLA's Director of Purchasing. The appeal shall be decided by MTLA's Board of Directors. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of MTLA's board of directors shall be binding upon the Contractor and the Contractor shall abide by the decision.

(b) *Performance During Dispute* - Unless otherwise directed by MTLA, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

(c) *Claims for Damages* - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

(d) *Remedies* - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between MTLA and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of West Virginia.

(e) *Rights and Remedies* - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by MTLA or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

2.13 Civil Rights Requirements

The following requirements apply to this contract:

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

(b) *Equal Employment Opportunity* - The following equal employment opportunity requirements apply to the underlying contract:

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

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

(3) *Disabilities* - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

2.14 Disadvantaged Business Enterprise

(a) *Policy.* It is the policy of the Department of Transportation (DOT) and MTLA that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with federal funds under this contract. Consequently the DBE requirement of 49 CFR Part 26 applies to this contract.

(b) 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 Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor 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 recipient deems appropriate.

(c) *Prompt payment.* The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from MTLA. The prime contractor agrees further to return retainage payments to each subcontractor within 10 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the MTLA. This clause applies to both DBE and non-DBE subcontractors.

(d) *DBE/WBE Obligation.* The contractor or its subcontractors agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this contract. In this regard all contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform under this contract. Contractors shall not discriminate on the basis of race, creed, color, age, sex or national origin in the award and performance of DOT-assisted contracts.

(e) Disadvantaged Business Enterprises will be encouraged and afforded full opportunity to actively solicit information concerning this project and to submit bids and/or proposals. Information on and applications for our DBE Program can be obtained from the Purchasing Department and the DBE Liaison.

2.15 Debarment and Suspension

(a) This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that neither the contractor, any of its principals, as defined at 49 CFR 29.105, or any of its affiliates, as defined at 49 CFR 29.105, are presently debarred, suspended, proposed for debarment, or voluntarily excluded by any Federal or State department or agency.

(b) 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 it enters into.

(c) The certification required by this clause is a material representation of fact relied upon by MTLA. If it is later determined that the contractor knowingly rendered an erroneous certification, in addition to remedies available to MTLA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The contractor 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 contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

2.16 Energy Conservation

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act and to insert this provision in every subcontract.

2.17 Geographic Restrictions

The contractor agrees to refrain from using State or local geographic preferences, except those expressly mandated

or encouraged by Federal stature, and as permitted by FTA.

2.18 Lobbying Restrictions

(a) This contract is subject to the lobbying restrictions set forth under Federal law. As such, the Offeror is required to verify that no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement or, if any such payments have been made, that the Offeror has made all required disclosures.

(b) The certification required by this clause is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

2.19 No Government obligations to Third Parties

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

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

2.20 Program Fraud and False or Fraudulent Statements and Related Act

The Contractor:

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

(b) Acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

2.21 Excusable Delays

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the

Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless-

(1) The subcontracted supplies or services were obtainable from other sources;

(2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

2.22 Warranties

(a) *Definitions.* As used in this clause-

"Acceptance" means the act of an authorized representative of MTLA by which MTLA assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the contract.

"Supplies" means the end items furnished by the Contractor and related services required under this contract. The word does not include "data."

(b) *Contractor's obligations.*

(1) Notwithstanding inspection and acceptance by MTLA of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that:

(i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with all requirements of this contract; and

(ii) The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this contract.

(2) When return, correction, or replacement is required, transportation charges and responsibility for the supplies while in transit shall be borne by the Contractor. However, the Contractor's liability for the transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in this contract and the Contractor's plant, and return.

(3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

(4) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this contract.

(c) *Remedies available to MTLA.*

(1) MTLA shall give written notice to the Contractor of any breach of warranties in paragraph (b)(1) of this clause within 45 days after discovery of the defect.

(2) Within a reasonable time after the notice, MTLA may either-

(i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph (b)(1) of this clause; or

(ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances.

(3)(i) If the contract provides for inspection of supplies by sampling procedures, conformance of supplies or components subject to warranty action shall be determined by the applicable sampling procedures in the contract.

MTLA -

(A) May, for sampling purposes, group any supplies delivered under this contract;

(B) Shall require the size of the sample to be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed;

- (C) May project warranty sampling results over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection; provided, that the supplies remaining are reasonably representative of the quantity on which warranty action is proposed; and
- (D) Need not use the same lot size as on original inspection or reconstitute the original inspection lots.
- (ii) Within a reasonable time after notice of any breach of the warranties specified in paragraph (b)(1) of this clause, MTLA may exercise one or more of the following options:
- (A) Require an equitable adjustment in the contract price for any group of supplies.
- (B) Screen the supplies grouped for warranty action under this clause at the Contractor's expense and return all nonconforming supplies to the Contractor for correction or replacement.
- (C) Require the Contractor to screen the supplies at locations designated by the MTLA within the contiguous United States and to correct or replace all nonconforming supplies.
- (D) Return the supplies grouped for warranty action under this clause to the Contractor (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement.
- (4)(i) The Contracting Officer may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies from another source and charge to the Contractor the cost occasioned to MTLA thereby if the Contractor-
- (A) Fails to make redelivery of the corrected or replaced supplies within the time established for their return; or
- (B) Fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these circumstances does not cure such failure within a period of 10 days (or such longer period as MTLA may authorize in writing) after receipt of notice from MTLA specifying such failure.
- (ii) Instead of correction or replacement by MTLA, MTLA may require an equitable adjustment of the contract price. In addition, if the Contractor fails to furnish timely disposition instructions, MTLA may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner. MTLA is entitled to reimbursement from the Contractor, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.
- (5) The rights and remedies of MTLA provided in this clause are in addition to and do not limit any rights afforded to MTLA by any other clause of this contract.

2.23 Fly America

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

2.24 Buy America

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

2.25 Cargo Preference

The contractor agrees:

- (a) To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- (b) To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.)
- (c) To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

2.26 Clean Water

The contractor agrees:

- (a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (b) To include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

2.27 Bonding

The Contractor may be required to obtain performance and payment bonds when necessary to protect MTLA's interest.

- (a) The following situations may warrant a performance bond:
 - (1) MTLA property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
 - (2) A contractor sells assets to or merges with another concern, and the MTLA, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
 - (3) Substantial progress payments are made before delivery of end items starts.
 - (4) Contracts are for dismantling, demolition, or removal of improvements.
- (b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:
 - (1) The penal amount of performance bonds shall be 100 percent of the original contract price, unless MTLA determines that a lesser amount would be adequate for the protection of MTLA.
 - (2) MTLA may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. MTLA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- (c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in MTLA interest.
- (d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
 - (1) The penal amount of payment bonds shall equal:
 - (i) Fifty percent of the contract price if the contract price is not more than \$1 million;
 - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (iii) Two and one half million if the contract price is increased.

2.28 Clean Air

The Contractor agrees:

- (a) To comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (b) To include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

2.29 Recycled Products

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

2.30 Federal Privacy Act

- (a) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (b) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

2.31 Options

The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

SECTION III
TIRE SPECIFICATIONS
MLTA 2010-1

TIRE SPECIFICATIONS

SIZE	LOAD RANGE	PLY RATING	NON-SKID (32ND)	MAXIMUM LOAD RATING	
				SINGLE	DUAL
225/75 R16	E			2680	2470
275/80 R 22.5	H			4080	3860
245/70 R 19.5	F			2680	2470
225/70 R 19.5	F			3640	3415
12 R 22.5	H			7390	6780

SCHEDULE OF BUSES

NUMBER OF BUSES	MAKE OF BUS	MODEL OF BUS	TIRE SIZE	SINGLE/DUAL
4	Ford	Van	225/75R16	Front Single/Rear Dual
7	Champion		245/70R19.5	Front Single/Rear Dual
7	Champion		275/80R22.5	Front Single/Rear Dual
2	Ford	Van	245/75R16	
1	Goshen		225/70R16	
1	Ford	Van	245/75R19.6	
7	Gillig		12R22.5	
2	FRHT	Trolley	225/70R19.5	

SECTION IV

BIDDING DOCUMENTS

LEASE AND/OR PURCHASE OF TRANSIT VEHICLE TIRES

MLTA2010-1

INDEX

- 1 Bidding Documents #1 Leasing
- 2 Bidding Documents #2 Purchasing
- 3 Bidding Documents #3 Unused Original Tread
- 4 Bidding Documents #4 Regrooved Tread
- 5 Signature Page
- 6 Representation Concerning Offeror's Business Form
- 7 Representation Concerning Offeror's DBE Status
- 8 Certification Concerning Overall Federal Regulator Compliance
- 9 Certification Concerning Compliance With Specifications
- 10 Procurement Integrity Certificate
- 11 Lobbying Certification
- 12 Certification Concerning Debarment, Suspension, and Other Responsibility Matters
- 13 Buy America Certification
- 14 Addenda Receipt Acknowledgement

BIDDING DOCUMENT #1 LEASING

STATE OF WEST VIRGINIA

DATE: _____

CONTRACT FOR LEASING OF TRANSIT VEHICLE TIRES

This price sheet is for the firm fixed rate per tire miles

The undersigned, as bidder, upon receipt of contract acceptance hereby agrees to furnish Leased Transit Tires for MTLA in accordance with instructions accompanying the contract and in accordance with the terms of the contract, both of which have been carefully reviewed and examined by bidder.

Bidder has submitted this bid with the understanding that the acceptance in writing MTLA of this offer to furnish the leased tires which shall bind the bidder on its part to furnish and deliver at prices given and in accordance with the terms and conditions as set forth in this contract, the following:

All tires are to be branded.

Firm Fixed Rate

Tire Size	1st Year	2nd Year	3rd Year	4th Year	5th Year
225/75R16					
245/70R19.5					
275/80R22.5					
245/75R16					
225/70R19.5					
245/75R19.6					
12R22.5					
225/70R19.5					

BIDDING DOCUMENT #2 PURCHASING

STATE OF WEST VIRGINIA

DATE: _____

CONTRACT FOR PURCHASING OF TRANSIT VEHICLE TIRES

This price sheet is for the firm fixed rate of purchased tires

The undersigned, as bidder, upon receipt of contract acceptance hereby agrees to furnish New Transit Tires for MTLA in accordance with instructions accompanying the contract and in accordance with the terms of the contract, both of which have been carefully reviewed and examined by bidder.

Bidder has submitted this bid with the understanding that the acceptance in writing MTLA of this offer to furnish the new tires which shall bind the bidder on its part to furnish and deliver at prices given and in accordance with the terms and conditions as set forth in this contract, the following:

All tires are to be branded.

Firm Fixed Rate

Complete Tire cost

Tire Size	1st Year	2nd Year	3rd Year	4th Year	5th Year
225/75R16					
245/70R19.5					
275/80R22.5					
245/75R16					
225/70R19.5					
245/75R19.6					
12R22.5					
225/70R19.5					

BIDDING DOCUMENT #3 UNUSED ORIGINAL TREAD

STATE OF WEST VIRGINIA

DATE: _____

CONTRACT FOR LEASING OF TRANSIT VEHICLE TIRES

Firmed Fixed Rate

**This price sheet is for the Cost of Damaged or Lost Tires
Original Tread**

The undersigned, as bidder, upon receipt of contract acceptance hereby agrees to furnish New Transit Tires for MTLA in accordance with instructions accompanying the contract and in accordance with the terms of the contract, both of which have been carefully reviewed and examined by bidder.

Bidder has submitted this bid with the understanding that the acceptance in writing MTLA of this offer to furnish the new tires which shall bind the bidder on its part to furnish and deliver at prices given and in accordance with the terms and conditions as set forth in this contract, the following:

All tires are to be branded.

Firm Fixed Rate

Cost per 32nd

Tire Size	1st Year	2nd Year	3rd Year	4th Year	5th Year
225/75R16					
245/70R19.5					
275/80R22.5					
245/75R16					
225/70R19.5					
245/75R19.6					
12R22.5					

225/70R19.5					
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BIDDING DOCUMENT #4 REGROOVED TREAD

STATE OF WEST VIRGINIA

DATE: _____

CONTRACT FOR LEASING OF TRANSIT VEHICLE TIRES
Firmed Fixed Rate
This price sheet is for the Cost of Damaged or Lost Tires
Regrooved Tires

The undersigned, as bidder, upon receipt of contract acceptance hereby agrees to furnish New Transit Tires for MTLA in accordance with instructions accompanying the contract and in accordance with the terms of the contract, both of which have been carefully reviewed and examined by bidder.

Bidder has submitted this bid with the understanding that the acceptance in writing MTLA of this offer to furnish the new tires which shall bind the bidder on its part to furnish and deliver at prices given and in accordance with the terms and conditions as set forth in this contract, the following:

All tires are to be branded.

Firm Fixed Rate

Cost per 32nd

Tire Size	1st Year	2nd Year	3rd Year	4th Year	5th Year
225/75R16					
245/70R19.5					
275/80R22.5					
245/75R16					
225/70R19.5					
245/75R19.6					
12R22.5					

225/70R19.5					
-------------	--	--	--	--	--

MTLA will order tires on an as needed basis with a written purchase order.

This proposal shall remain in effect for sixty (60) days after bid opening.

name of individual, partner, or corporation

address

city

state

zip

telephone number

fax number

email

typed or printed name

title

authorized signature

attest

Representation Concerning Offeror's Business Form

The Offeror is a:

- Corporation
- Partnership
- Limited Liability Company
- Sole Proprietorship
- Other: _____

organized and existing under the laws of _____.

Offeror Representative Signature

Offeror Representative Name and Title

Offeror Company

Date

**DISADVANTAGED BUSINESS ENTERPRISE VENDORS/MANUFACTURERS
CERTIFICATION**

(Check appropriate statement)

_____ The Vendor hereby certifies that it has complied with the requirements of 49 CFR Part 26. Please submit your goal for DBE participation _____.

_____ The Vendor hereby certifies that it has not complied with the above-reference requirement of 49 CFR Part 26.

Date

Authorized Signature

Title

Company Name

Certification Concerning Overall Federal Regulatory Compliance

All contractual provisions required by USDOT, as set forth in the FTA Circular 4220.1 D, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any MTLA requests, which would cause MTLA to be in violation of the FTA grant terms and conditions.

Offeror Representative Signature

Offeror Representative Name and Title

Offeror Company

Date

Certification Concerning Compliance with Specifications

The Offeror hereby certifies that it has carefully reviewed and understood all technical specifications and contract terms and conditions and that it will comply with the technical specifications issued by MTLA. **The Offeror warrants and certifies that of the following three paragraphs, paragraph A or B or C is true** (*√ check one*):

- A. _____ The Offeror hereby states that it will comply with the specifications in all areas. (This means that there are no exceptions to the technical specifications, no matter how minor.)

- B. _____ The Offeror hereby states that it will comply with the specifications in all areas except those where requests for clarification were approved prior to bid submission.

- C. _____ The Offeror hereby states that it will comply with the specifications in all areas except those noted on the attached page. The Offeror understands that those exceptions to the specifications may be considered non-responsive, and may be rejected.

Offeror Representative Signature

Offeror Representative Name and Title

Offeror Company

Date

Procurement Integrity Certification

- 1. If the Offeror is not the parent company, insert below the name and main office address of the parent company. (A parent company is one that owns at least a majority, fifty-one (51%) percent of the voting rights and/or assets in that company.)

I, _____ of _____
Authorized Official Title Company
_____, the Offeror, attest to the authority of the executing agent,
_____ to submit this bid/proposal on behalf of Offeror and the
parent company if other than the Offeror.

Authorized Official Signature

- 2. By the submission of this bid/proposal, the Offeror and each person signing on its behalf certifies, and in the case of a joint bid, each party certifies as to its own organization, under penalty of perjury, that to the best of knowledge and behalf:
 - a. The prices in this bid proposal have been arrived at independently without collusion, consultation, communication or agreement with any other competitor.
 - b. Unless otherwise required by law, the Offeror prior to any competitor has not knowingly disclosed the prices that have been quoted in this bid.
 - c. No attempt has been made or will be made by the Offeror to induce any other person, partnership or corporation to submit or not to submit a bid proposal for the purpose of restricting competition.

Offeror Representative Signature

Offeror Representative Name and Title

Offeror Company

State of _____, County of _____

Taken, subscribed and sworn before me this ____ day of _____, _____.

Notary

My Commission Expires:

Lobbying Certification

The Offeror certifies, to the best of its knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in Paragraph B herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
- C. The Offeror shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

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

Offeror Representative Signature

Offeror Representative Name and Title

Offeror Company

Date

**Certification Concerning
Debarment, Suspension, and Other Responsibility Matters**

1. The Offeror certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
 - (b) Have not within a three-year period preceding this bid/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; or 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;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this bid/proposal had one or more public transaction (Federal, State, or Local) terminated for cause of default.
2. If the Offeror is unable to certify to any of the statements in this certification, it must attach an explanation to this certification.
3. The Offeror certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Sections 3801 *et seq.* are applicable thereto.

Offeror Representative Signature

Offeror Representative Name and Title

Offeror Company

Date

**Buy America Certification
for Steel, Iron, or Manufactured Products**

Certificate of Compliance

The Offeror/Manufacturer hereby certifies that it will meet the requirements of 49 U.S.C. Section 5323(j)(1) and the applicable regulations of 49 C.F.R. 661:

Offeror/Manufacturer Representative Signature

Offeror/Manufacturer Representative Name and Title

Offeror/Manufacturer Company

Date

Certificate of Non-Compliance

The Offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(1), but may qualify for an exception pursuant to 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 C.F.R. 661.7.

Offeror/Manufacturer Representative Signature

Offeror/Manufacturer Representative Name and Title

Offeror/Manufacturer Company

Date

Describe the nature of the exception: _____

Addenda Receipt Acknowledgement

Failure to acknowledge receipt of all addenda may cause the bid to be considered nonresponsive to the solicitation. Acknowledged receipt of each addendum must be clearly established and included with the offer.

ADDENDA

The undersigned acknowledges receipt of the following addenda to the documents:

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Bidder Name and
Address

Signature of Authorized
Signer _____

Title and Telephone
No. _____