

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Request for Qualifications to Supply Renewable Diesel

SOLICITATION INSTRUCTIONS

Summary Sheet

Solicitation Name: Request for Qualifications to Supply Renewable Diesel

Project Description: MTD is requesting qualifications from interested renewable diesel fuel suppliers to determine eligibility to participate in a future invitation for fixed price bids for a one to two year contract for the supply of approximately 600,000 gallons of renewable diesel.

Solicitation Issuance Date: Monday, March 16, 2020

Requests & Clarifications Deadline: Tuesday, March 24, 2020 at 5:00 PM (PDT)

Qualifications Submittal Due Date/Time: Thursday, April 2, 2020 at 5:00 PM (PDT)

Qualifications Submittal Location: Delivery to MTD via email to bdavis@sbmtd.gov

Solicitation Contact: Brad Davis, Director of Finance and Administration, (805) 883-4201

Check MTD's website at sbmtd.gov/about/doing-business/ for RFQ updates.

TABLE OF CONTENTS

1 SUBMITTAL REQUIREMENTS..... 1

1.1 Contents & Documents 1

1.2 Project Summary Description 1

1.3 Pre-Bid Meeting..... 1

1.4 Communications, Requests & Clarifications 2

1.5 RFQ Modifications & Addenda..... 2

2 PREPARATION & SUBMITTAL2

2.1 MTD Forms & Certifications..... 2

2.2 Qualifications Submittal 3

2.3 Submittal Review..... 3

2.4 Checklist 3

2.5 Protest Procedures..... 3

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Request for Qualifications to Supply Renewable Diesel

SOLICITATION INSTRUCTIONS

1 SUBMITTAL REQUIREMENTS

1.1 Contents & Documents

These *Solicitation Instructions* provide direction on the qualification submittal process. The request for qualifications is composed of the following items which make up the qualification submittal packet and are available on MTD's website at sbmtd.gov/about/doing-business/

- ❑ *Solicitation Instructions* (the document presently being read)
- ❑ RFQ Forms & Certifications (Attachment 1)
- ❑ *MTD Master Agreement* which will serve as the future contract between MTD and an awarded bidder as part of a separate bid process to take place at a later date (Attachment 2)
- ❑ *FTA Contract Provisions* covering conditions of the contract required by the Federal Transit Administration (Attachment 3)
- ❑ *Statement of Work* that provides a description of work contained in the future IFB (Attachment 4)

Interested parties should be certain to read all documents in this RFQ in order to prepare qualification submittals correctly and be fully aware of the future contractual terms and conditions. Failure of an interested supplier to follow instructions may result in rejection or disqualification of its submittal. The terms "party", "vendor", and "supplier" herein are used interchangeably and have the same meaning.

1.2 Project Summary Description

The Santa Barbara Metropolitan Transit District (MTD) is issuing this *Request for Qualifications (RFQ) to Supply Renewable Diesel* as an initial step in its procurement process which will include a separate Invitation for Bids (IFB) for renewable diesel to be released at a later date. The future IFB will specify MTD's renewable diesel delivery requirements for approximately 600,000 gallons of renewable diesel to an MTD on-site facility. A copy of MTD's Supply of Renewable Diesel Statement of Work for the upcoming IFB has been included for reference as Attachment 4.

With this RFQ, MTD will prequalify interested parties by determining their financial and technical capacity to meet MTD's renewable diesel and contract requirements. Only those vendors prequalified through this RFQ process will receive an invitation to bid for providing renewable diesel. The prequalification process consists of submitting the information and forms described in Section 2.1 in electronic format via email. **The prequalification submittal must be received by MTD no later than Thursday, April 2, 2020, by 5:00 PM local time. FAILURE OF MTD TO RECEIVE THE PRE-QUALIFICATION INFORMATION BY THE DEADLINE WILL AUTOMATICALLY DISQUALIFY THE VENDOR FROM SUBMITTING A BID FOR THE FUTURE.** It is strongly recommended that interested vendors submit their prequalification package in advance of the deadline and contact Brad Davis during regular business hours to verify MTD's receipt of the email.

1.3 Pre-Bid Meeting

There is no pre-bid meeting for this RFQ solicitation.

1.4 Communications, Requests & Clarifications

Communications concerning this solicitation may only be through Brad Davis. Unless authorized by Mr. Davis, interested vendors and their representatives shall not make contact or communicate with any other MTD agent or employee in regard to this solicitation. At any time during this solicitation until Tuesday, March 24, 2020 at 5:00 PM, interested parties may request a clarification, interpretation, or change to any aspect or requirement of the RFQ or any addenda thereto. If MTD elects to accept the request, all interested vendors will be notified through a written addendum.

1.5 RFQ Modifications & Addenda

MTD reserves the right to amend this RFQ through written addenda. No other form of communication with any officer, employee or agent of MTD shall be binding upon MTD of the RFQ. Addenda will be posted to MTD's website. As a courtesy, MTD will concurrently send addenda via e-mail to all parties known to have received the RFQ; however, MTD retains no responsibility for any consequences resulting from the failure of a supplier to receive addenda from MTD via email. It is the responsibility of each interested supplier to check MTD's website for all relevant solicitation documents.

2 PREPARATION & SUBMITTAL

2.1 MTD Forms & Certifications

Acknowledgement of Addenda—Interested vendor shall acknowledge either the receipt of each addendum or that there were no addenda by including in its submittal the fully completed (including listing any addenda issued) and signed *Acknowledgement of Addenda* form included in this RFQ.

Contract Terms Certification Form—Provide the signed and dated *Contract Terms Certifications* form included in this solicitation indicating that the interested supplier understands and agrees to the project requirements including all of the terms and conditions of a possible future contract to be formally solicited separately from this RFQ and awarded by MTD at a later date.

Vendor Information Form—Provide the fully completed *Vendor Information* form included in this solicitation.

References, Suppliers & Subcontractors Form—Provide the fully completed *References, Suppliers & Subcontractors* form included in this solicitation. Work references should include customers similar in nature and fuel quantity requirements to MTD to the extent feasible. **If not the interested vendor itself, the suppliers section must include the ULSD producer(s) and the subcontractor section must include the fuel delivery trucking firm(s).** If these vary during the contract, list the anticipated three most frequently used suppliers and subcontractors. If additional space is needed, make copies of the blank form. It is imperative that current, accurate contact names, emails, and phone numbers are provided. It is strongly recommended that the interested vendor give advance notice to such contacts that MTD will be contacting them as references and that a response from them may determine your eligibility to bid.

Lobbying Certification—Provide the fully completed and signed *Lobbying Certification* form which is required because this is a federally funded project with a contract amount exceeding \$100,000.

Non-Collusion Declaration and Compensation Certification—Interested vendors shall include the fully completed *Non-Collusion Declaration and Compensation Certification* form included in this RFQ.

Description of the Firm—Provide a description of your company including its line(s) of business, size, location(s), years in business, and other information to allow MTD to determine the capacity of the interested vendor to successfully undertake the project. If a large entity, information on the division of the

firm that would be responsible for the project should be emphasized. Please limit such information to 10 pages and 5 MB in size.

Certificate of Insurance—Provide a Certificate of Liability Insurance listing relevant policy coverages currently in effect for the interested vendor. Evidence of insurance ideally meets the minimum coverage stipulated in paragraph 18 of the *MTD Master Agreement* (see attachment 2). If MTD is requiring greater or different coverage than currently held by the interested vendor, it must be capable of providing a Certificate of Insurance meeting MTD's insurance requirements prior to the start of an awarded contract. **However, if the insurance certificates supplied as part of this pre-qualification process are substantially less than MTD's required coverage, this will weigh negatively in the determination of the interested vendor's financial capacity to undertake the project and, thus, to be invited at a later date to submit a bid.** While not being requested at this time, proof of similar insurance coverage will be required for any independent trucking firms being used for fuel delivery to MTD.

2.2 Qualifications Submittal

Interested vendors shall submit one (1) complete electronic set of its qualifications submittal via email to bdavis@sbmtd.gov preferably using "RFQ to Provide Diesel Fuel" as the email subject. **Qualification submittals will be accepted until 5:00 PM on Thursday, April 2, 2020.** Unless due to the fault of MTD, submittals received after such time cannot be considered by MTD.

2.3 Submittal Review

MTD shall examine all eligible qualification submittals received to determine the responsiveness to the provisions of this solicitation. Qualification submittals that do not contain all required items or where such documents are substantially incomplete may be considered non-responsive and rejected by MTD. The qualification review is anticipated to be completed and interested parties to be notified of their qualification status by Wednesday, April 15, 2020.

2.4 Checklist

To ensure all required qualification submittal documents are included, a Submittal Checklist has been provided on the following page. Please do not include this checklist in your submittal.

2.5 Protest Procedures

Procurement protest procedures have been established to ensure uniform, timely, and equitable consideration of all complaints received by MTD concerning its procurement activities. Such procedures may be found on MTD's website at the following link: sbmtd.gov/about/doing-business/

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Request for Qualifications to Supply Renewable Diesel

CHECKLIST

The Checklist is an aid for completing the requirements of this RFQ. It does not substitute for any provision or obligation in the *Solicitation Instructions* or the terms and conditions in the attachments. In the event of any conflict between this Checklist and the aforementioned documents, the latter shall control over the Checklist.

Important Dates:

- Email any requests and clarifications by Tuesday, March 24, 2020 at 5:00 PM (PDT)
 - Email to Brad Davis at bdavis@sbmtd.gov
- Email all prequalification documents by Thursday, April 2, 2020 at 5:00 PM (PDT)
 - Email to Brad Davis at bdavis@sbmtd.gov

Required Pre-Qualification Documents:

- Vendor Information Form: complete *Vendor Information* form in this RFQ.
- References, Suppliers & Subcontractors Form: complete *References, Suppliers & Subcontractors* form in this RFQ. Work references shall include projects similar to that described in this RFQ to the extent feasible (Note: all significant suppliers and subcontractors must be included).
- Contract Terms Certification Form: complete and sign *Contract Terms Certification* form in this RFQ
- Lobbying Certification Form: complete and sign *Lobbying Certification* form included in this RFQ.
- Non-Collusion Declaration and Compensation Certification Form: complete *Non-Collusion Declaration and Compensation Certification* form included in this RFQ.
- Description of Bidding Firm: Provide a description of your company including its line(s) of business, size, location(s), years in business, and other information to allow MTD to determine the capacity of the interested vendor to successfully undertake the project. If a large entity, information on the division of the firm that would be responsible for the project should be emphasized.
- Certificate of Insurance: Provide a Certificate of Liability Insurance listing policy coverages currently in effect for the interested vendor.
- Acknowledgement of Addenda Form: complete and sign *Acknowledgement of Addenda* form in this RFQ acknowledging either the receipt of each addendum or that there were no addenda.

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT
Request for Qualifications to Supply Renewable Diesel

Attachment 1
PRE-QUALIFICATION FORMS

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Request for Qualifications to Supply Renewable Diesel

REFERENCES, SUPPLIERS & SUBCONTRACTORS

Business Name of Vendor: _____

Credit References

Include your primary bank and two firms that you **currently** purchase materials or services from on credit:

Bank Name: _____ Contact: _____ Phone: _____

Vendor Name: _____ Contact: _____ Phone: _____

Vendor Name: _____ Contact: _____ Phone: _____

Work References

Include three current or recent customers for which you provided **similar services** to the project work:

Client Name: _____ Contact: _____ Phone: _____

Client Name: _____ Contact: _____ Phone: _____

Client Name: _____ Contact: _____ Phone: _____

Suppliers & Subcontractors

Provide the following information for any **significant** suppliers or subcontractors to be used in the project:

Firm: _____ Contact: _____ Phone: _____

Description of Work: _____

Firm: _____ Contact: _____ Phone: _____

Description of Work: _____

Firm: _____ Contact: _____ Phone: _____

Description of Work: _____

Firm: _____ Contact: _____ Phone: _____

Description of Work: _____

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Request for Qualifications to Supply Renewable Diesel

CONTRACT TERMS CERTIFICATION

Vendor certifies that it:

1. Has read, understands, and agrees to the terms and conditions of this solicitation and any ensuing contract that it is awarded as a result of this solicitation. Such documents include the *Solicitation Instructions*, *MTD Master Agreement*, *Federal Transit Administration Contract Provisions*, and any other documents, terms, or conditions cited within them. **MTD will not negotiate or modify contractual terms and conditions unless it is in its best interest to do so.**
2. Has the ability and willingness to obtain insurance meeting the requirements indicated in paragraph 18 of the *Master Agreement* and that a Certificate of Liability Insurance and endorsements meeting such requirements must be provided to MTD prior to contract implementation.

Authorized Official Signature

Date of Signature

Authorized Official Name

Authorized Official Title

Business Name of Vendor

(Signer must match authorized official shown on Vendor Information form)

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Request for Qualifications to Supply Renewable Diesel

LOBBYING CERTIFICATION

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

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

Authorized Official Signature

Date of Signature

Authorized Official Name

Authorized Official Title

Business Name of Vendor

(Signer must match authorized official shown on Vendor Information form)

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Request for Qualifications to Supply Renewable Diesel

NON-COLLUSION DECLARATION

The undersigned declares:

I am the _____ of _____,
(title) (business name of bidder)

the party making the included bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____, at _____, _____.
(date) (city) (state)

Authorized Official Signature

Authorized Official Name (printed)

COMPENSATION CERTIFICATION

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Authorized Official Signature

Date of Signature

Authorized Official Name

Authorized Official Title

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Request for Qualifications to Supply Renewable Diesel

ACKNOWLEDGEMENT OF ADDENDA

The undersigned acknowledges either that there were no addenda to the solicitation or that the Interested Vendor received the following addenda to this *Request for Qualifications to Supply Renewable Diesel* and has incorporated information or changes in said addenda within its bid.

No Addenda

OR

Addendum No. _____ dated _____

Addendum No. _____ dated _____

Addendum No. _____ dated _____

Addendum No. _____ dated _____

Authorized Official Signature

Date of Signature

Authorized Official Name

Authorized Official Title

Business Name of Vendor

(Signer must match authorized official shown on Vendor Information form)

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT
Request for Qualifications to Supply Renewable Diesel

Attachment 2
MTD MASTER AGREEMENT

Santa Barbara Metropolitan Transit District
Supply of Renewable Diesel

MASTER AGREEMENT with [contractor name tbd]

THIS AGREEMENT is entered into by and between Santa Barbara Metropolitan Transit District, an incorporated transit district under Sections 95000, et seq. of the California Public Utilities Code ("MTD"), and [contractor name], a [insert state name] [insert business type] ("Contractor"), at Santa Barbara, California, as of the later date set forth below the signatures executing this Agreement.

WHEREAS:

- A. MTD desires to engage Contractor for the supply of renewable diesel fuel (the "Project");
- B. Contractor represents that it has the knowledge and experience to carry out the Project, and desires to carry out the Project pursuant to the terms and conditions hereof, and;
- C. Based upon the representations made by Contractor, MTD desires to retain the services of Contractor to carry out the aforesaid Project, upon the within terms and conditions.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

- 1. Effect of Recitals. The foregoing recitals are hereby made express provisions of this Agreement.
- 2. FTA Provisions. The Project is funded in part by the Federal Transit Administration of the U.S. Department of Transportation and, as such, this Agreement is subject to the terms and conditions contained in *Federal Transit Administration: Contract Provisions* which is attached hereto as Exhibit "A" and incorporated herein by this reference.
- 3. Public Works Provisions. Not applicable to this agreement.
- 4. Statement of Work. MTD has heretofore issued on March 23, 2020, a statement of work contained in the Invitation for Bids (IFB) for the Supply of Renewable Diesel, a true copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference. [if SOW amended, may need to modify]
- 5. Bid. Contractor has heretofore submitted on [date tbd] a bid to carry out the Project, true copies of relevant parts that are attached hereto as Exhibit "C" and incorporated herein by this reference.
- 6. Order of Control. Contractor shall carry out the Project described in Exhibit B to this Agreement for the price quoted in Exhibit C. All work and services shall be performed according to and controlled by the terms and provisions of this Agreement and the exhibits attached hereto. In the event of any conflict between the contract documents, the following order of control shall prevail: MTD Master Agreement, Exhibit A, Exhibit B, Exhibit C.
- 7. Contract Price. Contractor shall carry out the Project for a fixed price per gallon of renewable diesel of [insert fixed price] , which is in accordance with Exhibit C".
- 8. Payment. Contractor shall submit invoice to MTD for each fuel delivery. Payment from MTD shall be made to Contractor no later than thirty (30) days after receipt by MTD of a valid invoice, which shall be sent to either: AP@sbmtd.gov or Santa Barbara MTD, Attn: Accounts Payable, 550 Olive Street, Santa Barbara, CA 93101.
- 9. Taxes & Fees. As a government agency, MTD is exempt from the payment of many federal and state taxes and fees. Applicable taxes and fees are specified in the Statement of Work. Contractor shall not include any taxes or fees in its bid, but shall include applicable taxes and fees it's invoice.
- 10. Project Schedule. Contactor shall deliver renewable diesel to MTD on an as-needed basis beginning December 1, 2020 and ending November 30, 2021. [modify if two-year contract]
- 11. Delivery & Freight. Unless specified otherwise in the statement of work, any item provided under this Agreement shall be delivered FOB Santa Barbara to 550 Olive Street, Santa Barbara, CA 93101. Any Project

freight and delivery charges shall have been already included in the Contractor's fixed price bid and shall not be paid otherwise by MTD.

12. Title & Risk of Loss. The Contractor shall have title to and bear the risk of any loss of or damage to any item provided hereunder until delivered and, if applicable pursuant to this Agreement or standard industry practice, installed or otherwise set up for usage. Upon such delivery and applicable installation and setup, title shall pass from the Contractor to MTD, and the Contractor's responsibility for loss or damage shall cease, except for loss or damage resulting from the Contractor's negligence. Such passing of title shall not constitute acceptance of an item by MTD. The Contractor shall further warrant that the title to any item provided hereunder is free from all claims, encumbrances and liens.

13. Damages. All losses or damages arising from any unforeseen circumstances, either natural or artificial, which may be encountered by the Contractor during the performance of the Project under this Agreement shall be sustained solely by the Contractor. This provision shall also apply to losses or damages resulting from any act or omission not authorized by this Agreement on the part of the Contractor or any agent or person employed by the Contractor.

14. Defective, Damaged or Noncompliant Work. Any items, services, work or systems acquired pursuant to this Agreement found to be defective, damaged or non-compliant with the statement of work at the time of delivery or installation shall be replaced by the Contractor without additional cost to MTD. If the Contractor should fail to promptly comply with any order to replace or repair any defective items, services, work or systems, MTD shall have the authority to deduct the cost of such replacement or repair from any compensation due or to become due to the Contractor. Nothing in this section shall limit or restrict any warranty provisions of this Agreement or any exhibits hereto.

15. Acceptance. Terms of Acceptance are contained in the statement of work.

16. Warranty. Pursuant to the warranty provisions contained in the statement of work, the Contractor shall warrant to MTD that, for the specified period after MTD's full acceptance of items, services, work or systems, each shall conform with the requirements hereof and be free of defects. The rights of MTD hereunder are in addition to, and not limited by, the Contractor's standard warranties. Acceptance of items, services, work or systems by MTD, or payment therefor, shall not relieve the Contractor of its obligations thereunder.

17. Changes. Any changes or modifications to this Agreement must be in writing, and agreed to by both parties.

18. Insurance.

a. Contractor's Insurance Representations to MTD.

i. It is expressly understood and agreed that the insurance coverages required herein:

A. represent MTD's minimum requirements and are not to be construed to void or limit Contractor's indemnity obligations as contained in this Agreement nor represent in any manner a determination of the insurance coverages Contractor should or should not maintain for its own protection; and

B. are being, or have been, obtained by Contractor in support of Contractor's liability and indemnity obligations under this Agreement. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy, or failure of any insurance company carrying insurance of Contractor, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate, or waive any of the provisions of this Agreement.

ii. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under this Contract. If Contractor shall fail to remedy such breach within five (5) business days after written notice by MTD, Contractor will be liable for any and all costs, liabilities, damages and penalties resulting to MTD from such breach, unless a written waiver of the specific insurance requirement(s) is provided to Contractor by MTD. In the event of any failure to Contractor to comply with the provisions of this portion of the Agreement, MTD may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to Contractor, purchase such insurance, at Contractor's expense, provided that MTD shall have no obligation to do so and if MTD shall do so, Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

iii. MTD will consider variations from these insurance requirements if it is determined that such variations provide the same essential coverage required herein. Such determination shall be made solely by MTD.

b. Conditions Affecting All Insurance Required Herein.

i. Cost of Insurance. All insurance coverage shall be provided at Contractor’s sole expense.

ii. Maintenance of Insurance. All insurance coverage shall be maintained in effect with limits not less than those set forth below at all times during the term of this Agreement.

iii. Status and Rating of Insurance Company. All insurance coverage shall be written through insurance companies admitted to do business in California and with a Best’s Financial Strength Rating of A- or better, as shown in the on-line version of Best’s Rating & Criteria Center.

iv. Restrictive, Limiting, or Exclusionary Endorsements. All insurance coverage shall be provided to Contractor Parties in compliance with the requirements herein and shall contain no endorsements that restrict, limit, or exclude coverage in any manner without the prior express written approval of MTD.

v. Limits of Liability. The limits of liability may be provided by a single policy of insurance or by a combination of primary and umbrella policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.

vi. Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage. In the event of cancellation, nonrenewal, or material reduction in coverage affecting the certificate holder, thirty (30) days prior written notice shall be given to the certificate holder by certified mail, return receipt requested, except in the event of cancellation for nonpayment, in which event fifteen (15) days prior written notice shall be given. If insurer will not include in its coverage such written notifications, it shall be incumbent upon Contractor to comply with such written notification requirements.

vii. Additional Insured Status. Additional insured status shall be provided in favor of MTD and its officers, employees and agents, including consultants, on all liability insurance required herein except workers’ compensation/employer’s liability and the certificate of insurance shall reflect same. Such additional insured coverage shall be primary to and shall seek no contribution from all insurance available to MTD, with MTD’s insurance being excess, secondary, and noncontributing.

viii. Waiver of Subrogation. All insurance coverage carried by Contractor required herein shall provide a waiver of subrogation in favor of MTD for all loss covered by such insurance, and Contractor waives all rights of action against MTD for such loss.

ix. Primary Liability. All insurance coverage required herein shall be primary to and shall seek no contribution from all insurance available to MTD, with MTD’s insurance being excess, secondary, and noncontributing. Where necessary, coverage shall be endorsed to provide such primary liability, and the certificate of insurance shall reflect same.

x. Deductible/Retention. All insurance required for this project shall have a maximum deductible or self-insured retention of \$10,000 per policy.

xi. Claims Against Aggregate. MTD must be notified in writing by Contractor at MTD’s address set forth herein immediately upon knowledge of possible claims against Contractor that might cause a reduction below seventy-five (75%) of any aggregate limit of any primary policy.

c. Commercial General Liability Insurance.

i. Coverage. Such insurance shall cover liability arising out of all locations and operations of Contractor, including but not limited to liability assumed under this Agreement (including the tort liability of another assumed in a business contract). Defense shall be provided as an additional benefit and not included within the limit of liability.

ii. Form. Commercial General Liability Occurrence form, at least as broad as an unmodified ISO CG 00 01 10 93 or its equivalent.

iii. Amount of Insurance. Coverage shall be provided with limits of not less than:

A. Each Occurrence Limit	\$1,000,000
B. General Aggregate Limit	\$2,000,000

C. Product-Completed Operations Aggregate Limit	\$2,000,000
D. Personal and Advertising Injury Limits	\$1,000,000
E. Fire Damage (any one fire)	\$50,000
F. Medical Expense (any one person)	\$5,000

iv. Additional Endorsements.

A. Personal Injury Liability: The personal injury contractual liability exclusion shall be deleted.

B. Continuing Commercial General Liability Insurance: Contractor shall maintain such insurance in identical coverage, form, and amount, including required endorsements, for at least three (3) years following the date of acceptance by MTD of the last bus built pursuant to this Agreement.

d. Auto Liability Insurance.

i. Coverage. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned).

ii. Form. Business Auto Form (at least as broad as an unmodified ISO CA 0001 or its equivalent).

iii. Amount of Insurance. Coverage shall be provided with a limit of not less than \$1,000,000, combined single limit.

e. Excess Liability/Umbrella Insurance.

i. Coverage. Such insurance shall be excess over and be no less broad than all coverages described above and shall include a drop-down provision.

ii. Form. This policy shall have the same inception and expiration dates and the commercial general liability insurance required above.

iii. Amount of Insurance. Coverage shall be provided with a limit of not less than \$4,000,000, combined single limit over and above the Commercial General Liability coverage.

f. Pollution/Environmental Liability Insurance.

i. Coverage. Such insurance shall cover liability arising out of any sudden accidental pollution and related cleanup costs incurred by the Contractor or Subcontractor, arising out of work or services, including transportation, to be performed under this Agreement. Such coverage may be satisfied with endorsements to Commercial General Liability, Auto Liability, and/or Excess Liability/Umbrella insurance meeting these requirements.

ii. Amount of Insurance. Coverage shall be provided with a limit of not less than \$5,000,000, combined single limit.

g. Workers' Compensation/Employer's Liability Insurance.

i. Coverage. Such insurance shall cover liability arising out of Contractor's employment of workers and anyone for whom Contractor may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance shall be permitted.

ii. Amount of Insurance. Coverage shall be provided with a limit of not less than:

- A. Workers' Compensation: Statutory limits
- B. Employer's Liability: \$1,000,000 each accident and disease.

19. Bonding. Not applicable to this agreement.

20. Termination. For applicable terms, refer to Paragraph 21 (Termination) in *Federal Transit Administration: Contract Provisions*, which is attached hereto as Exhibit A.

21. Liquidated Damages. Not applicable to this agreement.

22. Infringement of Patents. The Contractor agrees that it will, at its own expense, defend all suits and proceedings instituted against MTD and pay any award of damages assessed against MTD in such suits or proceedings, insofar as the same are based upon any claim that the items, services, work, systems, or any part thereof, or any tool, or process used in or for the Project, constitutes an infringement of any legal United States copyright or patent. MTD agrees that it will give the Contractor prompt notice in writing of the institution of the suit or proceeding and permits

the Contractor through its counsel to defend the same and gives the Contractor all information, assistance and authority necessary for the Contractor to do so. In case said items, services, work, systems, or any part thereof, or any tool, or process used in or for the Project, is in such suit held to constitute infringement and use of same is enjoined, the Contractor shall, at its own expense and at its option, either procure for the MTD the right to continue using said items, services, work, systems, or any part thereof, or any tool, or process used in or for the Project, or replace same with non-infringing equipment, or modify it so it becomes non-infringing.

23. Rights in Data. Not applicable to this agreement.

24. Indemnification. The Contractor shall, to the extent permitted by law protect, indemnify, defend, and hold MTD and its officers, employees and agents, including consultants, 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 MTD and its officers, employees and agents, including consultants, 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 acts, errors or omissions of the Contractor, including acts, errors or omissions of its officers, employees, servants, agents, subcontractors and suppliers; and 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 MTD and its officers, employees and agents, including consultants, relating to such injury, death, loss or damage. Each party shall promptly notify the other in writing of the notice or assertion of any claim, demand, lien, encumbrance, judgment, award, suit, action or other proceeding hereunder. The Contractor shall have sole charge and direction of the defense of such suit, action or proceeding. The MTD shall not make any admission which 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 MTD 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. The MTD shall have the right to be represented therein by advisory counsel of its own selection at its own expense. The obligations of the Contractor under this clause shall not extend to circumstances where the injury, or death, or damages is caused solely by the negligent acts, errors or omissions of the MTD, its officers, employees, agents or consultants, including negligence in the preparation of the Contract documents, or the giving of directions or instructions with respect to the requirements of the Contract by written order.

25. Notice. Notices in connection with this Agreement shall be made in writing and may be delivered either personally, by governmental postal service (regular, certified or registered), by private delivery service, or by email. Receipt shall be deemed to have occurred when actually made to the party or its designated agent. Such notices shall be properly addressed to the intended party as follows:

<p><u>MTD:</u> Jerry Estrada, General Manager Santa Barbara Metropolitan Transit District 550 Olive Street Santa Barbara, CA 93101 Email: jestrada@sbmtd.gov</p>	<p><u>CONTRACTOR:</u> [authorized official name & title] [contractor name] [contractor street address] [insert contractor city, state & zip] [insert contractor email]</p>
---	---

26. Attorney Fees and Costs. In the event of a controversy (including, but not limited to arbitration or an criminal or civil filing in a Federal Court or a court of any of the United States) between the parties with respect to the enforcement or interpretation of this Agreement, the prevailing party in such controversy shall be entitled to receive, in addition to such other award as the court may deem appropriate, full reimbursement for its court costs and reasonable attorney fees incurred therein.

27. Negation of Partnership. This Agreement creates a relationship between two independent contractors and does not, nor may it be interpreted to, create the relationship of joint venturers, partners, employee/employer, or any other business relationship.

28. No Assignment. This Agreement is not assignable by either party, and any attempt by either party to assign its obligations hereunder shall be void ab initio at the election of the other party, which election may be made by written notice within ten (10) days of the non-assigning party's receipt of actual knowledge of such attempted

assignment. Notwithstanding the foregoing, however, at the election of the other party, the obligations and burdens of a party shall bind and apply to any permitted successor in interest or assignee of the business and/or operations of a party.

29. Partial Invalidity. In the event that any portion of this Agreement or any provision hereof shall be deemed as invalid as contrary to applicable law, the balance of this Agreement shall be enforced according to its term, and that portion found unenforceable shall be interpreted and enforced to the extent that it may be within said applicable laws.

30. Disputes. This Agreement shall be construed and all disputes arising therefrom shall be settled in accordance with the laws of the State of California. Venue for any dispute arising under this Agreement shall be in Santa Barbara, California. Any controversy or claim arising out of or relating to this Agreement shall be resolved by binding arbitration before a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) then pertaining (available at www.adr.org), except where those rules conflict with this provision, in which case this provision controls. Any court with jurisdiction shall enforce this clause and enter judgment on any award. The arbitrator shall be selected within twenty business days from commencement of the arbitration from the AAA’s National Roster of Arbitrators pursuant to agreement or through selection procedures administered by the AAA. Within 45 days of initiation of arbitration, the Parties shall reach agreement upon and thereafter follow procedures, including reasonable limits on discovery, assuring that the arbitration will be concluded and the award rendered within no more than eight months from selection of the arbitrator or, failing agreement, procedures meeting such time limits will be designed by the AAA and adhered to by the Parties. The arbitration shall be held in Santa Barbara, California and the arbitrator shall apply the substantive law of California, except that the interpretation and enforcement of this arbitration provision shall be governed by the Federal Arbitration Act. Prior to commencement of arbitration, emergency relief is available from any court to avoid irreparable harm. **THE ARBITRATOR SHALL NOT AWARD EITHER PARTY PUNITIVE, EXEMPLARY, MULTIPLIED OR CONSEQUENTIAL DAMAGES.** Prior to commencement of arbitration, however, the Parties must attempt to mediate their dispute using a professional mediator from AAA, the CPR Institute for Dispute Resolution, or like organization selected by agreement or, absent agreement, through selection procedures administered by the AAA. Within a period of 45 days after the request for mediation, the Parties agree to convene with the mediator, with business representatives present, for at least one session to attempt to resolve the matter. In no event will mediation delay commencement of the arbitration for more than 45 days absent agreement of the Parties or interfere with the availability of emergency relief.

31. Prohibited Interest. The parties hereto covenant and agree that to their knowledge no board member, officer, or employee of MTD, during his/her tenure or for one year thereafter, has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of a contracting party other than MTD. If any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such information will be made in writing to the other parties, even if such interest would not be considered a conflict of interest under Article 4, Chapter 1, Divisions 4 and 4.5, Title I of the Government Code of the State of California.

32. Compliance with Laws and Regulations. Contractor shall warrant that in the performance of work under contract to MTD that they shall comply with all applicable federal, state and local laws and ordinances, and all lawful orders, rules, and regulations thereunder.

33. Audit and Inspection of Records. The Contractor shall agree that all materials supplied and services performed under the Project, facilities used in connection therewith, and records and documentation thereunto appertaining shall be subject to inspection, test, or audit by duly authorized representatives of MTD and the State of California. The Contractor agrees to maintain all required records relating to the Project for at least three years after MTD makes final payment and all other pending matters are closed.

34. Equal Employment Opportunity. For applicable terms, refer to Paragraph 24 (Civil Rights Requirements) in *Federal Transit Administration: Contract Provisions*.

35. Entire Agreement. This Agreement and its attached exhibits constitute the entire agreement between the parties and shall be deemed to supersede and cancel any and all previous representations, understandings, or agreements between MTD and Contractor as to the subject matter hereof. This Agreement may only be amended by an instrument in writing signed by the parties.

36. No Waiver. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party's right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.

37. Counterparts & Email. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties agree that a scanned and emailed signature may substitute for and have the same legal effect as the original signature.

38. Qualifications. Contractor or Contractor's representative (Contractor) certifies that Contractor is qualified to do business and is in good standing in the State of California, and that Contractor has authority to enter into and perform its obligations under this Agreement, which constitutes a valid and binding obligation of Contractor.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed.

SANTA BARBARA MTD

[contractor name in caps]

[NAME], General Manager

[authorized official name & title]

Date

Date

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT
Request for Qualifications to Supply Renewable Diesel

Attachment 3
FTA CONTRACT PROVISIONS

FEDERAL TRANSIT ADMINISTRATION
CONTRACT PROVISIONS
*Supply of Renewable Diesel – **Contractor Name***

TABLE OF CONTENTS

1.	Fly America Requirements (not applicable)	1
2.	Buy America Requirements (not applicable).....	1
3.	Charter Bus & School Bus Requirements (not applicable).....	1
4.	Cargo Preference Requirements (not applicable).....	1
5.	Seismic Safety Requirements (not applicable)	1
6.	Energy Conservation Requirements	1
7.	Clean Water Requirements.....	1
8.	Bus Testing (not applicable)	1
9.	Pre-Award & Post-Delivery Audit Requirements (not applicable).....	1
10.	Lobbying	1
11.	Access to Records & Reports	2
12.	Federal Changes	2
13.	Bonding Requirements (not applicable).....	2
14.	Clean Air	2
15.	Recycled Products (not applicable).....	3
16.	Davis-Bacon & Copeland Anti-Kickback Acts (not applicable).....	3
17.	Contract Work Hours & Safety Standards Act (not applicable)	3
18.	[Reserved]	3
19.	No Government Obligations to Third Parties	3
20.	Program Fraud & False or Fraudulent Statements & Related Acts.....	3
21.	Termination.....	3
22.	Government-Wide Debarment & Suspension	4
23.	Privacy Act (not applicable)	4
24.	Civil Rights Requirements.....	4
25.	Breaches & Dispute Resolution	5
26.	Patent & Rights in Data (not applicable)	5
27.	Transit Employee Protective Agreements (not applicable)	5
28.	Disadvantaged Business Enterprise (DBE)	5
29.	[Reserved]	6
30.	Incorporation of Federal Transit Administration (FTA) Terms	6
31.	Drug & Alcohol Testing (not applicable).....	6
32.	Intelligent Transportation System (ITS) (not applicable)	6

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1. **FLY AMERICA REQUIREMENTS (NOT APPLICABLE)**
2. **BUY AMERICA REQUIREMENTS (NOT APPLICABLE)**
3. **CHARTER BUS & SCHOOL BUS REQUIREMENTS (NOT APPLICABLE)**
4. **CARGO PREFERENCE REQUIREMENTS (NOT APPLICABLE)**
5. **SEISMIC SAFETY REQUIREMENTS (NOT APPLICABLE)**
6. **ENERGY CONSERVATION REQUIREMENTS**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. The Contractor agrees to include the requirements of this section in all subcontracts.

7. **CLEAN WATER REQUIREMENTS**

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

8. **BUS TESTING (NOT APPLICABLE)**

9. **PRE-AWARD & POST-DELIVERY AUDIT REQUIREMENTS (NOT APPLICABLE)**

10. **LOBBYING**

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

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

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (b) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]

(c) The Contractor shall require that the language of this certification be included in the award documents for all subawards exceeding \$100,000 at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this

transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. [Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.] Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure.

[Note: The Contractor shall have previously submitted to MTD a separately signed Lobbying Certification containing the above language for itself and any subcontracts exceeding \$100,000 as a condition of contract award.]

11. ACCESS TO RECORDS & REPORTS

(a) The Contractor agrees to provide MTD, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 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 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

(b) If contract is for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to MTD, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

(c) 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.

(d) 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 MTD, 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).

12. FEDERAL CHANGES

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 MTD 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.

13. BONDING REQUIREMENTS (NOT APPLICABLE)

14. CLEAN AIR

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. 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.

15. RECYCLED PRODUCTS (NOT APPLICABLE)

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

16. DAVIS-BACON & COPELAND ANTI-KICKBACK ACTS (NOT APPLICABLE)**17. CONTRACT WORK HOURS & SAFETY STANDARDS ACT (NOT APPLICABLE)****18. [RESERVED]****19. NO GOVERNMENT OBLIGATIONS TO THIRD PARTIES**

(a) MTD 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 MTD, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

20. PROGRAM FRAUD & FALSE OR FRAUDULENT STATEMENTS & RELATED ACTS

a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 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.

(b) 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 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(c) 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 will be subject to the provisions.

21. TERMINATION

(a) Termination for Convenience: MTD may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in MTD's best interest. The Contractor shall be paid its costs, including any applicable contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to MTD to be paid the Contractor. If the Contractor has any property in its possession belonging to MTD, the Contractor will account for the same, and dispose of it in the manner MTD directs.

(b) Termination for Default: If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, MTD may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by MTD that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events not the fault of or are beyond the control of Contractor, MTD, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

(c) Opportunity to Cure: MTD in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to MTD's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from MTD setting forth the nature of said breach or default, MTD shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude MTD from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

22. GOVERNMENT-WIDE DEBARMENT & SUSPENSION

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

23. PRIVACY ACT (NOT APPLICABLE)

24. CIVIL RIGHTS REQUIREMENTS

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

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

(1) Race, Color, Creed, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor

(U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 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 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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

25. BREACHES & DISPUTE RESOLUTION

Paragraph 30 of the *MTD Master Agreement* regarding disputes shall be deemed satisfactory to meet the federal requirements for dispute resolution. The Contractor agrees to include the requirements of said Paragraph 30 in all subcontracts.

26. PATENT & RIGHTS IN DATA (NOT APPLICABLE)

27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS (NOT APPLICABLE)

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

(a) 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 national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. MTD's overall goal for DBE participation is 2.9%. A separate contract goal has not been established for this procurement.

(b) 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 MTD deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

(c) The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

(d) The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from the MTD. In addition, the Contractor is required to return any retainage payments to those

subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

(e) Contractor must promptly notify MTD whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of MTD.

29. [RESERVED]

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

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

31. DRUG & ALCOHOL TESTING (NOT APPLICABLE)

32. INTELLIGENT TRANSPORTATION SYSTEM (ITS) (NOT APPLICABLE)

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT
Request for Qualifications to Supply Renewable Diesel

Attachment 4

SUPPLY OF RENEWABLE DIESEL
STATEMENT OF WORK



Supply of Renewable Diesel

Statement of Work

Month DD, 2020

Santa Barbara Metropolitan Transit District
550 Olive Street • Santa Barbara, CA 93101
Phone: (805) 963-3364 • Fax: (805) 963-3365 • Website: www.sbmtd.gov

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Supply of Renewable Diesel
Statement of Work

TABLE OF CONTENTS

1.0 PROJECT SUMMARY & GENERAL REQUIREMENTS 1

1.1 PROJECT SUMMARY1

 1.2 LIMITATIONS OF STATEMENT OF WORK1

2.0 TECHNICAL SPECIFICATIONS..... 1

 2.1 RENEWABLE DIESEL FUEL DEFINITION1

 2.2 COMPLIANCE WITH STANDARDS & SPECIFICATIONS1

 2.3 CERTIFICATIONS, SAMPLING & TESTING1

3.0 ORDERING & DELIVERY 1

 3.1 ORDERING FUEL.....1

 3.2 DELIVERY.....2

4.0 PRICING & TAXES 2

 4.1 FUEL PRICE DETERMINATION.....2

 4.2 TAXES, FEES & EXEMPTIONS.....2

5.0 WARRANTY..... 3

 5.1 WARRANTY DESCRIPTION3

 5.2 DEFINITION OF DAMAGES3

 5.3 REPAIR OF DAMAGES.....3

1.0 PROJECT SUMMARY & GENERAL REQUIREMENTS

1.1 PROJECT SUMMARY

The Santa Barbara Metropolitan Transit District (MTD) desires to purchase Renewable Diesel and have it delivered to its on-site underground storage tank for usage by its fleet of public transit buses powered by diesel engines (the "project"). To meet this desire, Contractor shall supply, sell and deliver to MTD Renewable Diesel on an "as needed" basis with an expected annual volume of 600,000 U.S. gallons. Contractor shall provide the fuel in the industry standard load size of approximately 7,500 gallons within 48 business weekday hours of order by MTD. All fuel delivered to MTD by Contractor shall meet or exceed applicable government agency and ASTM standards in effect at the time of delivery.

1.2 LIMITATIONS OF STATEMENT OF WORK

This Statement of Work does not necessarily include a full and complete description of all required parts, materials, resources, services, or processes required to fulfill the project. Information provided in this Statement of Work is provided only for those materials, procedures, and values that are considered key to achieving the overall goals and objectives of the project. Contractor is expected to be experienced in and adhere to the customs of the trade. Any substantive deviations from such customs shall have been explicitly identified to MTD in Contractor's bid and either accepted or rejected prior to the award of the Agreement for the project.

2.0 TECHNICAL SPECIFICATIONS

2.1 RENEWABLE DIESEL FUEL DEFINITION

Renewable Diesel provided under this Agreement shall be R99 and comply with California Code of Regulations §95481, which defines it as a diesel fuel that is:

- Produced from nonpetroleum renewable resources but is not a mono-alkyl ester;
- Intended for use in engines that are designed to run conventional diesel fuel;
- Registered as a motor vehicle or fuel additive under 40 Code of Federal Regulations part 79.

2.2 COMPLIANCE WITH STANDARDS & SPECIFICATIONS

Renewable Diesel provided under this Agreement shall comply with:

- Current *ASTM Standard D 975: Standard Specification for Diesel Fuel Oils* for Grade No. 2-D S15
- All applicable California Air Resources Board and Low Carbon Fuel Standards requirements
- All applicable Cummins and Detroit Diesel transit bus engine fuel requirements

2.3 CERTIFICATIONS, SAMPLING & TESTING

2.3.1 MTD Fuel Conformity Testing

MTD shall have the right and may perform random sampling of Contractor-delivered fuel for determining conformity with these technical specifications. MTD shall only use qualified third-party laboratories to perform such analysis. Laboratory findings of non-conformity with the specification shall be considered a breach of contract and may be subject to the termination provisions contained in the Agreement.

3.0 ORDERING & DELIVERY

3.1 ORDERING FUEL

3.1.1 Method & Hours

Contractor shall provide MTD with a phone number, website, or other appropriate and reliable means for ordering fuel as needed. At a minimum, such ordering system shall be capable of accepting orders on all

non-federal holiday weekdays between 8:00 AM and 5:00 PM Pacific Time. MTD shall only order fuel in full load capacities (approximately 7,500 gallons). MTD shall make efforts to ensure that the UST to be loaded by Contractor contains adequate available capacity to fully receive the full load although this shall not relieve Contractor of verifying available capacity as described in Section 3.2.2 below.

3.1.2 Estimated Volume & Frequency

MTD's estimated annual fuel consumption is 600,000 U.S. gallons. Given MTD's single 20,000 gallon UST and restriction of delivery to non-holiday weekdays, delivery loads will be required approximately every three weekdays. These volume figures are estimates only and subject to change. MTD is under no obligation to purchase a minimum annual volume under the Agreement.

3.2 DELIVERY

3.2.1 Location, Timeframe & Hours

Contractor shall deliver all fuel orders to MTD at 550 Olive Street, Santa Barbara, CA no later than two (2) non-federal holiday weekdays following receipt of such order from MTD. Contractor shall make a concerted effort to restrict delivery times to non-federal holiday weekdays between 8:00 AM and 4:00 PM Pacific Time. Given the MTD facility yard layout and vehicle capacity, deliveries at other times may require MTD vehicle movements and are greatly discouraged. Contractor or its agent shall contact MTD by telephone in advance for deliveries expected outside of this timeframe. Under no circumstances will deliveries be received by MTD between the hours of 12:00 AM and 5:00 AM except in an emergency or as specifically approved in advance by MTD.

3.2.2 Driver Requirements

Contractor shall require delivery truck driver to physically "stick" the UST and print the Veeder Root tank gauge report before unloading fuel in order to verify available UST capacity. Driver shall also print a tank gauge report after unloading is complete. MTD shall provide the measurement stick and instructions for report printing. Driver shall attach both tank gauge reports to the delivery receipt. Upon completion of fuel unloading, driver shall obtain a receiving signature from MTD's Materials Manager, Steve Hahn, or another Maintenance Department staff member in his absence. It shall be the responsibility of the driver to actively seek such personnel. Only when such personnel are not available shall other MTD employees sign the receipt. One copy of the MTD-signed delivery receipt that contains industry standard fuel receipt information shall be left with the MTD signer. All delivery receipts require a valid MTD employee signature.

4.0 PRICING & TAXES

4.1 FUEL PRICE DETERMINATION

Contractor shall bill MTD for each gallon of Renewable Diesel delivered to MTD at the fixed price per gallon stipulated in the Agreement which includes all transportation or other contractor charges and costs. Applicable governmental taxes and fees shall be listed separately on the invoice.

4.2 TAXES, FEES & EXEMPTIONS

Due to its status as a California special district public transit operator, MTD is exempt from the California Diesel Fuel Tax (presently \$0.36 per gallon); the Federal Excise Tax on Diesel Fuel (presently \$0.244 per gallon); and the California add-on fuel sales and use tax for diesel fuel (+5.75%). Invoices shall reflect these exemptions. Applicable fees and taxes shall be included as separate line items on each billing invoice. MTD understands that such current billable fees and taxes and the appropriate rates include:

<u>Tax/Fee Description</u>	<u>Present \$/Gallon</u>
Federal LUST Tax	\$0.001
Federal Oil Spill Liability Tax	\$0.002143
CA Inspection Fee	\$0.003237

CA & Local Sales Tax	8.75% (City of Santa Barbara current rate)
CA AB32 Low Carbon Fuel Fee	varies: see method of determination below
CA Cap-and-Trade Program Fee	varies: see method of determination below

The California Cap-and-Trade Program and AB32 LCFS fees shall be based on the previous day's CAP-AT-THE-RACK and LCFS COST cents per gallon listed under the No2 column posted by OPIS in its Los Angeles, CA OPIS Gross CARB Ultra Low Sulfur Distillate Prices With CAR Cost report. The fees shall be included as separate lines on each invoice. The fee for Saturday, Sunday and Monday pricing will be based on Friday's posted price and prices for holidays will be the same as the most recently posted prices. It shall be the Contractor's responsibility for any subscription or other costs for the OPIS report.

Contractor shall provide MTD with any required exemption forms to prevent inclusion of exempt taxes on Contractor billings. In instances where Contractor is at fault for inclusion of inapplicable fees or taxes on billings, MTD shall have the right to adjust the payment for such billings to remove such charges.

5.0 WARRANTY

5.1 WARRANTY DESCRIPTION

Contractor shall warrant that fuel delivered to MTD under this Agreement is compatible for use with diesel engines, including Cummins and Detroit Diesel engines, and shall not harm MTD diesel engines. Contractor agrees to reimburse MTD for damages to vehicles, engines or any vehicle systems caused by Contractor fuel that does not comply with this Statement of Work and the technical specifications contained herein.

5.2 DEFINITION OF DAMAGES

Damages shall be defined as MTD costs incurred as a result of wrongful actions on the part of the Contractor including but not limited to the delivery of inappropriate fuel into MTD fuel storage tanks. Examples of such damages include costs incurred by MTD for: removal of incorrect fuel from MTD storage tanks systems; repair of vehicular systems due to the use of incorrect fuel; or vehicular accidents, including third-parties claims, due to the use of incorrect fuel.

5.3 REPAIR OF DAMAGES

MTD reserves the right to perform the work or contract with a third party to perform the work with reimbursement by the Contractor for all reasonable expenses associated with the damages defined in 5.2 above. MTD shall be reimbursed by the Contractor for the cost of: labor performed by MTD for repair of damages at the actual wage rate plus forty percent (40%) for overhead; materials and supplies required to correct damages at full MTD cost (including taxes and freight); and third party vendor repairs at the full invoice cost incurred by MTD.