



VICTOR VALLEY TRANSIT AUTHORITY

Representing the Communities of Adelanto, Apple Valley, Hesperia,
Victorville and San Bernardino County

AGREEMENT No. VVTA 2013-04

(Acquisition for Purchase of 45-Foot Compressed Natural Gas (CNG), and Low Emission Diesel (LED) Commuter Coaches)

THIS AGREEMENT is made and entered into this 21st day of March 2014, by and between the **VICTOR VALLEY TRANSIT AUTHORITY**, a Joint Powers authority, created pursuant to the laws of the State of California, ("VVTA" OR "Lead Procuring Agency"), and Motor Coach Industries, Inc. ("CONTRACTOR").

RECITALS

WHEREAS, VVTA circulated and distributed a request for proposals ("RFP") for purchase in various quantities of 45-foot Compressed Natural Gas, and Low Emission Diesel type Commuter Coaches, a copy which is attached herein as Exhibit 1; and

WHEREAS, CONTRACTOR submitted a proposal to supply 45-foot Compressed Natural Gas and Low Emission Diesel Commuter Coaches, a copy which is attached herein as Exhibit 6; and

WHEREAS, CONTRACTOR has represented and warrants to VVTA that it has the necessary training, experience, expertise, physical manufacturing capacity and staff competency to provide the services, goods and materials that are described in this Agreement, at a cost to VVTA as specified in contractors proposal and that it will be able to perform the herein described services to VVTA by virtue of its current resources and specialized knowledge of relevant data, issues, and conditions: and

WHEREAS, CONTRACTOR represents and warrants that neither CONTRACTOR, nor any of its officers, agents, employees, contractors, subcontractors, volunteers, or five percent owners, is excluded or debarred from participating in or being paid for participation in any Federal or State program; and

WHEREAS, CONTRACTOR further represents and warrants that no conditions or events now exist which give rise to CONTRACTOR, or any of its officers, agents, employees, contractors, subcontractors, volunteers or five percent owners being excluded or debarred from any Federal or State program; and

WHEREAS, CONTRACTOR understands that VVTA is relying upon these representations in entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and conditions herein contained, VVTA and CONTRACTOR hereby agree as follows:

ARTICLE 1. SCOPE OF WORK

Subject to the terms and conditions set forth herein, CONTRACTOR shall supply VVTA with the Commuter Coach vehicles pursuant to Section 5, Technical Performance Specifications and fit for the dynamic operational envelope of the procuring transit agencies who are parties to this contract as well as all current relevant manuals, and operator and maintainer training and all other ("Work") as set forth in Contract Documents in a manner satisfactory to VVTA's Executive Director or designee (collectively "VVTA's Executive Director"). CONTRACTOR shall not commence work under this Contract until a written Notice to Proceed is issued by VVTA.

ARTICLE 2. CONTRACT DOCUMENTS

The complete Contract record includes all of the following Contract Documents, either included herewith or incorporated herein by reference, and they are included in their entirety as a part of this Contract, A first, then B, then C:

- A. This signed Agreement dated March 21st, 2014 and any and all of its Amendments, Appendices, Exhibits and Attachments;
- B. VVTA Request for Proposal (RFP), RFP Number 2013-04 dated August 29th, 2013 and any and all of its Amendments, Addenda, Appendices, Exhibits and Attachments;
- C. Contractor's Business Proposal, dated October 31st, 2013, and any and all of its Amendments, Appendices, Exhibits and Attachments;

In the event of any conflict or deviation Document B will be given highest priority followed by A and then C

ARTICLE 3. TERM OF CONTRACT

Contractor shall perform the services under this Contract for a term of one year, with 4 one year options beginning on March 21st, 2014 and ending on March 20th, 2019, unless sooner terminated as hereinafter provided.

ARTICLE 4. TOTAL CONSIDERATION

A. The total consideration payable to CONTRACTOR under this Contract by VVTA and its assignees for the Base Order of:

1. Ten (10) CNG Commuter Coaches; (5 for VVTA), and (5 for SCT)
2. Fifteen (15) Diesel Commuter Coaches; (3 for AVTA), (2 for MST), (10 for VCTC)
3. Vehicle deliveries shall be to the respective joint procuring agencies
4. Provision of all requisite manuals, and all operator / maintainer training for each

vehicle ordered placed by VVTA and participating procuring transit agencies.

Consideration shall not exceed the sum of \$15,417,190.00 for the base order and the applicable California state and local sales taxes Plus any additional options that each participating agency may choose to include in their respective order.

OPTION ORDERS:

- B. The total consideration payable to CONTRACTOR under this Contract by Victor Valley Transit Authority (hereinafter referred to as "VVTA"), for the potential VVTA Option Order of (5) CNG Commuter Coaches, delivery, manuals and training shall not exceed the base order price adjusted be the Annual COACH (PPI) for the year in which the order is placed.
- C. The total consideration payable to CONTRACTOR under this Contract by VVTA's assignee, Antelope Valley Transit Authority (hereinafter referred to as "AVTA") for the potential AVTA's Option Order of (17) Low Emission Diesel Commuter Coaches, delivery manuals and all training shall not exceed the base order price adjusted be the Annual COACH (PPI) for the year in which the order is placed.
- D. The total consideration payable to CONTRACTOR under this Contract by VVTA's assignee, Santa Clarita Transit (hereinafter referred to as "SCT"), for the potential SCT's Option Order Of (18) CNG Commuter Coaches, delivery, spare parts, manuals and all training shall not exceed the base order price adjusted be the Annual COACH (PPI) for the year in which the order is placed.
- E. The total consideration payable to CONTRACTOR under this Contract by VVTA's assignee, Monterey-Salinas Transit, (hereinafter referred to as "MST"), for the potential MST Option Order of (10) Low Emission Diesel Commuter Coaches, delivery, manuals and all training shall not exceed the base order price adjusted be the Annual COACH (PPI) for the year in which the order is placed.
- F. The total consideration payable to CONTRACTOR under this Contract by VVTA's assignee, Ventura County Transportation Commission, (hereinafter referred to as "VCTC"), for the potential VCTC Option Order of (10) Low Emission Diesel Commuter Coaches, delivery, manuals and all training shall not exceed the base order price adjusted be the Annual COACH (PPI) for the year in which the order is placed.
- G. Subject to available funding, the total consideration VVTA and the other Procuring Agencies shall pay to CONTRACTOR for delivery of the total Joint Agency Option Order Commuter Coaches under this Contract, delivery of manuals and operator and maintainer training sessions shall not exceed the base order price adjusted be the Annual COACH (PPI) for the year in which the orders are placed.

See (8)
3-21-14

ARTICLE 5. METHOD OF PAYMENT

A. In accordance with the terms and conditions of this Contract, VVTA or its assignee(s) shall pay CONTRACTOR for the Commuter Coaches, delivery and acceptance by VVTA or its assignee(s), respectively in accordance with the unit prices set out in the Pricing Schedule (Exhibit 1) and subject to the limitation of the total Contract Consideration payable to CONTRACTOR for VVTA and its assignee(s)' orders as set out in Article 4. Such payment shall be the full compensation for all costs and expenses of completing the Work in accordance with the Contract Documents, including but not limited to, manuals, training and all labor and materials required, overhead, expenses, storage and shipping, risks and obligations, fees and profit, and any unforeseen costs.

B. All payments will be made as provided herein, less withholding of ^{two} ~~five~~ percent (2%) plus any additional monies withheld as provided below, and less any amounts for liquidated damages in accordance with the Section 2.3.4 of Exhibit 1, the "Liquidated Damages" section. VVTA and its assignee(s) will make payments for their respective Base Order and Option Order Commuter Coaches, delivery, at the unit prices itemized in CONTRACTOR's Pricing Schedule (Exhibit 1) within thirty (30) calendar days after the delivery and acceptance of each Coach and receipt of a proper invoice, whichever date is later, subject to the following. If VVTA and/or its assignee(s) determine that CONTRACTOR has improperly invoiced an item, including, without limitation, invoicing an item that has not been accepted or with an incorrect amount, VVTA and/or its assignee(s) may deduct that disputed item from the payment, but shall not delay payment for the undisputed portions. The amounts and reasons for such deductions shall be documented and sent to CONTRACTOR within thirty (30) days after receipt of an invoice by VVTA and/or its assignee(s) and a sequential reference number shall be assigned to each deduction. In addition, VVTA and/or its assignee(s) may withhold payment, in whole or in part, to such extent as may be reasonably necessary in VVTA's and/or its assignee(s)' opinion to protect against losses because VVTA and/or its assignee(s) determines that one or more of the following conditions exist:

1. Defective Work is not remedied;
2. Third party claims are filed against VVTA and/or its assignee(s) or there is reasonable evidence indicating the probability of filing such claims;
3. Failure of the CONTRACTOR to make payments properly to Subcontractors or Suppliers;
4. CONTRACTOR has caused damage to VVTA, its assignee(s), or to another contractor's person or property;
5. Liquidated damages are assessed by VVTA and/or its assignee(s); or
6. Persistent failure by CONTRACTOR to carry out the Work In accordance with the Contract Documents.

- D. If a Coach does not meet all of the requirements under the Contract for acceptance, VVTA, at its sole discretion, may "conditionally accept" the Coach and place it into revenue service pending receipt of CONTRACTOR furnished materials and/ or labor necessary to correct the problem to permit acceptance of the Coach. For any conditionally accepted Coach, the payment owed will be reduced by an amount to be withheld equal to twice the estimated cost for parts and labor for corrective action as determined by VVTA. The amount withheld will be paid within thirty (30) days after completion of the corrective action by the CONTRACTOR and receipt of a proper invoice, whichever date is later.
- E. VVTA and /or its assignee(s) will make final payment for the amount of withholding for all Coaches and/or spare parts within thirty (30) calendar days after acceptance of all Coaches and spare parts and receipt of a final proper invoice, subject to the following conditions:
1. Delivery and acceptance of all Contract deliverables, including manuals and other documentation required by the Contract and completion of all required training has occurred; and
 2. Withholding due to any of the reasons set out in paragraphs C and/or D, above, have been remedied to VVTA's and/or its assignee(s)' satisfaction.
- F. Unless otherwise agreed, payment against invoice shall be delivered by first class mail through the facilities of the US Postal Service, postage prepaid, addressed to the applicable party in the manner set forth in Article 7. Payment against invoice shall be deemed to be made in California, whether or not payment is addressed to a different location or delivered in another manner

ARTICLE 6. CONTRACTOR'S RESPONSIBILITY

- A. The CONTRACTOR shall be responsible for the Work performed under the terms of this Contract to the extent provided by law. The CONTRACTOR agrees not to disclose information identified by VVTA as proprietary to third parties, unless approved in advance by VVTA or required by law.
- B. VVTA shall not be held liable or responsible for the maintenance and/or safety of the CONTRACTOR's equipment or supplies placed upon VVTA's property in accordance with this Contract. The CONTRACTOR acknowledges that it assumes full responsibility for any loss or damage to its equipment and supplies.
- C. Any materials, equipment or work found to be damaged or defective during the period
CONTRACTOR is performing the maintenance for the facility pursuant to this Agreement shall be
repaired, replaced or corrected by the CONTRACTOR hereunder without additional cost to VVTA, unless such damage is the result of VVTA's gross negligence or willful misconduct.

D. CONTRACTOR shall pay for all taxes, except for sales, use, transaction and excise taxes that were legally enacted at the time CONTRACTOR's offer submitted. CONTRACTOR shall secure and pay for all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of this Contract.

ARTICLE 7. COMMUNICATIONS

All Notices and other communications under this Contract shall be in writing and shall be deemed to have been duly given: (i) on the date of delivery, if delivered personally to the party to whom notice is given, or (ii) at the earlier of actual receipt or the second BUSINESS day following deposit in the United States mail, postage prepaid. Notices and other communications shall be directed to the parties at the addresses shown below. A party may change its person designated to receive notice, or its address from time to time by giving written notice to the other party of such change at least fifteen (15) calendar days prior to the effective date of the change.

VVTA: Victor Valley Transit Authority
17150 Smoketree Street
Hesperia, California 92345
Attention: Ron Zirges (COTR)
Telephone: (760) 948-4021 Ext: 118

CONTRACTOR: Motor Coach Industries, Inc.
200 East Oakton Street
Des Plaines, IL 60018
Attention: Patrick Scully
Telephone: (847) 285-2354

The parties have each carefully reviewed this Contract and have agreed to each term of this Contract. No ambiguity shall be presumed to be construed against either party.

ARTICLE 8. WAIVER

Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Contract.

ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

The provisions of Sections 2.2.4.3 and 2.2.4.4 of the RFP (Exhibit 1) shall apply.

ARTICLE 10. SUCCESSORS AND ASSIGNS

Subject to any provision under this Contract restricting assignment or subcontracting by CONTRACTOR, the provisions of this Contract shall be binding upon and

inure to the benefit of the respective successors, assigns, heirs, and personal representatives of the parties to this Contract.

ARTICLE 11. STATUS OF CONTRACTOR

- A. It is understood and agreed by all the parties hereto that Contractor is an independent contractor and that no relationship of employer-employee exists between VVTA and CONTRACTOR. Neither CONTRACTOR nor CONTRACTOR'S assigned personnel shall be entitled to any benefits payable to employees of VVTA. CONTRACTOR hereby indemnifies and holds VVTA harmless from any and all claims that may be made against VVTA, based upon any contention by any third party that an employer-employee relationship exists by reason of this Contract or any services provided pursuant to this Contract.
- B. It is further understood and agreed by all the parties hereto that neither CONTRACTOR nor CONTRACTOR'S assigned personnel shall have any right to act on behalf of VVTA in any capacity whatsoever as an agent or to bind VVTA to any obligation whatsoever.
- C. It is further understood and agreed by all the parties hereto that CONTRACTOR must issue any and all forms required by Federal and State laws for income and employment tax purposes, including, but not limited to W-2 and 941 forms, for all of CONTRACTOR'S assigned personnel.

ARTICLE 12. GOVERNING LAW

This Contract shall be deemed to be executed within the State of California and construed in accordance with and governed by the laws of the State of California. Any action or proceeding arising out of this Contract shall be filed and resolved in the Superior Court of the County San Bernardino.

ARTICLE 13. TIME OF THE ESSENCE

Time is of the essence in the performance of every term, covenant, condition, and provision of this Contract.

ARTICLE 14. PUBLIC RECORDS ACT

Upon its execution, this Contract (including all Exhibits) shall be subject to disclosure pursuant to the California Public Records Act.

ARTICLE 15. TERMINATION OF CONTRACT, DISPUTES, AND LITIGATION

The provisions of Section 2.2.6, 2.2.7, and 2.2.8 of the RFP (Exhibit 1) shall apply to this Contract.

ARTICLE 16. GRATUITIES, CONTINGENT FEES AND CONFLICTS OF INTERESTS

The provisions of Section 2.2.11 of the RFP (Exhibit 1) shall apply to this Contract.

ARTICLE 17. DELIVERY AND TITLE

The provisions of Section 2.3 of the RFP (Exhibit 1) shall apply to this Contract.

ARTICLE 18. LIQUIDATED DAMAGES

The provisions of Section 2.3.4 of the RFP (Exhibit 1) shall apply to this Contract.

ARTICLE 19. AUDIT AND INSPECTION OF RECORDS

The provisions of Section 2.6 of the RFP (Exhibit 1) shall apply to this Contract.

ARTICLE 20. FEDERAL REQUIREMENTS

The provisions of Section 2.8, 2.9, and 2.10 of the RFP (Exhibit 1) shall apply to this Contract.

ARTICLE 21. STATE REQUIREMENTS

The provisions of Section 2.11 of the RFP (Exhibit 1) shall apply to this Contract.

ARTICLE 22. SEVERABILITY

If any provision of this Contract is adjudicated by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Contract shall continue in full force and effect.

ARTICLE 23. STATE REQUIREMENTS

The provisions of Section 2.11 of the RFP (Exhibit 1) shall apply to this Contract.

ARTICLE 24. SEVERABILITY

If any provision of this Contract is adjudicated by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Contract shall continue in full force and effect.

ARTICLE 25. AMENDMENT

This Contract may only be amended in writing signed by both VVTA and CONTRACTOR, and any other purported amendment shall be of no force or effect.

ARTICLE 26. WARRANTY OF AUTHORITY

The person executing this Contract on behalf of Contractor affirmatively represents that she/he has the requisite legal authority to enter into this Contract on behalf of Contractor and to bind Contractor to the terms, covenants and conditions of this Contract. Both the person executing this Contract on behalf of Contractor and CONTRACTOR understand that VVTA is relying on this representation in entering into this Contract.

ARTICLE 27. ENTIRE AGREEMENT

This Contract, including any and all Exhibits, constitutes the entire agreement between VVTA and CONTRACTOR and supersedes all prior negotiations, representations, or agreements, whether written or oral. In the event of a dispute between the parties as to the language of this Contract or the construction or meaning of any term hereof, this Contract shall be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Contract.

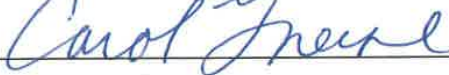
IN WITNESS WHEREOF, the parties have executed this Contract on the day and year set forth above.

VICTOR VALLEY TRANSIT AUTHORITY

By: 

Kevin Kane, VVTA Executive Director

APPROVED AS TO FORM _____

By: 

Carol Green, VVTA Legal Counsel

MOTOR COACH INDUSTRIES, INC.

By: 

Patrick Scully, Executive Vice President, Sales and Marketing.