

**Request for Proposals**

**Morongo Basin Transit Authority  
As Lead Agency for the California Association for Coordinated Transportation Purchasing  
Cooperative  
For Bus Shelters and Accessories**

**RFP 21-01**

**May 2021**

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## **SECTION 1: NOTICE OF INVITATION FOR PROPOSALS**

### **NR 1. Purpose of the Procurement and Period of Performance**

The purpose of this procurement is to establish a solicitation for Bus Shelters, street furniture and accessories. Items proposed may be purchased by consortium members independently of the shelters. The Morongo Basin Transit Authority (“MBTA” or “Agency”) a member of the California Association for Coordinated Transportation (“CalACT”) is the lead agency for the solicitation. Following contract award, CalACT shall provide all contract administration activities on behalf of its members (“Assignee/s). However, the resulting Contract may only be modified or amended by written action of MBTA. Usage is restricted to those public agencies that are using non-federal (ex. local or state) funding.

The period of performance shall be a three (3) year base period, with three (3) one-year options. Exercise of the options is at the unilateral discretion of MBTA.

Description of the Work to be Done:

The Agency requests proposals for the manufacture and delivery of bus shelters and accessories in accordance with the terms and conditions set forth in RFP 21-01. The Contract for each order placed using this Proposal shall be a firm-fixed price Contract.

### **NR 2. Proposal Due Date and Submittal Requirements**

#### **Proposals must be received by 1130 am on Friday, July 16, 2021**

1. Sealed Proposals shall be submitted to following address:  
Morongo Basin Transit Authority  
62405 Verbena Road  
Joshua Tree, 92405
2. Envelopes or boxes containing Proposals shall be sealed and clearly labeled with the Agency’s Proposal number and the solicitation title: RFP #21-01, Bus Shelters.
3. Proposers are required to submit to the Agency one hard copy marked “Original,” in a 3-ring binder with tabs marking each section of the Proposal as per IP 14, and five (5) marked and labeled USB Thumb Drives containing a complete electronic PDF copy of the Proposal. Files to be formatted to include Optical Character Recognition (OCR) so items can be searched. In case of any discrepancies, the hard copy shall be considered by the Agency in evaluating the Proposal, and the electronic version is provided for the Agency’s administrative convenience only. In addition, proposers are to submit the Price Worksheet in its Excel version and an electronic copy with signature for ease of distribution to participating agencies. A Proposal is deemed to be late if it is received by the Agency after the deadline stated above. Proposal received after the submission deadline may be rejected at the discretion of the Agency.

**NR 3. Validity of Proposals**

Proposals shall be valid for a period of one hundred twenty (120) days.

**NR 4. Pre-Proposal Meeting Information**

A Pre-Proposal Meeting shall be held for this solicitation via Teleconference as per IP 5.

Prospective Proposers are requested to submit written questions electronically, to the Contract Administrator, identified below. In addition, questions may be submitted up to the date specified in “Schedule for the Procurement.” Responses shall be shared with all prospective Proposers. Prospective Proposers reminded that any changes to the RFP shall be by written addenda only.

**Pre-Contract Contracting Officer’s Contact Information:**

Name: Mr. Joe Meer

Title: Director of Cooperative Purchasing Programs

Address: 62405 Verbena Road, Joshua Tree, CA 92252

Phone number: 760-285-3479

E-mail: joe@mbtabus.com

Fax number: 760-366-2445

**Identification of Source of Funding**

Financial support of this project is provided through financial assistance grants from the State of California, California Department of Transportation (CalTrans) and other sources of local and state public funding.

**Signed and Dated for Posting**

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Signature/Title

Date

## **SECTION 2: INSTRUCTIONS TO PROPOSERS**

### **IP 1. Estimated Quantities**

The Work under these Contract documents consists of the provision of Bus Shelters and Accessories which may be ordered by members of CalACT. The resulting contract will be an Indefinite Delivery Indefinite Quantity (IDIQ) contract, with specific minimum and maximum quantities for the total number of shelters to be potentially ordered during the contract period, including option periods.

The minimum and maximum quantities established for the term of this contract are:

Minimum per year	5
Maximum per year	250

These figures represent the foreseeable needs of the participating Agencies. Orders shall be placed on an as-needed basis. Estimated quantities are informational and not to be construed as a warranty of accuracy of historical or anticipated volumes. As the anticipated purchasers are primarily small and rural agencies, the successful proposer must be willing and able to supply and deliver shelter kits as specified for orders as small as one (1) shelter kit.

### **IP 2. Schedule for the Procurement**

The following is the solicitation schedule:

- Proposer communications and requests: Friday, May 28, 2021
- Responses to Proposer's communications and/or Agency addenda: Friday, June 18, 2021.
- Proposal Due Date: As specified in Section NR2.

### **IP 3. Obtaining Proposal Documents**

Proposal documents may be obtained from Morongo Basin Transit Authority, in person at 62405 Verbena Road, Joshua Tree, CA 92252 or electronically at [www.mbtabus.com](http://www.mbtabus.com). Documents requested by mail shall be packaged and sent postage paid. Documents requested by courier shall be packaged and sent only at the Proposer's expense.

### **IP 4. Proposal Security Requirements – Not Used**

### **IP 5. Pre-Proposal Meeting/Information for Proposers**

A Pre-Proposal Meeting will be held via Teleconference on **Thursday, May 6, 2021 at 2 pm**. Please RSVP to Joe Meer at [joe@mbtabus.com](mailto:joe@mbtabus.com) for a copy of the agenda, call in details and access code. Prospective Proposers are reminded that any changes to the RFP shall be by written addenda



only, and nothing stated at the Pre-Proposal Meeting shall change or qualify in any way any of the provisions in the RFP and shall not be binding.

#### **IP 6. Questions, Clarifications and Omissions**

All correspondence, communication and contact in regard to any aspect of this solicitation or offers shall be only with the Contracting Officer identified above. Unless otherwise instructed by the Contracting Officer, Proposers and their representatives shall not make any contact with or communicate with any member of the Agency, or its employees and consultants, other than the designated Contracting Officer, in regard to any aspect of this solicitation or offers.

At any time during this procurement up to the time specified in “Schedule for the Procurement,” Proposers may request, in writing, a clarification or interpretation of any aspect, a change to any requirement of the RFP, or any addenda to the RFP. Requests may include suggested substitutes for specified items and for any brand names, which whenever used in this solicitation shall mean the brand name or approved equal. Such written requests shall be made to the Contracting Officer. The Proposer making the request shall be responsible for its proper delivery to the Agency as identified on the form Request for Pre-Offer Change or Approved Equal. Any request for a change to any requirement of the Contract documents must be fully supported with technical data, test results or other pertinent information showing evidence that the exception shall result in a condition equal to or better than that required by the RFP, without a substantial increase in cost or time requirements.

All responses to Request for Pre-Offer Change or Approved Equal shall be provided to all Proposers. Any response that is not confirmed by a written addendum shall not be official or binding on the Agency.

If it should appear to a prospective Proposer that the performance of the Work under the Contract, or any of the matters relating thereto, is not sufficiently described or explained in the RFP or Contract documents, or that any conflict or discrepancy exists between different parts of the Contract or with any federal, state, local or Agency law, ordinance, rule, regulation or other standard or requirement, then the Proposer shall submit a written request for clarification to the Agency within the time period specified above.

#### **IP 7. Addenda to RFP**

The Agency reserves the right to amend the RFP at any time in accordance with “Schedule for the Procurement.” Any amendments to the RFP shall be described in written addenda. Notification of or the addenda also shall be distributed to all such prospective Proposers officially known to have received the RFP. Failure of any prospective Proposer to receive the notification or addenda shall not relieve the Proposer from any obligation under the RFP therein. All addenda issued shall become part of the RFP. Prospective Proposers shall acknowledge the receipt of each individual addendum in their Proposals on the form Acknowledgement of Addenda. Failure to acknowledge in the Proposal receipt of addenda may at the Agency’s sole option disqualify the Proposal.

If the Agency determines that the addenda may require significant changes in the preparation of Proposals, the deadline for submitting the Proposals may be postponed no less than ten (10) days from the date of issuance of addenda or by the number of days that the Agency determines shall allow Proposers sufficient time to revise their Proposals. Any new Due Date shall be included in the addenda.

**IP 8. DBE Requirements – Not Used**

**IP 9. Conditions, Exceptions, Reservations or Understandings**

Proposers are cautioned that exceptions, conditions and limitations to the provisions of this RFP may cause rejection of the Proposal for not responding to the requirements of the RFP.

**IP 10. Protest Procedures**

All protests must be in writing, stating the name and address of protestor, a contact person, Contract number and title. Protests shall specify in detail the grounds of the protest and the facts supporting the protest.

**IP 10.1 Address**

All protests must be addressed as follows:

- Agency Contact: Mr. Joe Meer
- For U.S. Mail, special delivery or hand delivery:  
Morongo Basin Transit Authority  
62405 Verbena Road  
Joshua Tree, CA 92252

Protests not properly addressed to the address shown above may not be considered by the Agency.

Copies of the Agency's protest procedures and the protest provisions may be obtained from Mr. Joe Meer, Director of Cooperative Purchasing Programs, Morongo Basin Transit Authority, 62405 Verbena Road, Joshua Tree, CA 92252, 760-366-2986. Protests must be made in accordance with the terms and provisions of the agency policy.

**IP 10.2. Pre-Proposal Protests**

Pre-Proposal protests are protests based upon the content of the solicitation documents. Three copies of Pre-Proposal protests must be received by the Agency's office no later than ten (10) calendar days after the RFP is first advertised. Protests shall be considered and either denied or sustained in part or in whole, in writing, in a manner that provides verification of receipt, prior to the Due Date for Proposals. A written decision specifying the grounds for sustaining all or part of or denying the protest shall be transmitted to the protestor prior to the Due Date for Proposals in a manner than provides verification of receipt prior to the Due Date for Proposals. If the protest is sustained, the Proposal Due Date may be postponed and an addendum issued to the solicitation documents or, at the sole discretion of the Agency, the solicitation may be canceled.

**IP 10.3. Protests on the Recommended Award**

All Proposers shall be notified of the recommended award. This notice shall be transmitted to each Proposer at the address contained in its Proposal form or email address used by the proposer in a manner that provides verification of receipt. Any Proposer whose Proposal has not lapsed may protest the recommended award on any ground not specified in “Pre-Proposal Protests,” above. Three (3) copies of a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest must be received by the Agency at the appropriate address in “Address,” above, no later than fifteen (15) calendar days after the date such notification is received. Prior to the issuing of the Notice of Award, a written decision stating the grounds for allowing or denying the protest shall be transmitted to the Proposer and the Proposer recommended for award in a manner that provides verification of receipt.

**IP 10.4. FTA Review**

This is a non-federal schedule, and therefore ineligible for Federal review.

**IP 11. Preparation of Proposals****IP11.1. Use of Proposer Forms**

Proposers are advised that the forms contained in this RFP are required to be used for submission of a Proposal. Pencil or erasable ink shall not be accepted. Initial all modifications made to Proposer’s entries. Liquid or dry correction materials shall not be used.

**IP 12. Alternate and Multiple Proposals – Not Used****IP 13. Proposal Format Requirements**

Proposals shall be submitted in sealed package containing a three-ring binder with “tabs” separating each section as listed below. The “original” proposal binder is to be marked “ORIGINAL.” The spine of the binder is to be marked with MBTA RFP 21-01 and Proposing Firm’s name. Five (5) USB thumb drive copies of the hard copy proposal are to be submitted with the original.

1. **Section 1** - Letter of Transmittal
2. **Section 2** - CER 3. - Acknowledgement of Addenda
3. **Section 3** - CER 4. - Pricing Schedule. Note: Subject to the provisions of SP 4, Pricing, the selected Contractor shall agree to sell shelters, including proposed optional features, at the same price and under the terms and conditions of this Agreement from the time of contract award to the expiration of the contract term. The selected Contractor is prohibited from offering any parts discounts, credits, rebates, etc. following Contract award.
4. **Section 4** - CER 5 Pre-Award Evaluation Data Form – The Proposer is to submit all of the required Schedules requested on this form.
5. **Section 5** - CER 1.6 - Proposal Form and Price Worksheet
6. **Section 6** - CER 1.1 – 1.5 All Federal certifications: Buy America Certification, Debarment and Suspension Certification for Prospective Contractor, Debarment and Suspension Certification (Lower-Tier Covered Transaction), Non-Collusion Affidavit, Lobbying Certification – NOTE, Notwithstanding the absence of federal funding, the

federal clauses are incorporated as contract requirements and the federal certification forms are used for the convenience of the Agency.

7. List of References with agency emails and phone numbers included. Products sold to comparable public agencies within the last 3 years.

**IP 13.1. Signing of Proposal Forms**

Proposals shall include firm name (and, in the event that the Proposer is a joint venture, the names of the individual firms comprising the joint venture); business address; and the name, title and business address of the responsible individual(s) with their telephone, facsimile (fax) numbers and email address who may be contacted during the Proposal evaluation period for receiving notices from the Agency.

**IP 13.2. Modification or Withdrawal of Proposals**

A modification of a Proposal already received shall be accepted by the Agency only if the modification is received prior to the Proposal Due Date or is specifically requested by the Agency. All modifications shall be made in writing and executed and submitted in the same form and manner as the original Proposal.

A Proposer may withdraw a Proposal already received prior to the Proposal Due Date by submitting to the Agency, in the same manner as the original Proposal, a written request for withdrawal executed by the Proposer's authorized representative. After the Proposal Due Date, a Proposal may be withdrawn at the discretion of the Agency, upon submission and consideration of a similar request. The withdrawal of a Proposal does not prejudice the right of a Proposer to submit another Proposal within the time set for receipt of Proposals.

**IP 13.3. Cost of Proposal Development**

This RFP does not commit the Agency to enter into a Contract, to pay any costs incurred in the preparation or presentation of a Proposal, or to procure or contract for the equipment.

**IP 14. Proposal Evaluation and Selection**

Proposals shall be evaluated, selected and any award made in accordance with the criteria and procedures described below.

**IP 14.1. Public Opening of Proposals**

Proposals shall not be publicly opened.

**IP 14.2. Duration of the Validity of Proposals**

Proposals shall be valid for the period stated in "Section 1: Notice of Request for Proposals." The Agency may request Proposers to extend the period of time specified herein by written agreement between the Agency and the Proposer(s) concerned.

**IP 14.3. Evaluation Committee**

An Evaluation Committee, which shall include officers, employees and agents of the Agency or affiliates may be established. The Evaluation Committee shall review the Proposals and the qualifications of the Proposers to determine the proposal(s) offering the best value to the Agency.

The Evaluation Committee may report its recommendations and findings to the appropriate Agency individual or body responsible for awarding the Contract.

#### **IP 14.4. Proposal Selection Process**

This solicitation is intended to be a multiple award procurement. Award is to be made to the responsive, responsible proposer(s) whose submittal(s) offer the best value to the Agency.

The following describes the process by which Proposals shall be reviewed and selection(s) made for a potential award.

Any such selection of a Proposer shall be made by consideration of only the criteria set forth below.

Proposals must be responsive. A responsive proposal means a proposal that substantially complies with the request for proposals and all prescribed procurement procedures and requirements. Proposals deemed not responsive may be summarily rejected by the Agency.

Awards may only be made to responsible vendors. "Qualification Requirements" specifies the requirements for determining a responsible Proposer, all of which must be met by a Proposer to be found qualified. Final determination of a Proposer's qualification shall be made based upon all information received during the evaluation process and as a condition for award.

#### **Qualification Requirements**

The following are the requirements for qualifying responsible Proposers. All of these requirements must be met; therefore, they are not listed by any particular order of importance. Any Proposer that the Agency finds not to meet these requirements may be determined not to be responsible and its Proposal rejected. Measures of responsibility are:

1. Sufficient financial strength, resources and capability to finance the Work to be performed and to complete the Contract in a satisfactory manner, as measured by the following:
  - A review of the Proposer's financial condition to determine if the Proposer has sufficient financial capability to perform the work. This may include obtaining reports from credit agencies or review of a Proposer's financial statements prepared in accordance with generally accepted accounting principles of the jurisdiction in which the Proposer is located, and audited by an independent certified public accountant; or a statement from the Proposer regarding how financial information may be reviewed by the Agency.
2. Evidence that the human and physical resources are sufficient to perform the Contract as specified to ensure delivery of the shelter specified in the Contract, to include the following:

- Engineering, management and service organizations with sufficient personnel and requisite disciplines, licenses, skills, experience and equipment to complete the Contract as required and to satisfy any engineering or service problems that may arise during the warranty period.
  - Adequate manufacturing facilities sufficient to produce the shelters.
3. Evidence of the Proposer's ability to comply with the anticipated delivery schedule within the context of the Proposer's current commercial and government commitments.
  4. Evidence of the necessary organizational, accounting, and operational controls to execute all aspects of the project.
  5. Evidence of satisfactory past performance.
  6. Evidence of a satisfactory record of integrity and business ethics. Proposing Firm may not be on the list of debarred firms. (Sam.Gov)
  7. Evidence that the Proposer is otherwise qualified and eligible for contract award.

**SELECTION CRITERIA** – Responsive proposals will be evaluated based on the following criteria.

1. 40% - Price (including delivery) of the base bus shelters
2. 10% Price of selected optional items
3. 30% - Technical, to include quality of materials and craftsmanship, as well as proposed delivery scheduling and a review of the proposing firms manufacturing capability
4. 10% - Past performance/References
5. 10% - Warranty offered

Proposer Price Score =  $\frac{\text{Lowest Price Proposed}}{\text{Proposer's Cost}}$  X Proposer's Price Points

Under this formula, the proposer with the lowest proposed price for the base shelter including delivery will receive 40 points. The other proposals will receive a proportionate share of points based on how much higher their proposed price is in relationship to the low proposed price. Proposed accessories or services will be evaluated for the optional features scores (10 points).

### **IP 15. Evaluation Procedures**

Proposals shall be analyzed for responsiveness. Non-responsive Proposals may be rejected as noted above however the Agency reserves the right to waive minor informalities or to request that a Proposer provide any minor missing information. Submittal of a Proposal shall signify that the Proposer has accepted the whole of the Contract terms and conditions.

### **Discrepancies in Proposal Items**

The Proposer shall furnish a price for each individual Proposal item, unless otherwise stated in the Pricing Worksheet. Failure to do so may render the Proposal(s) incomplete and non-responsive and may cause its rejection. The Proposal shall state the unit prices, the total amount of each Proposal item, and the "Total Proposal Price" for which the Proposer proposes to supply

the labor, goods, and completely perform the Contract. If the unit price and the extended amount expressed by the Proposer or any item are not in agreement, the unit price alone will be considered as representing the Proposer's intention. The Agency will correct the extended unit price and the Total Proposal Price in the evaluation process.

Should any unit price or total price be left blank the proposal will be considered non-responsive unless the blank item can be objectively calculated from the information available or is not required as identified in the Proposal Form.

If any line item is left blank, and the above situations do not apply, no attempt shall be made to reconcile the amounts. The proposal in this case shall be considered non-responsive.

**IP 16. Single Proposal**

If only one Proposal is received in response to this RFP, the Agency may, in its sole discretion, enter into negotiations with the single Proposer, conduct a price and/or cost analysis, or both, possibly including an audit, may be performed by or for the Agency. The Proposer has agreed to such analysis by submitting a Proposal in response to this RFP.

**IP 17. Availability of Funds**

Orders placed as a result of this procurement are subject to the availability of funding.

**IP 18. Agency Contract Approval Process**

Following completion of the evaluation process, the Agency shall prepare a written recommendation for contact award(s) to the recommended firm(s). This recommendation shall then be presented to the Agency General Manager for approval.

**IP 19. Agency Rights**

The Agency reserves the right to cancel the procurement in whole or in part, at its sole discretion, at any time before the Contract is fully executed and approved on behalf of the Agency.

The Agency reserves the right to reject any or all Proposals or to waive minor informalities. The Agency reserves the right to determine any specific Proposal that is conditional or not prepared in accordance with the instructions and requirements of this RFP to be nonresponsive. The Agency reserves the right to waive any Defects, or minor informalities or irregularities in any Proposal which do not materially affect the Proposal or prejudice other Proposers.

If there is any evidence indicating that two or more Proposers are in collusion to restrict competition or are otherwise engaged in anti-competitive practices, the Proposals of all such Proposers shall be rejected, and such evidence may be a cause for disqualification of the participants in any future solicitations undertaken by the Agency.

**IP 20. Execution of Contract**

The acceptance of a Proposal for award, if made, shall be evidenced in writing by a notice of award of Contract delivered to the Proposer whose Proposal is accepted. Upon notice of award of the Contract to a Proposer, the Proposer shall execute the required Contract documents within

thirty (30) calendar days after the date of receipt of the notice of award. Failure to fulfill this requirement within the specified time may be cause for termination of the Contract under “Termination for Default” in Section 3.

**IP 21. Conflicts of Interests and Gratuities**

Proposers are prohibited from engaging in any practice that may be considered as a conflict of interests under existing Agency policies, CalACT policies, or state law, and to refrain from participating in any gifts, favors or other forms of compensation that may be viewed as a gratuity in accordance with such policies and laws.

**IP 21. Purpose of the Solicitation**

The purpose of this solicitation is to establish a contract for Bus Shelters that may be purchased by Local Government Agencies that are members of CalACT. The selected Contractor(s) shall accept purchase orders directly from the users. The intent is to reduce the cost and effort needed to order these shelters in order to make the funds and equipment available to increase services available to transit organizations.

**IP 22. Roles of the Parties for this Solicitation**

The Morongo Basin Transit Authority (“MBTA”), a member of the California Association for Coordinated Transportation (“CalACT”), is the lead agency role in the formation of the CalACT/MBTA Local Government Purchasing Contract for Bus Shelters. For the purposes of this Contract, the arrangement entered into by the MBTA and CalACT shall hereinafter be referred to as the “Cooperative” and MBTA is referred to as the “Agency.”

The specific roles and obligations of the MBTA and CalACT are described in detail in the Cooperative Purchasing Agreement between them. As a general matter, MBTA staff, consultants, and counsel shall be responsible for the development of RFP solicitation documents, the technical product specifications and the awarding of the contract on behalf of the Cooperative. After the contract is awarded, CalACT shall be responsible for providing participating agencies with the ordering instructions and forms required to ensure compliant purchasing, solicitation documentation required for the agency’s files, collecting fees, and the general administration of the contract.



## **SECTION 3: GENERAL CONDITIONS**

### **GC 1. Definitions**

The following are definitions of special terms used in this document:

**Agency:** Morongo Basin Transit Authority (MBTA). Any contract modification involving the base Local Government Purchasing Schedule shall be issued by MBTA.

**Assignee:** Term for the entity that shall be purchasing shelter from the Local Government Purchasing Contract. In this case, this entity must be a CalACT member whose transit operations and physical location are geographically located within the State of California.

**Authorized Signer:** The person who is executing this Contract on behalf of the Contractor and who is authorized to bind the Contractor.

**Proposal:** A promise, if accepted, to deliver equipment and services according to the underlying solicitation of the Agency documented using the prescribed form in the solicitation, including any Proposal document.

**Proposer:** A legal entity that makes a Proposal.

**Contract:** The Proposal and its acceptance by the Agency as manifested by the Contract documents specified in "Section 10: Contract."

**Contracting Officer:** The person who is executing this Contract on behalf of the Agency and who has complete and final authority except as limited herein. For this solicitation, the Contracting Officer prior to Contract award is the authorized representative of MBTA. The Contracting Officer for administration of the Contract following Contract award is the authorized representative of CalACT. Each order placed shall also designate a Contracting Officer for the Assignee placing the order. This individual can also be a representative of CalACT.

**Contractor:** The successful Proposer who is awarded a Contract for providing the shelters and equipment described in the Contract documents.

**Cooperative:** Term used to describe the relationship between MBTA and CalACT for the establishment of the Local Government Purchasing Schedule.

**Days:** Unless otherwise stated, “days” shall mean calendar days.

**Defect:** Patent or latent malfunction or failure in manufacture, installation or design of any component or subsystem.

**Deviation:** Variance from a requirement or specification that does not alter the basis of a contract or adversely affects its performance.

**Due Date:** The date and time by which Proposals must be received by the Agency as specified in “Section 1: Notice of Request for Proposals.”

**Local Government Purchasing Contract:** An arrangement that a local government entity has established with a vendor in which that vendor agrees to provide specific property or services in the future at established prices. In this case, the specific property includes bus shelters and other related equipment.

**Solicitation:** Agency’s Request for Proposals.

**Supplier or Subcontractor:** Any manufacturer, company or person providing units, components, subassemblies, or labor for inclusion in the products and services that are supplied by the Contractor.

**Work:** Any and all labor, supervision, services, materials, machinery, equipment, tools, supplies and facilities called for by the Contract and necessary to the completion thereof.

## **GC 2. Materials and Workmanship**

The Contractor shall be responsible for all materials and workmanship in the construction of the bus shelter and all accessories used, whether the same are manufactured by the Contractor or purchased from a Supplier. This provision excludes any equipment leased or supplied by the Agency, except insofar as such equipment is damaged by the failure of a part or component for which the Contractor is responsible, or except insofar as the damage to such equipment is caused by the Contractor during the manufacture of the shelters and accessories.

## **GC 3. Conformance with Specifications and Drawings**

Materials furnished and Work performed by the Contractor shall conform to the requirements of the Technical Specifications and other Contract documents. Notwithstanding the provision of drawings, technical specifications or other data by the Agency, the Contractor shall have the responsibility of supplying all parts and details required to make the shelter complete and ready for service even though such details may not be specifically mentioned in the drawings and specifications. Items that are installed by the Agency shall not be the responsibility of the Contractor unless they are included in this Contract.

## **GC 4. Acceptance**

### **GC 4.1 General**

Within fifteen (15) calendar days after arrival and required installation at the designated point of delivery is complete, the Assignee shall inspect the shelter and any related equipment. If the Agency does not notify the Contractor of non-acceptance within 15 calendar days after delivery and required installation, then acceptance by the Agency occurs on the 15th day after delivery.

### **GC 4.2 Risk of Loss**

The Assignee shall assume risk of loss of the shelter on the completion of delivery and required installation. Prior to the completion of delivery and required installation, the Contractor shall have risk of loss of the shelter, including any damages sustained during the delivery and installation process regardless of the status of title. If the material is released back to the Contractor for any reason, the Contractor has the risk of loss upon such release.

## **GC 5. Intellectual Property Warranty**

The Agency shall advise the Contractor of any impending patent suit related to this Contract against the Agency and provide all information available. The Contractor shall indemnify, defend, and hold the Agency, CalACT, and any affected Assignee, including their respective officers, directors, employees, agents, and relevant government agencies in any claim, suit, or proceeding brought against any of said indemnitees based on a claim that any equipment, or any part thereof, furnished under this Contract constitutes an infringement of any patent. In case said equipment, or any part thereof, is determined to constitute infringement and use of said equipment or parts is enjoined, the Contractor shall, at its own expense and at its option, either procure for the Agency the right to continue using said equipment or part, or replace same with non-infringing equipment, or modify it so it becomes non-infringing.

## **GC 6. Changes**

### **GC 6.1 Contractor Changes**

Any proposed change in this Contract shall be submitted to the Agency for its prior approval. Oral change orders are not permitted. No change in this Contract shall be made without the prior written approval of the Contracting Officer. The Contractor shall be liable for all costs resulting from, and/or for satisfactorily correcting, any specification change not properly ordered by written modification to the Contract and signed by the Contracting Officer.

### **GC 6.2 Agency Changes**

The Agency may obtain changes to the Contract by notifying the Contractor in writing. As soon as reasonably possible but no later than thirty (30) calendar days after receipt of the written change order to modify the Contract, the Contractor shall submit to the Contracting Officer a detailed price and schedule Proposal for the changed Work to be performed. This Proposal shall be accepted or modified by negotiations between the Contractor and the Contracting Officer. At that time, a detailed modification shall be executed in writing by both parties. Disagreements that cannot be resolved within negotiations shall be resolved in accordance with "Disputes," below. Regardless of any disputes, the Contractor shall proceed with the Work ordered.

**GC 7. Legal Clauses****GC 7.1 Indemnification**

**GC 7.1.1** The Contractor shall, to the extent permitted by law: (1) defend, indemnify and save the Agency, CalACT, and any affected Assignee, including their respective officers, directors, employees, agents, and relevant government agencies harmless from and against any and all liabilities, damages, claims, demands, liens, encumbrances, judgments, awards, losses, costs, expenses and suits or actions or proceedings, including reasonable expenses, costs and attorneys' fees incurred by the indemnitees in the defense, settlement or satisfaction thereof, for any injury, death, loss or damage to persons or property of any kind whatsoever, arising out of or resulting from the intentional misconduct or negligent acts, errors or omissions of the Contractor in the performance of the Contract, including intentional misconduct, negligent acts, errors or omissions of its officers, employees, servants, agents, Subcontractors and Suppliers; and (2) upon receipt of notice and if given authority, shall settle at its own expense or undertake at its own expense the defense of any such suit, action or proceeding, including appeals, against the indemnitees, relating to such injury, death, loss or damage. Each party shall promptly notify the other in writing of the notice or assertion of such claim, demand, lien, encumbrance, judgment, award, suit, action or other proceeding hereunder. The indemnitees shall not make any admission that might be materially prejudicial to the Contractor unless the Contractor has failed to take over the conduct of any negotiations or defense within a reasonable time after receipt of the notice and authority above provided. The indemnitees shall at the request of the Contractor furnish to the Contractor all reasonable assistance that may be necessary for the purpose of defending such suit, action or proceeding, and shall be repaid all reasonable costs incurred in doing so. Any indemnitee shall have the right to be represented therein by advisory council of its own selection at its own expense.

**GC 7.1.2** The obligations of the Contractor under the above paragraph shall not extend to circumstances where the injury, death or damages are caused solely by the negligent acts, errors or omissions of the indemnitees, including, without limitation, negligence in: (1) the preparation of the Contract documents, or (2) the giving of directions or instructions with respect to the requirements of the Contract by written order. In case of joint or concurrent negligence of the Parties giving rise to a claim or loss against either one or both, each shall have full rights of contribution from the other.

**GC 7.2 Suspension of Work**

**GC 7.2.1.** The Agency may at any time and for any reason within its sole discretion issue a written order to the Contractor suspending, delaying or interrupting all or any part of the Work for a specified period of time.

**GC 7.2.2.** The Contractor shall comply immediately with any such written order and take all reasonable steps to minimize costs allocable to the Work covered by the suspension during the period of work stoppage. Contractor shall continue the Work that is not included in the suspension and shall continue such ancillary activities as are not suspended. The Contractor shall

resume performance of the suspended Work upon expiration of the notice of suspension, or upon direction from the Agency.

**GC 7.2.3.** The Contractor shall be allowed an equitable adjustment in the Contract price (excluding profit) and/or an extension of the Contract time, to the extent that cost or delays are shown by the Contractor to be directly attributable to any suspension. However, no adjustment shall be made under this section for any suspension, delay or interruption due to the fault or negligence of the Contractor, or for which an equitable adjustment is provided for, or excluded under any other term or condition of the Contract. As soon as reasonably possible but no later than fourteen (14) calendar days after receipt of the written suspension of work notice, the Contractor shall submit to the Contracting Officer a detailed price and schedule Proposal for the suspension, delay or interruption.

### **GC 7.3 Excusable Delays/Force Majeure**

**GC 7.3.1.** If the Contractor is delayed at any time during the progress of the Work by the neglect or failure of the Agency or by a cause as described below, then the time for completion and/or affected delivery date(s) shall be extended by the Agency subject to the following cumulative conditions:

- a. The cause of the delay arises after the Notice of Award and neither was nor could have been anticipated by the Contractor by reasonable investigation before such award. Such cause may also include force majeure events such as any event or circumstance beyond the reasonable control of the Contractor, including but not limited to acts of God; earthquake, flood and any other natural disaster; civil disturbance, strikes and labor disputes other than those undertaken by the Contractors own employees; fires and explosions; war and other hostilities; embargo; or failure of third parties, including Suppliers or Subcontractors, to perform their obligations to the Contractor;
- b. The Contractor demonstrates that the completion of the Work and/or any affected deliveries shall be actually and necessarily delayed;
- c. The Contractor has taken measures to avoid and/or mitigate the delay by the exercise of all reasonable precautions, efforts and measures, whether before or after the occurrence of the cause of delay; and
- d. The Contractor makes written request and provides other supporting information to the Agency as required by section GC 7.3.3., below.

A delay in meeting all of the conditions of this section shall be deemed an excusable delay. Any concurrent delay that does not constitute an excusable delay shall not be the sole basis for denying a request hereunder.

**GC 7.3.2.** The Agency reserves the right to rescind or shorten any extension previously granted, if subsequently the Agency determines that any information provided by Contractor in support of a request for an extension of time was erroneous; provided, however, that such information or facts, if known, would have resulted in a denial of the request for an excusable delay. Notwithstanding the above, the Agency shall not rescind or shorten any extension previously granted if the Contractor acted in reliance upon the granting of such extension and such

extension was based on information which, although later found to have been erroneous, was submitted in good faith by the Contractor.

**GC 7.3.3.** No extension or adjustment of time shall be granted unless: (1) written notice of the delay is filed with the Agency within fourteen (14) calendar days after the commencement of the delay and (2) a written application therefore, stating in reasonable detail the causes, the effect to date and the probable future effect on the performance of the Contractor under the Contract, and the portion or portions of the Work affected, is filed by the Contractor with the Agency within thirty (30) calendar days after the commencement of the delay. No such extension or adjustment shall be deemed a waiver of the rights of either party under this Contract. The Agency shall make its determination within thirty (30) calendar days after receipt of the application.

## **GC 7.4 Termination**

### **GC 7.4.1. Termination for Convenience**

The performance of Work under this Contract may be terminated by the Agency in accordance with this clause in whole, or from time to time in part, whenever the contracting officer shall determine that such termination is in the best interest of the Agency. Any such termination shall be effected by delivery to the Contractor of a notice of termination specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective.

After receipt of a notice of termination, and except as otherwise directed by the Contracting Officer, the Contractor shall do the following:

- Stop Work under the Contract on the date and to the extent specified in the notice of termination.
- Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the Work under the Contract as is not terminated.
- Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination; assign to the Agency in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the Agency shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he or she may require, which approval or ratification shall be final for all the purposes of this clause.
- Transfer title to the Agency and deliver in the manner, at the times and to the extent, if any, directed by the Contracting Officer the fabricated or unfabricated parts, Work in process, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated, and the completed or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to the Agency.

- Use its best efforts to sell, in the manner, at the times, to the extent, and at the price(s) directed or authorized by the Contracting Officer, any property of the types referred to above, provided, however, that the Contractor shall not be required to extend credit to any purchaser, and may acquire any such property under the conditions prescribed by and at a price(s) approved by the Contracting Officer, and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Agency to the Contractor under this Contract or shall otherwise be credited to the price or cost of the Work covered by this Contract or paid in such other manner as the Contracting Officer may direct.
- Complete performance of such part of the Work as shall not have been terminated by the notice of termination.
- Take such action as may be necessary, or as the Contracting Officer may direct, for the protection or preservation of the property related to this Contract that is in the possession of the Contractor and in which the Agency has or may acquire an interest.

The Contractor shall be paid its costs, including Contract close-out costs, and profit on Work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. Settlement of claims by the Contractor under this termination for convenience clause shall be in accordance with the provisions set forth in Part 49 of the Federal Acquisition Regulations (48 CFR 49) except that wherever the word “Government” appears, it shall be deleted and the word “Agency” shall be substituted in lieu thereof.

#### **GC 7.4.2. Termination for Default**

The Agency may, by written notice of default to the Contractor, terminate the whole or any part of this Contract if the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or if the Contractor fails to perform any of the other material provisions of the Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) business days, or such longer period as the Contracting Officer may authorize in writing, after receipt of notice from the Contracting Officer specifying such failure.

If the Contract is terminated in whole or in part for default, the Agency may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated. The Contractor shall be liable to the Agency and affected Assignees for any excess costs for such similar supplies or services, and shall continue the performance of this Contract to the extent not terminated under the provisions of this clause.

Except with respect to defaults of Subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of a cause beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both the Contractor and Subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or

services to be furnished by the Subcontractor were obtainable from other sources and in sufficient time to permit the Contractor to meet the required delivery schedule.

Payment for completed supplies delivered to and accepted by the Assignee shall be at the Contract price. The Assignee may withhold from amounts otherwise due the Contractor for such completed supplies such sum as the Contracting Officer determines to be necessary to protect against loss because of outstanding liens or claims of former lien holders.

If, after notice of termination of this Contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to termination for convenience of the Agency.

### **GC 7.5 Compliance with Laws and Regulations**

Contractor shall at all times comply with all applicable laws, regulations, policies, procedures and directives (together, the "Law"). Contractor's failure to so comply shall constitute a material breach of this Contract.

### **GC 7.6 Changes of Law**

Changes of Law that become effective after the Proposal Due Date may, at the option of the Agency, result in price changes. If a price adjustment is indicated, either upward or downward, it shall be negotiated between the Agency and the Contractor and the final Contract price shall be adjusted upwards or downwards to reflect such changes in Law. Such price adjustment is subject to audit by the Agency. See clause SP 6.5.

### **GC 7.7 Governing Law and Choice of Forum**

This Contract shall be governed by the laws of State of California without regard to conflict of law rules. The Contractor consents to the jurisdiction of the identified State and the County where any Assignee involved in the then-instant claim, dispute, or suit is located.

### **GC 7.8 Disputes**

Any dispute arising under or related to this Contract that is not disposed of by agreement shall be decided in accordance with the following steps. No litigation shall be filed related to this Contract except upon the issuance of the Agency's Final Decision. Pending final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Contracting Officer's or Chief Executive Officer's decision, as the case may be.

1. **Notice of dispute.** All disputes shall be initiated through a written dispute notice submitted by either party to the other party within 10 (ten) calendar days of the determination of the dispute.
2. **Negotiation between or among contracting officers.** The parties shall attempt in good faith to informally resolve any dispute arising out of or relating to this Contract promptly



by negotiation between or among the Contracting Officer, the appointed representative of any affected Assignee, and the Contractor's representative authorized to settle the controversy, as appropriate. Any party may give the other party written notice of any dispute not resolved in the normal course of business as provided in (1) above. Within 14 (fourteen) calendar days after delivery of the dispute notice, the receiving party shall submit to the other party a written response. The dispute notice and written response shall include: (a) a statement of the party's position and a summary of the arguments supporting that position, and (b) any evidence supporting the party's position. The Contracting Officer or Assignee's representative, as appropriate shall conduct such investigation of the claim as he or she deems reasonable and, within 28 (twenty-eight) calendar days after delivery of the dispute notice, issue a final decision. The Contractor may, within 7 (seven) days of the final decision, seek review by the Chief Executive Officer. Such review must be requested, in writing, with such supporting information as necessary to support the Contractor's position. Thereafter, the Chief Executive Officer shall conduct such investigation of the claim as he or she deems reasonable and issue the Agency's Final Decision.

**GC 7.9 Maintenance of Records; Access by Agency; Right to Audit Records**

The Contractor agrees to provide the Agency, affected Assignees, the State of California or any of their duly authorized representatives access to any books, documents, papers and records of the Contractor that are directly pertinent to or relate to this Contract (1) for the purpose of making audits, examinations, excerpts and transcriptions and (2) when conducting an audit and inspection.

1. In the event of a sole source Contract, single Proposal or a single responsive Proposal, the Contractor shall maintain and the Contracting Officer, the State of California or the representatives thereof shall have the right to examine all books, records, documents and other cost and pricing data related to the Contract price, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, or combinations thereof. Data related to the negotiation or performance of the Contract shall be made available for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data. The right of examination shall extend to all documents necessary for adequate evaluation of the cost or pricing data, along with the computations and projections used therein, including review of accounting principles and practices that reflect properly all direct and indirect costs anticipated for the performance of the Contract.
2. For Contract modifications or change orders the Contracting Officer, the State of California, or their representatives shall have the right to examine all books, records, documents and other cost and pricing data related to a Contract modification, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, or combinations thereof. Data related to the negotiation or performance of the Contract modification or change order shall be made available for the purpose of

evaluating the accuracy, completeness and currency of the cost or pricing data. The right of examination shall extend to all documents necessary for adequate evaluation of the cost or pricing data, along with the computations and projections used therein, either before or after execution of the Contract modification or change order for the purpose of conducting a cost analysis. If an examination made after execution of the Contract modification or change order reveals inaccurate, incomplete or out-of-date data, the Contracting Officer may renegotiate the Contract modification or change order price adjustment, and the Agency shall be entitled to any reductions in the price that would result from the application of accurate, complete or up-to-date data.

The requirements of this section are in addition to other audit, inspection and record-keeping provisions specified elsewhere in the Contract documents.

#### **GC 7.10 Confidential Information**

Access to government records is governed by the statutes of the State of California. Except as otherwise required by the statutes of the State of California, the Agency shall exempt from disclosure proprietary information, trade secrets and confidential commercial and financial information submitted or disclosed during the Contract period. Any such proprietary information, trade secrets or confidential commercial and financial information that a Contractor believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information shall not ensure confidentiality. The specific proprietary information, trade secrets or confidential commercial and financial information must be clearly identified as such.

Upon a request for records from a third party regarding the Contract, the Agency shall notify the Contractor in writing. The Contractor must respond within twenty (20) days with the identification of any and all “proprietary, trade secret or confidential commercial or financial” information, and the Contractor shall indemnify the Agency’s defense costs associated with its refusal to produce such identified information; otherwise, the requested information may be released.

The Agency shall employ sound business practices no less diligent than those used for the Agency’s own confidential information to protect the confidence of all licensed technology, software, documentation, drawings, schematics, manuals, data and other information and material provided by the Contractor pursuant to the Contract that contain confidential commercial or financial information, trade secrets or proprietary information as defined in or pursuant to the statutes of the State of California against disclosure of such information and material to third parties except as permitted by the Contract. The Contractor shall be responsible for ensuring that confidential commercial or financial information, trade secrets or proprietary information, with such determinations to be made by the Agency in its sole discretion, bears appropriate notices relating to its confidential character.

This Confidentiality section shall survive the termination or expiration of the Contract.

**GC 7.11 Conflicts of Interest, Gratuities**

No member, officer, or employee of the Agency or of a local public body during his or her tenure, or one year thereafter, shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

**GC 7.12 General Nondiscrimination Clause**

In connection with the performance of Work provided for under this Contract, the Contractor agrees that it shall not, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, medical condition, marital status, sex, sexual orientation or age, discriminate or permit discrimination against any person or group of people in any manner prohibited by federal, state or local laws.

**GC 7.13 Amendment and Waiver**

**GC 7.13.1. Amendment**

Any modification or amendment of any provisions of any of the Contract documents shall be effective only if in writing, signed by authorized representatives of both the Agency and Contractor, and specifically referencing this Contract.

**GC 7.13.2. Waiver**

In the event that either party elects to waive its remedies for any breach by the other party of any covenant, term or condition of this Contract, such waiver shall not limit the waiving party's remedies for any succeeding breach of that or of any other term, covenant or condition of this Contract.

**GC 7.14 Remedies not Exclusive**

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

**GC 7.15 Counterparts**

This Contract may be executed in any number of counterparts. All such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed an original thereof.

**GC 7.16 Severability**

Whenever possible, each provision of the Contract shall be interpreted in a manner as to be effective and valid under applicable law. However, if any provision, or part of any provision, should be prohibited or invalid under applicable law, such provision, or part of such provision, shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of the Contract.

**GC 7.17 Third-Party Beneficiaries**

No provisions of the Contract shall in any way inure to the benefit of any party (other than the Agency, Assignees, and Contractor), including the public at large, so as to constitute such person

a third-party beneficiary of the Contract or of any one or more of the terms and conditions of the Contract or otherwise give rise to any cause of action in any person not a party to the Contract.

**GC 7.18 Assignment of Contract**

Neither party shall assign or subcontract its rights or obligations under the Contract without prior written permission of the other party, and no such assignment or subcontract shall be effective until approved in writing by the other party. Notwithstanding this or any other provision of this Contract, the Agency may assign the right to purchase materials under this Contract to the Assignees under SP 2.

**GC 7.19 Independent Parties**

The Contractor is an independent contractor with respect to the performance of all Work hereunder, retaining control over the detail of its own operations, and the Contractor shall not be considered the agent, employee, partner, fiduciary or trustee of the Agency.

**GC 7.20 Survival**

The following sections shall survive the nominal expiration or discharge of other Contract obligations, and the Agency may obtain any remedy under law, Contract or equity to enforce the obligations of the Contractor that survive the manufacturing, warranty and final payment periods:

- “Intellectual Property Warranty”
- “Indemnification”
- “Governing Law and Choice of Forum”
- “Disputes”
- “Confidential Information”
- “Parts Availability Guarantee”
- “Access to Records”
- “Training”

**GC 8. Agency-Specific Provisions – Not Used**

## **SECTION 4: SPECIAL PROVISIONS**

### **SP 1. Authorization to Use the Local Government Purchasing Schedule**

The use of this Proposal shall be restricted to members in good standing of CalACT. These members are to be publicly funded transit agencies, city transit systems, other governmental agencies or non-profit organizations performing governmental services.

### **SP 2. Assignability**

A letter of Assignment shall be issued by either MBTA or by CalACT acting for MBTA under the terms of their Cooperative Purchasing Agreement. MBTA reserves the right to withhold assignments at its unilateral discretion. Each Assignment shall be valid for a one-year period. All shelters ordered under that Assignment shall be delivered and accepted within that one-year period.

### **SP 3. Period of Performance**

The period of performance shall be as specified in NR1. Exercise of these options is at the unilateral discretion of MBTA.

### **SP 4. Procurement Fee**

A procurement fee of 2.5% of total pre-tax price per shelter shall be paid to the Cooperative by the Contractor each month based on activity on this contract. This fee shall be shown as a separate line item on the invoice to the Assignee ordering the shelters. It shall be payable to the Cooperative within thirty (30) days of delivery to agencies. The Contractor shall also supply monthly activity reports showing all orders and payments to the Cooperative. This activity may be audited. The Cooperative may charge interest for late payment if payment is delayed more than ten (10) days after the payment Due Date set forth above. Interest will be charged at a rate of 10% of the procurement fee that is due.

Under the provisions of SP 2, Assignability, the MBTA may choose to assign shelters directly to agencies. These agencies may or may not be located within the political subdivisions comprising the MBTA's joint powers authority. For agencies located within the political subdivisions comprising the MBTA's joint powers authority, MBTA reserves the right to waive the procurement fees.

Failure to report shall also be seen as failure to perform the contract and may lead to corrective action up to and including Termination for Default.

### **SP 5. Pricing**

#### **SP 5.1 Price Protection**

Contractor agrees all the Prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the terms presently being offered by Contractor to any other governmental entity purchasing the similar quantities under similar terms. If during the term of this Contract, Contractor shall enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by this Contract, Contractor shall be obligated to provide the same to the Agency and its Assignees for subsequent purchases.

**SP 5.2 Price Validity for the Initial Contract Term**

Contractor agrees to sell shelters, including proposed optional features, at the same price and under the terms and conditions of this Agreement from the time of contract award to the expiration of the three-year base term. The Contractor shall provide delivery of the shelters including ordered optional features at the delivery pricing submitted with Proposal. Said pricing is based on the Delivery Charges as specified in SP 7.

**SP 5.3 Prohibitions**

The Contractor is expressly prohibited from offering any rebates or any other price discounts to ordering agencies using this procurement following contract award.

**SP 6. Ordering Procedures**

Agencies placing orders under this Proposal shall follow the following procedures:

1. Using the pricing from the Proposal, Assignee shall develop a list showing all optional features, if any, that are required.
2. The Assignee should obtain a delivery schedule with the proposed due date from the Contractor. Delivery schedules must be consistent with or more favorable than that incorporated into the Contract.
3. While the Assignment Agreement provides the Assignee the right to purchase shelters through the Proposal, each separate Agency shall issue a written a Purchase Order or Contract document to the Contractor for its specific order. The Purchase Order or Contract document should reference the Assignment Agreement and should at a minimum include the following:
  - a. Description of the shelter being ordered including any optional features and the pricing for these items
  - b. Designated delivery point
  - c. Delivery due date.

**SP 6.1 The Purchase Order or Contract does not replace any other required documents as may be issued or required. Price Protection**

Contractor agrees all the Prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the terms presently being offered by Contractor to any other governmental entity purchasing the same quantity under similar terms. If during the term of this Contract, Contractor shall enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by this Contract, Contractor shall be obligated to provide the same to Purchaser for subsequent purchases.

**SP 6.2 Price Validity for the Initial Contract Term**

Contractor agrees to the shelters, including proposed optional equipment or accessories, at the same price and under the terms and conditions of this Agreement from the time of contract award to the expiration of the initial contract term or option terms. By submittal and acceptance of its

pricing, the Contractor also agrees to provide any of the listed optional features at the listed pricing for the initial two-year contract term.

### **SP 6.3 Shelter and Optional Accessories Pricing for Option Periods**

The price of the shelters and of the optional features for each option period shall be the unit price established in the initial Schedule adjusted by multiplying the Base Order Price by the following fraction:

$$\frac{\text{Preliminary Index Number on Month Prior to Notice of Exercise of Option}}{\text{Index Number on Effective Date of the Contract}}$$

The Index shall be the Producer Price Index for Fabricated Structural Metal Products, Series No. 107 published by the United States Department of Labor or if such Index is no longer in use, then such replacement which is most comparable to the Index as may be designated by the Bureau of Labor Statistics, or as agreed by the parties.

### **SP 6.4 Prohibitions**

Contractors are expressly prohibited from offering any rebates, credits and any other price discounts following contract award.

### **SP 6.5 Price Adjustments**

This section provides for price adjustments because of changes of law or unusual circumstances. A price increase shall be considered when an unusual change is specific pertaining to the manufacture of bus shelters. The price may be adjusted only in the same amount as the price increase to the Contractor. The Contractor shall submit the request and all necessary documentation to the Agency to justify the requested increase. The documentation of such factors shall be provided by the contractor, however the decision to allow change is at the sole discretion of the Agency.

No such price increase shall be effective until at least 60 calendar days following approval of the price increase by the Agency.

## **SP 7. Pricing of Delivery and Coordination of Delivery**

### **SP 7.1 Delivery Zones**

The State of California has been divided into five (5) delivery zones. Each zone is comprised of multiple counties as listed below:

Zone 1: Riverside, San Bernardino, San Diego, Imperial

Zone 2: Los Angeles, Santa Barbara, Ventura

Zone 3: San Luis Obispo, Kern, Tulare, Inyo, Fresno, Madera, Mono, Mariposa, Tuolumne, Alpine, Merced, Stanislaus, San Benito, Monterey, Santa Cruz, Kings

Zone 4: San Francisco, Marin, Sonoma, Sacramento, Sutter, El Dorado, Placer, Nevada, Amador, San Joaquin, Calaveras, Yolo, Colusa, Contra Costa

Zone 5: Mendocino, Glenn, Butte, Plumas, Lassen, Shasta, Tehama, Tehama, Modoc, Siskiyou, Trinity, Humboldt, Del Norte, Modoc

### **SP 7.2 Pricing of Delivery**

The selected Contractor shall deliver shelters and any optional features ordered with the shelter(s) according to the delivery pricing submitted in the Proposal and incorporated into the Contract.

Accessories purchased independently of the shelter shall be charged only for the actual costs of delivery. A copy of the shipping invoice shall be provided to the agency within 30 days of the delivery. This activity may be audited for compliance.

At their discretion, a purchasing agency may elect to forego the delivery charge and pick up the shelter/s at the manufacturer if this option is feasible.

All deliveries shall be coordinated with the ordering agency. The Contractor shall contact the ordering agency to agree upon a delivery schedule at least three (3) working days prior to delivery. Delivery shall be made during normal working hours. Delivery terms are to be based on the Delivery identified by the ordering agency, either at their place of business or other identified location. No additional charges shall apply for deliveries.

### **SP 7.3 Delivery Inspection and Acceptance**

Upon delivery of the shelter(s) at the point of delivery, the Assignee shall take possession of the shelter(s) and shall perform any required inspections. If there is no damage reported, the Assignee shall Accept the shelter consistent with GC 4.1.

The Agency shall record any damage and shall notify the Contractor of acceptance or non-acceptance.

### **SP 7.4 Repairs after Non-Acceptance**

The Contractor shall repair or replace any damaged shelter after non-acceptance.

### **SP 8. Payment**

The Assignee shall make payments for shelters at the unit prices itemized in the price schedule within thirty (30) calendar days after the delivery and acceptance of each shelter and receipt of a proper invoice.

The Assignee shall make payments for optional features at the unit prices itemized in the price schedule within thirty (30) calendar days after the delivery and acceptance of said equipment and receipt of a proper invoice.



**SP 8.1 Invoices**

Contractor shall submit invoices for all shelters, optional features and all other items purchased under this Contract to the Agency thirty (30) calendar days after each delivery. Payment shall be within 30 days after Acceptance of each item. Proforma invoices shall be acceptable.

**SP 8.2 Payment of Taxes**

Unless otherwise provided in this Contract, the Contractor shall pay all federal, state and local taxes, and duties applicable to and assessable against any Work, goods, services, processes and operations incidental to or involved in the Contract, including but not limited to retail sales and use, transportation, export, import, business and special taxes. The Contractor is responsible for ascertaining and paying the taxes when due. The total Contract price shall include compensation for all taxes the Contractor is required to pay by laws in effect on the Proposal Due Date. The Contractor shall maintain auditable records, subject to the Agency reviews, confirming that tax payments are current at all times.

**SP 9. Delivery Schedule**

The Proposer is asked to identify a proposed “maximum delivery schedule” in writing as part of its submittal.

The Contractor shall deliver all shelters on or before the delivery date contained in the Order Confirmation issued by each ordering agency. The Order Confirmation shall also indicate the point of delivery as well as days and hours of delivery. The Proposer must identify a delivery schedule

**SP 10. New Technology**

The Cooperative reserves the right to add new features to this contract that may evolve through new technology to the resulting contract. Such features must be for the same purpose as equipment awarded and fall within the original scope.

**SP11. Buy America**

While this Contract is not subject to the Buy America requirements of 49 USC 5323(j) and 49 CFR Part 661, the Contractor must, as a contractual requirement, comply with the Buy America regime reflected in 49 CFR Part 661, except that references therein to the authority of federal authorities shall be read to confer such authority on the Agency. Specifically, the requirements of 49 CFR 661.5 will be applied in assessing the compliance of products delivered under this Contract. See also the required certification at CER 6.

**SP 12. Suspension and Debarment**

## **Request for Proposal**

RFP No. 21-01

While this Contract is not subject to 2 CFR Part 1200 and 2 CFR Part 180, the Contractor must, as a contractual requirement, verify that none of the Contractor, its principals, or affiliates, are excluded or disqualified as defined in those references.

The Contractor is required to comply with 2 CFR Parts 1200 and 180, except that references therein to the authority of federal authorities shall be read to confer such authority on the Agency, and must include the requirement to comply in any lower-tier covered transaction it enters into.

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

The certification in this clause is a material representation of fact relied upon by the Agency. The Proposer agrees to comply with the requirements of 2 CFR Parts 1200 and 180 as modified herein while this Proposal is valid and throughout the period of any Contract that may arise from this Proposal. The Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions

## **SECTION 5: FEDERAL REQUIREMENTS**

### **FR 1. Access to Records**

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 Agency, 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).

The following access to records requirements apply to this Contract:

#### **FR 1.1 Local Governments**

In accordance with 49 CFR 18.36(i), the Contractor agrees to provide the Agency, 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 that are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 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 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311.

#### **FR 1.2 State Governments**

In accordance with 49 CFR 633.17, the Contractor agrees to provide the Agency, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

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.

### **FR 2. Federal Funding, Incorporation of FTA Terms and Federal Changes**

The preceding provisions include, in part, certain standard terms and conditions required by the Department of Transportation, whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F or its successors 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 Agency requests that would cause the Agency to be in violation of the FTA terms and conditions.

The 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 Master Agreement between Agency 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.

**FR 3. Federal Energy Conservation Requirements**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**FR 4. Civil Rights Requirements**

The following requirements apply to the underlying Contract:

1. **Nondiscrimination:** In accordance with Title VI of the Civil Rights Act, as amended, 42 USC § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 USC § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 USC § 12132, and Federal transit law at 49 USC § 5332, the Contractor agrees that it shall 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.
2. **Equal Employment Opportunity:** The following equal employment opportunity requirements apply to the underlying Contract:
  - (a) **Race, Color, Creed, National Origin, Sex:** In accordance with Title VII of the Civil Rights Act, as amended, 42 USC § 2000e, and Federal transit laws at 49 USC § 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 CFR 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 USC § 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.

- (b) **Age:** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC §§ 623 and Federal transit law at 49 USC § 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.
  - (c) **Disabilities:** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 USC § 12112, the Contractor agrees that it shall 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 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. The Contractor also 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.

**FR 5. No Government Obligation to Third Parties**

- 1. The Agency 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 Agency, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.
- 2. 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 shall be subject to its provisions.

**FR 6. Program Fraud and False or Fraudulent Statements or Related Acts**

- 1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §§ 3801 *et seq.* and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 CFR 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.

2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a Contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 USC § 5307, the Government reserves the right to impose the penalties of 18 USC § 1001 and 49 USC § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who shall be subject to the provisions.

#### **FR 7. Suspension and Debarment**

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

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

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

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

#### **FR 8. Disadvantaged Business Enterprise (DBE)**

This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

The Contractor shall maintain compliance with “DBE Approval Certification” throughout the period of Contract performance.

The Contractor 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 this DOT-assisted Contract. 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 Agency deems appropriate. Each subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

**FR 9. Clean Water Requirements**

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 *et seq.* The Contractor agrees to report each violation to the Agency and understands and agrees that the Agency shall, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**FR 10. Clean Air Requirements**

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§ 7401 *et seq.* The Contractor agrees to report each violation to the Agency and understands and agrees that the Agency shall, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**FR 11. Compliance with Federal Lobbying Policy**

Contractors who apply or Proposal for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it shall not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal Contract, grant or any other award covered by 31 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal Contract, grant or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier up to the recipient.

**FR 12. Buy America**

The Contractor agrees to comply with 49 USC 5323(j) and 49 CFR 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 CFR 661.7. A general public interest waiver from the Buy America requirements applies to microprocessors, computers, microcomputers, software or other such devices, which are used solely for the purpose of processing or storing data. This general waiver does not extend to a product or device

that merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data.

Proposer to submit certificates of origin and sample invoices for components of proposed shelters including all steel and iron products and electronic items on an electronic thumb drive.

A Proposer must submit to the Agency the appropriate Buy America Certification with all offers on FTA-funded contracts, except those subject to a general waiver. Proposals that are not accompanied by a properly completed Buy America certification are subject to the provisions of 49 CFR 661.13 and may be rejected as nonresponsive.

### **FR 13. ADA Access**

The Contractor and any of its Subsuppliers under this Contract agree to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101 *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and the following regulations and any amendments thereto:

1. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
2. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;
3. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "American With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38;
4. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
5. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
6. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;
7. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
8. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 CFR Part 64, Subpart F;
9. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609;
10. U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR Part 1194; and
11. Any implementing requirements FTA may issue.

### **FR 14 Payment To Subcontractors**

1. Applicability: This Section only applies if the Contractor has employed Subcontractors.
2. Requirements: Payments – Contractor shall pay each Subcontractor under this Contract



for satisfactory performance of its Subcontracts no later than seven (7) days after its receipt of each payment from the Agency

## **SECTION 6: TECHNICAL SPECIFICATIONS**

### **TS 1. GENERAL**

Technical specifications define requirements for the shelters are contained in Appendix A and are embedded at that section.

Appendix A - Technical Specifications

**SECTION 7: FORMS AND CERTIFICATIONS**

**CER 1. Proposer's Checklist**

<b>RFP No. 21-01, For Bus Shelters</b>	
<input type="checkbox"/>	1. Letter of Transmittal
<input type="checkbox"/>	2. Acknowledgement of Addenda
<input type="checkbox"/>	3. Pricing Schedule (including option shelter features)
<input type="checkbox"/>	4. Pre-Award Evaluation Data Form
<input type="checkbox"/>	5. Required Certifications

**CER 2. Request for Pre-Offer Change or Approved Equal**

This form must be used for requested clarifications, changes, substitutes or approval of items equal to items specified with a brand name and must be submitted as far in advance of the Due Date, as specified in “Questions, Clarifications and Omissions.” **Please use only the embedded Excel document and submit electronically to assist the agency in responding to your requests.**

**Morongo Basin Transit Authority**

**RFP No. 21-01, Bus Shelters**



AE Form RFP  
#21-01.xls

**CER 3. Acknowledgement of Addenda**

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

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

Addendum No.:            –    Dated:

Addendum No.:            –    Dated:

Addendum No.:            –    Dated:

Addendum No.:            –    Dated:

Proposer:

Name:

Title:

Phone:

Street address:

City, state, ZIP:

\_\_\_\_\_  
Authorized signature

\_\_\_\_\_  
Date

**CER 4. Pricing Schedule**

The Pricing Schedule is contained in the embedded document is an Excel Spreadsheet containing the Pricing Schedule. Each Proposer is to complete the appropriate spreadsheet tabs, print and return an original with a “wet signature” with the required Proposal forms. Proposers are to also provide the other copies as required in NR 3, Proposal Due Date and Submittal Requirements.

**CER 5. Pre-Award Evaluation Data Form**

**Instructions:** This form is to be completed and included in the Qualification Package.  
Attach additional pages if required.

Morongo Basin Transit Authority  
RFP No. 21-01 for Bus Shelters

<p><b>1. Name of firm:</b></p> <p><b>2. Address:</b></p> <p><b>3. <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Joint Venture</b></p> <p><b>4. Date organized:</b> <b>State in which incorporated:</b></p> <p><b>5. Names of officers or partners:</b></p> <p>a.</p> <p>b.</p> <p>c.</p> <p>d.</p> <p><b>6. How long has your firm been in business under its present name?</b></p>
<p><b>7.</b> Have you been terminated or defaulted in the past five years, on any Contract you were awarded? Have you been barred by Federal process or any Western State? Has your firm ever defaulted on a performance bond? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, then attach as <b>SCHEDULE ONE</b> the full particulars regarding each occurrence.</p> <p><b>8.</b> Attach as <b>SCHEDULE TWO</b> a list of similar current contracts which demonstrates your technical proficiency, each with contract amount, name and address of contracting party including a contact person and their phone number, character or type of work and percentage of completion.</p> <p><b>9.</b> Attach as <b>SCHEDULE THREE</b> a list of similar contracts, each with contract amount, name of contracting party including a contact person and their phone number, character or type of work for similar contracts completed in the last five (5) years.</p> <p><b>10.</b> In the last two (2) years have you ever been denied an award where you were selected? _____. If the answer is YES, attach as <b>SCHEDULE FOUR</b> the full particulars regarding each occurrence.</p> <p><b>11.</b> Have you ever failed to complete, in the past five (5) years, any contract on which you were selected? _____. If the answer is YES, attach as <b>SCHEDULE FIVE</b> the full particulars regarding each occurrence.</p> <p><b>12.</b> Have you had any litigation within the previous 5 years involving any current or former projects with clients or government agencies? If the answer is YES, attached as <b>SCHEDULE SIX</b> the findings of any litigation including the status of each case.</p>
<p><b>The above information is confidential and shall not be divulged to any unauthorized personnel.</b></p>
<p>The undersigned certifies to the accuracy of all information: <b>Name and title:</b> <b>Company:</b></p> <p>_____</p> <p>Authorized signature Date</p>

**CER 6. Federal Certifications and Other Certifications**

**CER 1.1 Buy America Certification for Procurement of Steel, Iron, or Manufactured Products (Excludes Rolling Stock)**

**Certificate of Compliance**

The Proposer/Proposer hereby certifies that it will comply with the requirements of Title 49 USC Section 5323(j)(1) and the applicable regulations in 49 CFR Part 661.:

**Name and title:**

**Company:**

\_\_\_\_\_  
Authorized signature

\_\_\_\_\_  
Date

**Certificate of Non-Compliance**

The Proposer/Proposer hereby certifies that it cannot comply with the requirements of Title 49 USC Section 5323(j)(1), but it may qualify for an exception pursuant to Title 49 USC § 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

**Name and title:**

**Company:**

\_\_\_\_\_  
Authorized signature

\_\_\_\_\_  
Date

**CER 1.2 Debarment and Suspension Certification for Prospective Contractor**

Primary covered transactions must be completed by Proposer for contract values over \$25,000.

Choose one alternative:

- ☐ – The Proposer, [insert name], certifies to the best of its knowledge and belief that it and its principals:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  2. Have not within a three-year period preceding this Proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or Contract under a public transaction; violation of federal or state antitrust statutes or commission or embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in Paragraph 2 of this certification; and
  4. Have not within a three-year period preceding this Proposal had one or more public transactions (federal, state or local) terminated for cause or default.

**OR**

- ☐ – The Proposal is unable to certify to all of the statements in this certification, and attaches its explanation to this certification. (In explanation, certify to those statements that can be certified to and explain those that cannot.)

The Proposer 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 Title 31 USC § Sections 3801 are applicable thereto.

- Executed in [insert city and state].

**Name:**

\_\_\_\_\_  
Authorized signature

\_\_\_\_\_  
Date



**Request for Proposal**

RFP No. 21-01

**CER 1.3 Debarment and Suspension Certification (Lower-Tier Covered Transaction)**

This form is to be submitted by each Subcontractor receiving an amount exceeding \$25,000.

The prospective lower-tier participant (Proposer) certifies, by submission of this Proposal, that neither it nor its “principals” as defined at 2 CFR Parts 1200 and 180 is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

If the prospective Proposer is unable to certify to the statement above, it shall attach an explanation, and indicate that it has done so by placing an “X” in the following space: \_\_\_\_\_

**THE PROPOSER, \_\_\_\_\_,  
CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH  
STATEMENT OF ITS CERTIFICATION AND EXPLANATION, IF ANY. IN  
ADDITION, THE PROPOSER UNDERSTANDS AND AGREES THAT THE  
PROVISIONS OF 31 USC §§ 3801 *ET SEQ.* APPLY TO THIS CERTIFICATION AND  
EXPLANATION, IF ANY.**

**Name and title of the Proposer’s authorized official:**

\_\_\_\_\_  
Authorized signature

\_\_\_\_\_  
Date

**CER 1.4 Non-Collusion Affidavit**

This affidavit is to be filled out and executed by the Proposal; if a corporation makes the Proposal, then by its properly executed agent. The name of the individual swearing to the affidavit should appear on the line marked "Name of Affiant." The affiant's capacity, when a partner or officer of a corporation, should be inserted on the line marked "Capacity." The representative of the Proposer should sign his or her individual name at the end, not a partnership or corporation name, and swear to this affidavit before a notary public, who must attach his or her seal.

State of _____, County of _____	
I, _____, being first duly sworn, do hereby state that (Name of Affiant)	
I am _____ of _____ (Capacity) (Name of Firm, Partnership or Corporation)	
whose business is _____	
and who resides at _____	
and that _____ (Give names of all persons, firms, or corporations interested in the Proposal)	
is/are the only person(s) with me in the profits of the herein contained Contract; that the Contract is made without any connection or interest in the profits thereof with any persons making any Proposal or Proposal for said Work; that the said Contract is on my part, in all respects, fair and without collusion or fraud, and also that no members of the Board of Trustees, head of any department or bureau, or employee therein, or any employee of the Authority, is directly or indirectly interested therein.	
_____ Signature of Affiant	_____ Date
Sworn to before me this _____ day of _____, 20____.	
_____ Notary public	_____ My commission expires
Seal	

**CER 1.5 Lobbying Certification**

This form is to be submitted with an offer exceeding \$100,000.

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

1. No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of a federal department or agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a member of the U.S. 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 thereof.
2. If any funds other than federal appropriated funds have been paid or shall 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 instruction, as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
3. The undersigned 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, USC § 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.

**THE PROPOSER, \_\_\_\_\_, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE PROPOSER UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 USC §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.**

Name of the Proposer or Proposer's authorized official: \_\_\_\_\_

Title: \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Per paragraph 2 of the included form Lobbying Certification, add Standard Form–LLL, "Disclosure Form to Report Lobbying," if applicable.

**CER 1.6 Proposal Form**

Proposer shall complete the following form and include it in the Proposal.

**PROPOSER**

By execution below by a duly authorized representative(s) of the Proposer, the Proposer hereby offers to furnish equipment and services as specified in its Proposal submitted to MBTA in response to Invitation to Proposal No. 21-01 Bus Shelters in its entirety.

Proposer:

---

Street address:

---

City, state, ZIP:

---

Name and title of Authorized Signer(s):

---

Name and title of Authorized Signer(s):

---

Phone:

---

---

Authorized signature

---

Date

---

Authorized signature

---

Date

**CER 1.7 Notice of Award**

By execution below, Morongo Basin Transit Authority accepts the Proposal as indicated above.

Contracting officer:

---

---

Authorized signature

---

Date

## **SECTION 8: CONTRACT**

### **1. Contract Documents and Order of Precedence**

The Contract consists of the documents listed below. In case of any conflict among these documents, the order of precedence shall be:

1. Form of Contract
2. "Section 4: Special Conditions"
3. "Section 3: General Conditions"
4. "Section 6: Technical Specifications," "Section 7: Warranty Requirements," and "Section 8: Quality Assurance"
5. Contractor's Proposal
6. Addenda
7. RFP No. 21-01

A modification or change to any Contract document shall take its precedence from the term it amends. All other documents and terms and conditions shall remain unchanged.

### **2. Compensation**

The Pricing Form for Bus Shelters is Attachment 1 to this Contract. Each ordering Agency shall pay the Contractor the amount shown on the Ordering Confirmation Form as full compensation for all costs and expenses of completing the Work in accordance with the Contract, including but not limited to all labor and material required, overhead, storage, risks and obligations, taxes (as applicable), fees and profit, and any unforeseen costs. The only compensation to be paid shall be the cost of each shelter which is based on the quantity being ordered and the cost of shipping which is based on the quantity of shelters and the Zone to which the shelters will be shipped. In addition, the Contractor may also charge applicable sales tax based on the location to which the shelters are being shipped.

### **3. Contract Term and Period of Performance**

The effective date of this Contract shall be the effective date set forth in the Notice to Proceed (NTP). The Contractor shall provide bus shelters under the Contract for a period of three (3) years after the effective date of the Contract, upon receipt of the NTP and additional options years extended at the sole discretion of the MBTA.

### **4. Notices**

Any Notice legally required to be given by one party to another under the Contract shall be in writing, dated and signed by the party giving such Notice or by a duly authorized representative of such party.

Notices shall not be effective unless transmitted by any method that provides confirmation of transmission and delivery, such as fax, certified mail or registered mail and addressed to:

To Agency:

Mr. Joe Meer, Director of Purchasing  
Morongo Basin Transit Authority  
62405 Verbena Road  
Joshua Tree, CA 92252

[Insert Contractor name, address and point of contact]

### 5. Entire Agreement

This Contract constitutes the complete and entire agreement between the Agency and Contractor and supersedes any prior representations, understandings, communications, commitments, agreements or Proposals, oral or written that are not incorporated as a part of the Contract.

_____ Contractor name	_____ Agency name
_____ Signature of authorized official	_____ Signature of authorized official
_____ (Print or type name and title)	_____ (Print or type name and title)
_____ Date	_____ Date
_____ Tax ID number	_____ Approved as to form by:
	_____ Insert name and title

**Attachment 1 – Pricing Form for Bus Shelters**

[INSERT PRICING SCHEDULE]



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## **SECTION 9: APPENDIXES**

### **Appendix A: Bus Shelter Technical Specifications (Embedded here)**



Att A RFP 21-01  
Technical Specification

### **Appendix B: Pricing Form (Embedded here)**



Price Worksheet RFP  
21-01.xlsx