

**CONTRACT DOCUMENTS
STARTRAN**

**CITY OF LINCOLN
NEBRASKA**

**Annual Supply of
Transit Bus Transmission Rebuild - StarTran
Bid No. 14-205**

**Gillig Corporation
25800 Clawiter Rd.
Hayward, CA 94545
800-735-1500**

**CITY OF LINCOLN
STARTRAN
CONTRACT TERMS**

THIS CONTRACT, made and entered into by and between Gillig Corporation, 25800 Clawiter Rd., Hayward, CA 94545, hereinafter called "Contractor", and the City of Lincoln, Nebraska, a municipal corporation, hereinafter called "City".

WHEREAS, the City has caused to be prepared, in accordance with law, Specifications, Plans, and other Contract Documents for the Work herein described, and has approved and adopted said documents and has caused to be published an advertisement for and in connection with said Work, to-wit:

Annual Supply of Transit Bus Transmission Rebuild - StarTran. Bid No. 14-205

and,

WHEREAS, the Contractor, in response to such advertisement, has submitted to the City, in the manner and at the time specified, a sealed Proposal/Supplier Response in accordance with the terms of said advertisement; and,

WHEREAS, the City, in the manner prescribed by law has publicly opened, read aloud, examined, and canvassed the Proposals/Supplier Responses submitted in response to such advertisement, and as a result of such canvass has determined and declared the Contractor to be the lowest responsible bidder for the said Work for the sum or sums named in the Contractor's Proposal/Supplier Responses, a copy thereof being attached to and made a part of this Contract;

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor and the mutual covenants herein contained, the Contractor and the City has agreed and hereby agree as follows:

1. The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, transportation, and other accessories, services, and facilities; (b) furnish all materials, supplies, and equipment specified to be incorporated into and form a permanent part of the complete work; (c) provide and perform all necessary labor in a substantial and workmanlike manner and in accordance with the provisions of the Contract Documents; and (d) execute and complete all Work included in and covered by the City's award of this Contract to the Contractor, such award being based on the acceptance by the City of the Contractor's Proposal, or part thereof, as follows:

Agreement to line item pricing for each specified rebuild as per full proposal

2. The City agrees to pay to the Contractor for the performance of the Work embraced in this Contract, the Contractor agrees to accept as full compensation therefore, the following sums and prices for all Work covered by and included in the Contract award and designated above, payment thereof to be made in the manner provided by the City:

The City will pay for products/service, according to the Line Item pricing as listed in Contractors Proposal/Supplier Response as needed, a copy thereof being attached to and made a part of this Contract. The City shall order on an as-needed basis for the duration of the contract. The total cost of products or services for City departments shall not exceed \$ 63,315.00 during the contract term without approval.

3. Equal Employment Opportunity. In connection with the carrying out of this project, the contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, age or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, disability, age or marital status. 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 compensation; and selection for training, including apprenticeship.

4. E-Verify. In accordance with Neb. Rev. Stat. 4-108 through 4-114, the contractor agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. The Contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A 1324b. The contractor shall require any subcontractor to comply with the provisions of this section.
5. Termination. This Contract may be terminated by the following:
 - 5.1) Termination for Convenience. Either party may terminate this Contract upon thirty (30) days written notice to the other party for any reason without penalty.
 - 5.2) Termination for Cause. The City may terminate the Contract for cause if the Contractor:
 - 5.2.1) Refuses or fails to supply the proper labor, materials and equipment necessary to provide services and/or commodities.
 - 5.2.2) Disregards Federal, State or local laws, ordinances, regulations, resolutions or orders.
 - 5.2.3) Otherwise commits a substantial breach or default of any provision of the Contract Document. In the event of a substantial breach or default the City will provide the Contractor written notice of said breach or default and allow the Contractor ten (10) days from the date of the written notice to cure such breach or default. If said breach or default is not cured within ten (10) days from the date of notice, then the contract shall terminate.
 - 5.3) Termination for Lack of Funding. The City may terminate this Contract in whole or in part when funding is not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, or otherwise not forthcoming through no fault of City. In the event of unavailability of funds to pay any amounts due under this Contract, City shall immediately notify the Program Provider and this Contract shall terminate without penalty or expense to City. Upon termination, the City shall pay Program Provider for any approved and documented services completed up to the date of termination, but not to exceed the maximum amount allowed by this Contract.
6. Independent Contractor. It is the express intent of the parties that this contract shall not create an employer-employee relationship. Employees of the Contractor shall not be deemed to be employees of the City and employees of the City shall not be deemed to be employees of the Contractor. The Contractor and the City shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees nor the City's employees shall be entitled to any salary, wages, or benefits from the other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. Contractor shall also be responsible for maintaining workers' compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to its employees' compensation.
7. Period of Performance. This Contract shall be effective upon execution by both parties. The term of the Contract shall be a two (2) year term with the option of one (1) additional two (2) year term.
8. Non-Discrimination Clause. StarTran shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this Contract. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Contract. Upon notification to the (Recipient) of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

9. Indemnification. To the fullest extent permitted by law, Service Provider shall indemnify, defend and hold harmless the City, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Contract, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional or negligent act or omission of Service Provider, or anyone for whose acts any of them may be liable. This section will not require Service Provider to indemnify or hold harmless the City for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of the City. The City does not waive its governmental immunity by entering into this Contract and fully retains all immunities and defenses provided by law. This section survives any termination of this Contract.
10. The Contract Documents comprise the Contract, and consist of the following:
1. Contract Terms
 2. Accepted Proposal/Response
 3. Special Provisions
 4. Specifications
 5. Instructions to Bidders
 6. Sales Tax Exemption Form 13

The herein above mentioned Contract Documents form this Contract and are a part of the Contract as if hereto attached.

The Contractor and the City hereby agree that all the terms and conditions of this Contract shall be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Contractor and the City do hereby execute this contract.

EXECUTION BY THE CITY OF LINCOLN, NEBRASKA

ATTEST:

CITY OF LINCOLN, NEBRASKA

City Clerk

Mayor

Approved by:

Approved by Resolution No. _____

dated _____

EXECUTION BY CONTRACTOR

IF A CORPORATION:

ATTEST:

Secretary (SEAL)

Name of Corporation

(Address)

By: _____
Duly Authorized Official

Legal Title of Official

IF OTHER TYPE OF ORGANIZATION:

Gillig LLC

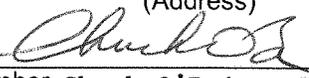
Name of Organization

LLC

Type of Organization

25800 Clawiter Rd. Hayward, CA 94545

(Address)

By: 
Member Chuck O'Brien, Vice President

By: _____
Member

IF AN INDIVIDUAL:

Name

Address

Signature

City of Lincoln/Lancaster County (Lincoln Purchasing) Supplier Response

Bid Information		Contact Information		Ship to Information	
Bid Creator	Suzanne Ideus Asst. Purchasing Agent	Address	710 J Street	Address	StarTran 710 J St.
Email	SMIdeus@lincoln.ne.gov		Lincoln, NE 68516		Lincoln, NE 68508
Phone	(402) 441-7414	Contact	Suzanne Ideus, Assistant Purchasing Agent	Contact	
Fax	(402) 441-6513		StarTran/Public Works & Utilities	Department	
Bid Number	14-205	Department		Building	
Title	Annual Supply of Transit Bus Transmission Rebuild - StarTran	Building		Floor/Room	
Bid Type	Bid	Floor/Room		Telephone	
Issue Date	08/22/2014	Telephone	(402) 441-7414	Fax	
Close Date	9/5/2014 12:00:00 PM CT	Fax	(402) 441-7055	Email	
Need by Date		Email	SMIdeus@lincoln.ne.gov		

Supplier Information

Company Gillig Corporation
 Address 25800 Clawiter Rd.
 Hayward, CA 94545
 Contact Terry Walker
 Department Parts
 Building
 Floor/Room
 Telephone 800 (735) 1500
 Fax 510 (887) 0981
 Email
 Submitted 8/26/2014 2:08:53 PM CT
 Total \$35,630.00

Signature Terry Walker

Email twalker@gillig.com

Supplier Notes

Bid Notes

If you need assistance in preparing your bid, 1) Click the "Help" button in the upper right hand corner of any screen; 2) Contact the Purchasing office at 402-441-7417 to set up a training session in Purchasing or assistance over the phone.

Bid Activities

Bid Messages

Please review the following and respond where necessary

#	Name	Note	Response
1	Instructions to Bidders	I acknowledge reading and understanding the Instructions to Bidders.	Yes
2	Specifications	I acknowledge reading and understanding the specifications.	Yes
3	Attachment 1	I acknowledge Reading and Understanding the requirements in Attachment 1.	Yes
4	Sample Contract	I acknowledge reading and understanding the sample contract.	Yes
5	Special Provision Term Contract Provisions	I acknowledge reading and understanding the Special Provision Term Contract Provisions.	Yes
6	Federal Bidding Documents and Compliance	I have read and understand the Federal Forms attached to this bid and hereby agree to comply with the provisions as they are listed in the forms.	Y
7	Tax Exempt Certificate Forms	Materials being purchased in this bid are tax exempt and unit prices are reflected as such. A Purchasing Agent Appointment form and a Exempt Sales Certificate form shall be issued with contract documents. (Note: State Tax Law does not provide for sales tax exemption for proprietary functions for government, thereby Water projects are taxable.)	Yes
8	DUNS Requirement	A DUNS (Data Universal Numbering System) Number is required to award a Federal Grant contract. Please list your DUNS number in the space provided. If you do not have a DUNS number go to http://fedgov.dnb.com/webform/CCRSearch.do Failure to obtain a DUNS number may result in the rejection of your bid.	06-655-7182
9	SAM Requirement	Vendors must be registered with the System for Award Management (SAM) system to be eligible for award on this bid due to the use of Federal Grant funds. Are you registered with SAM? YES or NO IF NO, YOUR BID MAY BE REJECTED To register in the SAM system go to www.sam.gov - Click: Create User Account.	YES

10 Small Business Information

The City of Lincoln wishes to foster small business participation in its bids for products and services purchased. In order to do this, all bidders are asked to answer the following questions as part of their bid submittal.(If you are unsure of your status as a Small Business, please refer to the NAICS list attached to the Bid Attachment section.)

1) Are you a Small Business according to the NAICS size guidelines? YES or NO?

If YES, what is the category you are listed under, the number of employees you have and the average annual receipts?

2) Will you be utilizing any Sub-Contractors in the performance of the contract awarded from this bid? YES or NO

If YES, name the Sub-Contractors in the space provided.

3) If you are not a Small Business, are you willing to provide subcontracting opportunities of the type/size that small businesses, including DBE's, can reasonably perform? YES or NO

If NO, why?

11 DBE Information

The City of Lincoln Transit Program(StarTran) requests Disadvantaged Business Enterprise (DBE) information from each Vendor submitting a bid for products and services. In order to do this, all bidders are asked to answer the following questions as part of their bid submittal.

Are you a registered DBE with the State of Nebraska or any other State or Entity? YES or NO?

If YES, name the state or entity.

IF YES OR NO, PLEASE ANSWER THE QUESTIONS BELOW!

What is the age of your business?

What are the annual gross receipts of your business - List One:

- A. - \$0 - \$500,000.00
- B. - \$500,000.00 - \$1 Million
- C. - \$1 Million - \$5 Million
- D. - Over \$5 Million

12 Protest Procedures - Fed Transit

I acknowledge that I have read and understand the City of Lincoln Bid Protest procedures. I further recognize that in the event a protest is denied by the City, the protester must deliver its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within five (5) working days of the date when the protester has received actual or constructive notice of the recipient's final decision. Likewise, the protester must provide its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within five (5) working days of the date when the protester has identified other grounds for appeal to FTA. For example, other grounds for appeal include the recipient's failure to have or failure to comply with its protest procedures or failure to review the protest."

For further information on a protest, a Vendor may contact

	the City Purchasing Agent.	
13	Renewal is an Option	Contract Extension Renewal is an option. Yes
14	Term Clause with Escalatin/De-escalation	I acknowledge that the term of the contract will be a two (2) year term from the date of the executed contract with the option for (1) one additional two (2) year term. (a) Bid prices will be firm for the first full contract period YES OR NO? (b) Bid prices are subject to escalation/de-escalation YES OR NO? (c) If (b) applies then state period for which prices will remain firm: through _____ B Yes escalation June 2015
15	Purchase Order and Delivery Contact	The City/County Purchasing Department issues Purchase Orders via email to a designated contact person of the awarded Vendor. This designee will be the primary contact with the department through the delivery of the product/services. Please list the name, email address and phone number of the person who will be the contact person for the PO to be awarded. Terry Walker twalker@gillig.com, 888 328-3688
16	Delivery and Order Process	Indicate your process for StarTran placing a transmission rebuild order and how the X-Change is handled? State the number of calendar days after receipt of an order to deliver the rebuilt transmission to StarTran via FOB Destination? Upon receipt of order, customer to prepare transmission, notify fed ex freight for pick up, pricing includes all freight charges. Voith ships back. 4 weeks upon date of shipment from Lincoln
17	Warranty	Indicate the type and length of the Warranty that will be provided to StarTran for a Transmission Rebuild and also attach any corresponding literature in the Response Attachment section of the E-bid. 18 months upon installation or 24 months upon date of purchase
18	Bid award	I acknowledge and understand that the City reserves the right to award bids item-by-item, with or without alternates/options, by groups, or "lump sum" such as shall best serve the requirements and interests of the City, County and/or Public Building Commission. If your pricing is based on an all-or-nothing basis, please indicate so in the Supplier Notes section of your E-Bid response. Yes
19	Bid Documents	I acknowledge and accept that it is my responsibility as a Bidder to promptly notify the Purchasing Department Staff prior to the close of the bid of any ambiguity, inconsistency or error which I may discover upon examination of the bid documents including, but not limited to the Specifications. Yes
20	Contact	Name of person submitting this bid: Terr Walker
21	Electronic Signature	Please check here for your electronic signature. Yes

Line Items

#	Qty	UOM	Description	Response
1	1	EA	2001 Gillig Low Floor Transit Bus Voith Transmission Rebuild	\$9,045.00
Item Notes: Vendors shall rebuild the following transmission to original specifications: Type Number: D864.3 Model Number: A3VTOR2-8.5L Pattern Number: 5441112 Price must include all freight and delivery charges. Any deviations from the specifications, Attachment 1 or the E-bid documents must be documented on Company letterhead and attached to the Response Attachment section of the E-bid response.				
Supplier Notes: Warranty is 18 months from date of installation or 24 months from date of sell.				
2	1	EA	2004 Gillig Low Floor Transit Bus Voith Transmission Rebuild	\$9,045.00
Item Notes: Vendors shall rebuild the following transmission to original specifications: Type Number: 864.3E Model Number: A3VTOR2-8.5E Pattern Number: 68.9121.1 Price must include all freight and delivery charges. Any deviations from the specifications, Attachment 1 or the E-bid documents must be documented on Company letterhead and attached to the Response Attachment section of the E-bid response.				
Supplier Notes: Warranty is 18 months from date of installation or 24 months from date of sell.				
3	1	EA	2006 Gillig Low Floor Transit Bus Voith Transmission Rebuild	\$9,045.00
Item Notes: Vendors shall rebuild the following transmission to original specifications: Type Number: 864.3E Model Number: A3VTOR2-8.5E Pattern Number: 68.9121.1 Price must include all freight and delivery charges. Any deviations from the specifications, Attachment 1 or the E-bid documents must be documented on Company letterhead and attached to the Response Attachment section of the E-bid response.				
Supplier Notes: Warranty is 18 months from date of installation or 24 months from date of sell.				
4	1	EA	2011 Gillig Low Floor Transit Bus Voith Transmission Rebuild	\$8,495.00
Item Notes: Vendors shall rebuild the following transmission to original specifications: Type Number: 864.5 Model Number: C3HTOR2-8.5 Pattern Number: 152 0014831 Price must include all freight and delivery charges. Any deviations from the specifications, Attachment 1 or the E-bid documents must be documented on Company letterhead and attached to the Response Attachment section of the E-bid response.				
Supplier Notes: Warranty is 18 months from date of installation or 24 months from date of sell.				
Response Total:				\$35,630.00

**SPECIFICATIONS
ANNUAL SUPPLY OF
TRANSIT BUS TRANSMISSION REBUILD
STARTRAN
BID NO. 14-205**

1. GENERAL INFORMATION

- 1.1 The City of Lincoln (hereinafter referred to as City) is requesting bids to establish an Annual Supply contract for Transmission Rebuilds for Gillig transit buses.
 - 1.1.1 Line Item pricing shall include the supply and delivery of the product being bid.
 - 1.1.2 Based on past experiences, a minimum of one (1) and a maximum of seven (7) transmissions would be rebuilt by StarTran over a two (2) year period.
 - 1.1.2.1 The City cannot guarantee any amount of purchase under the terms of this bid or subsequent contract due to funding from ridership and outside sources.
 - 1.1.2.2 In the event the City requires more than seven (7) units over the term of the contract, a new contract will be solicited and executed.
 - 1.1.2.3 Only one (1) Transmission Rebuild will be ordered at a time for the price indicated in the respective Line Item of the E-bid.
- 1.2 The term of the contract shall be two (2) years from the date of the executed agreement with the option to renew for one (1) additional two (2) year period upon mutual consent by both parties.
- 1.3 Bidder shall submit bid documents and all supporting material via E-bid.
- 1.4 All inquiries regarding these specifications shall be directed via e-mail or faxed written request to Suzanne Ideus, StarTran Assistant Purchasing Agent (SMIdeus@lincoln.ne.gov) or fax: (402) 441-7055
 - 1.4.1 These inquiries and/or responses shall be distributed to prospective bidders electronically as an addenda.
 - 1.4.2 The StarTran Purchasing Office shall only reply to written inquiries received within five (5) calendar days of bid opening.
 - 1.4.3 No direct contact is allowed between Vendor and other City staff, except the StarTran Assistant Purchasing Agent, through the award process.
 - 1.4.3.1 Failure to comply with this directive may result in Vendor bid being rejected.
- 1.5 The City receives funding from the Federal Government for the operation of their program.
 - 1.5.1 Vendors must read, acknowledge and follow the requirements of the Federal guidelines attached to the bid.
 - 1.5.2 Failure to agree to the Federal Requirements or return certifications as required will result in the rejection of bid.
- 1.6 Prices submitted must include delivery, FOB destination, to:
 - StarTran Garage
 - 710 J Street
 - Lincoln, NE 68508
- 1.7 **Due to the fact that this contract uses Federal Grant money from FTA, only**

StarTran may purchase from this contract.

- 1.8 The Successful Vendor shall provide StarTran and/or Purchasing with a quarterly report and final report, showing all purchases made under the terms and conditions of the resulting contract.
 - 1.8.1 Such reports shall itemize the following information:
 - 1.8.1.1 Product type(s) and quantities purchased.
 - 1.8.1.2 Total dollar amount of purchases.
- 1.9 In order for your company to qualify for an award on this bid, you must provide your DUNS (Data Universal Numbering System) number and be registered with the SAM (System for Award Management).
 - 1.9.1 Provide your DUNS number in the attribute section of the e-bid.
 - 1.9.1.1 If the vendor does not have a DUNS number, you must register at <http://fedgov.dnb.com/webform/CCRSearch.do>
 - 1.9.2 Indicate in the attribute section of the E-bid if your company is registered with SAM?
 - 1.9.2.1 For new registration, go to www.sam.gov and click "Create User Account" - Note you will need your DUNS Number and Federal Tax Identification number during the registration process.
 - 1.9.2.2 SAM registration must be renewed at least every 12 months to remain valid.
- 1.10 Bidder shall describe in the Attribute section of the E-bid your company's process for StarTran placing a transmission rebuild order and how the X-Change is handled.
 - 1.10.1 State the number of calendar days to deliver the rebuilt transmission to StarTran after receipt of an order.
- 1.11 Bidder shall advise the Warranty period for the rebuilt transmission.
 - 1.11.1 Attach any corresponding Warranty information in the Response Attachment section of the E-bid.
- 1.12 Any deviations from the Specifications, Attachment 1 and/or the E-bid documents must be documented on company letterhead and attached in the Response Attachment section fo the E-bid response.

2. REBUILD INFORMATION

- 2.1 The requirements for the Voith X-Change Rebuild Program transmission rebuilds are listed in **Attachment 1** in the Attachment section of the E-bid.
 - 2.1.1 Vendors must meet the requirements listed in **Attachment 1**.
- 2.2 Transmissions shall be rebuilt according to original transmission standards for Voith 2001, 2004, 2006 and 2011 transmissions installed in Gillig Low Floor Transit Buses.
- 2.3 StarTran's 35' and 30' buses that use the Voith Transmission are listed below and may or may not require a transmission replacement during the initial contract term and subsequent renewal period:
 - 2.3.1 19 - 2001 Gillig Low Floor Transit Buses
 - 2.3.2 9 - 2004 Gillig Low Floor Transit Buses
 - 2.3.3 15 - 2006 Gillig Low Floor Transit Buses
 - 2.3.4 13 - 2011 Gillig Low Floor Transit Buses
- 2.4 Part information for the **2001** Gillig Low Floor Transit Buses are as follows:
 - 2.4.1 Type Number: D864.3

- 2.4.2 Model Number: A3VTOR2-8.5L
- 2.4.3 Pattern Number: 5441112
- 2.5 Part information for the **2004 / 2006** Gillig Low Floor Transit Buses are as follows:
 - 2.5.1 Type Number: 864.3E
 - 2.5.2 Model Number: A3VTOR2-8.5E
 - 2.5.3 Pattern Number: 68.9121.1
- 2.6 Part information for the **2011** Gillig Low Floor Transit Buses are as follows:
 - 2.6.1 Type Number: 864.5
 - 2.6.2 Model Number: C3HTOR2-8.5
 - 2.6.3 Pattern Number: 152 0014831
- 2.7 Serial Numbers will be provided by StarTran at the time a Transmission Rebuild Order is placed.

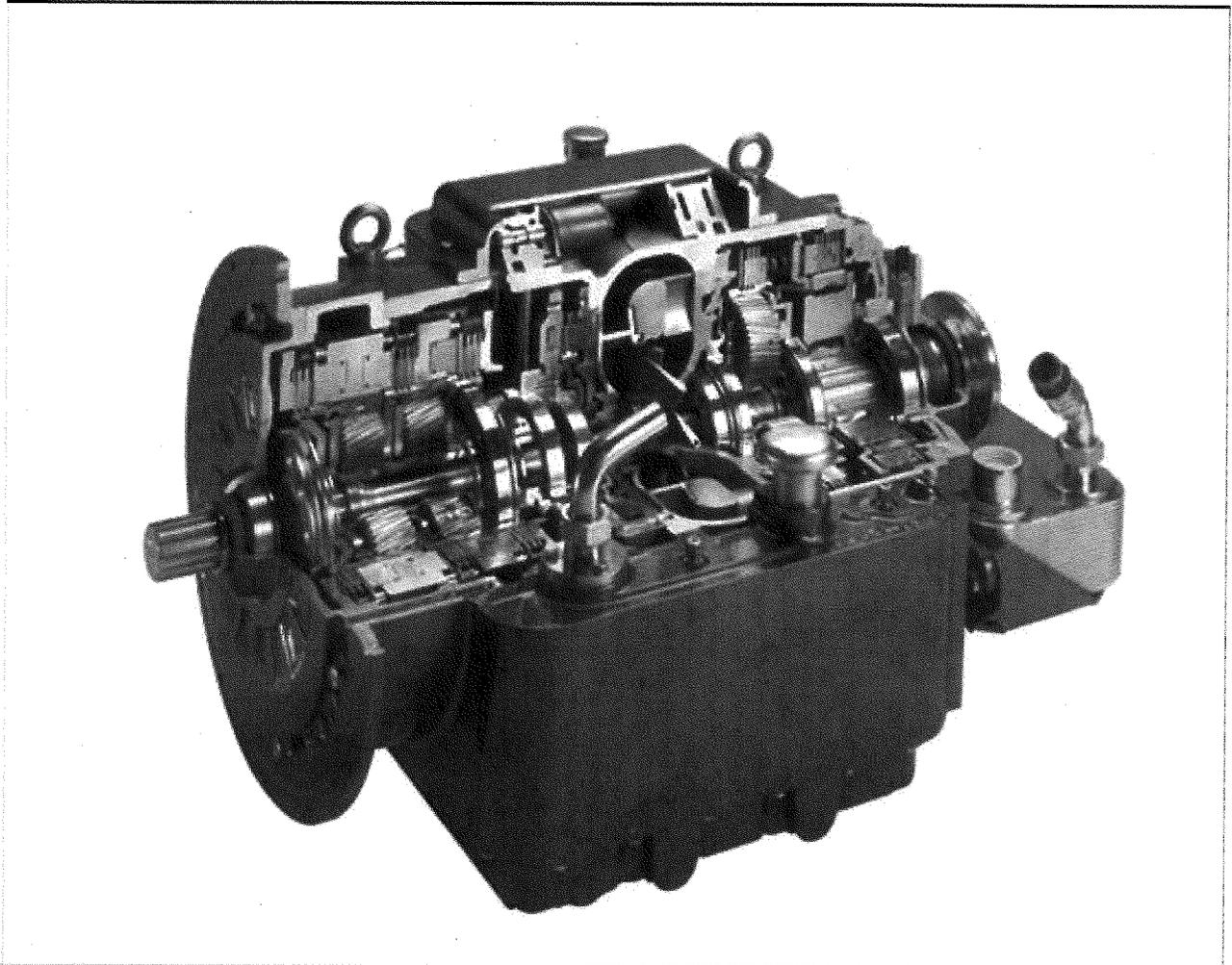
3. EVALUATION AND AWARD INFORMATION

- 3.1 Bid will be awarded based on:
 - 3.1.1 The lowest responsible, responsive Bidder whose bid will be most advantageous to the City and as the City deems will best serve the requirements and interest of the City for the equipment in the Line Items;
 - 3.1.2 Previous and current contract performance;
 - 3.1.3 Compliance with requirements as outlined in these specifications;
 - 3.1.4 Compliance with all Federal documents attached to this bid; and
 - 3.1.5 Length of time to deliver after receipt of an order.
- 3.2 The City reserves the right to award bids item-by-item, with or without alternates/options, by groups, or "lump sum" such as shall best serve the requirements and interests of the City.

END OF SPECIFICATIONS

VOITH

X-Change Rebuild Program



VOITH DIWA® - TRANSMISSIONS FOR TRANSIT BUSES

TABLE OF CONTENTS

SECTION 1

1.0 - IntroductionPage 1

SECTION 2

2.0 - Ordering instructions and On-Line Order Services.....Page 2 - 3

2.2 - Software Requirements.....Page 4

SECTION 3

3.0 - Complete X-Change TransmissionsPage 5 - 7

Grooming Instructions - Preparing Your Transmission For Shipment to Voith
Grooming Checklist
Core Acceptance Policy

SECTION 4

4.0 - Packaging & Identification Details.....Page 8 - 9

SECTION 5

5.0 – Warranty Information.....Page 10 -12

SECTION 1.0 - INTRODUCTION

Thank you for your interest in Voith's X-Change Rebuild Program. Your transmission will be completely overhauled in Voith's ISO 9001:2008 certified facility, incorporating the latest upgrades by our factory trained technicians, using only genuine Voith spare parts. Voith X-Change Program transmissions are overhauled in strict compliance with Voith specifications.

This manual has been designed to provide you with important information about Voith's Rebuild Program. Some of the topics covered include: Order Placement, Preparing Your Transmission for Transport, Grooming Guidelines and Warranty Information.

If at any time you have questions concerning participation and or use of this program please refer to this manual. If you have questions or concerns that require further information, or require warranty services, please contact your local Voith Service Provider (VSP). If you are not sure who your VSP is, please contact your regional Voith Sales Manager.

Please reference the following phone numbers if you require assistance:

- X-Change Program information or questions please call 717-767-3268 or 717-767-3252
- Warranty questions and issues please call: 717-767-3254.
- Service or Technical questions and problems please call: 717-767-3286 or 717-767-3281.

Thank you.

Voith Turbo, Inc.

SECTION 2.0 - ORDERING INSTRUCTIONS AND ON-LINE SERVICES

Thank you for using Voith's X-Change Rebuild Program. Your transmission will be completely overhauled in Voith's ISO 9001:2008 certified facility, incorporating the latest upgrades by our factory trained technicians, using only genuine Voith spare parts. Voith X-Change Program transmissions are overhauled in strict compliance with Voith specifications.

In an effort to make placing your order easier, Voith has developed an online order form. The online order form will help you save time and increase the efficiency of the ordering process. After the order is submitted, you will receive a message that the order was successfully submitted. Order confirmation and Bill of Ladings will be sent to you via e-mail. Please ensure your e-mail address is correct when you type it in the Order Form.

Voith's Online Order Form:

1. Use the following link to access the X-Change Online Order Form:
http://www.voithusa.com/road/e_vti.php
2. Fill out the form in its entirety. ALL required fields noted with a red asterisk must be filled in.
3. You must click **SUBMIT** at the bottom of the page. You will receive an Order Confirmation if the fields were filled out properly. If there are errors, please correct those errors and re-submit.

PLEASE NOTE: The clarity of the information you provide will assist us in completing the rebuild in a timely fashion. You will receive Bill of Ladings and Instructions to ship your unit to Voith within 24 hours (Monday - Friday) after placing your order. An example of the Online form is shown below.

X-Change On-Line Order Form

Note Please refer to the X-Change Handbook 2006 for instructions on completing this form and preparing your transmission for shipment. Items marked with * are mandatory.

Customer Information:

*First Name: _____
 *Last Name: _____
 *Phone #: _____
 *Fax #: _____
 *Email address: _____

***Company Billing Address:**

Company: _____
 Street: _____
 City: _____
 Country:
 State/Province:
 Zip/Post code: _____

***Company Ship-to Address: same as billing**

Company: _____
 Street: _____
 City: _____
 Country:
 State/Province:
 Zip/Post code: _____

Transmission Information # 1

*Serial #: _____
 *Model #: _____
 *Pattern #: _____
 *Type: _____

Order Information

*Purchase order #: _____
 Pricing as understood by customer: USD CDN
 Requested Delivery Date: _____ MM/DD/YY

Note: All transmissions must be returned with their oil cooler. All DIWA.2 transmissions must be returned with an ECU that has a serial number matching the transmission.

*Optional 6 Month Extended Warranty requested? Yes No
 *Is this a "bus down" situation? Yes No
 *Do you require the return of the same Serial # Transmission? Yes No
 Has this transmission been rebuilt by VOITH before? Yes No Unknown

ATF Oil Type & Manufacturer: _____

Approx Mileage on transmission: _____

Description of failure and/or special instructions: _____

Submit Order

SECTION 2.1 - Placing An X-Change Order Using Fax

The preferred method to place your X-Change Order is to use the On-Line Order Form. However, if you experience any problems with placing your order On-Line, you have the option to Fax your order to Voith.

Faxing Your Purchase Order to Voith:

1. Fax a detailed purchase order to **717-767-3210 (Attn: DIWA X-Change Program)**
2. Order acknowledgement will be sent in the form of your Bill of Lading (BOL) and shipping instructions.
3. You can confirm your facsimile by calling Voith directly at 1-877-374-1339 and ask for the DIWA X-Change Manager.

General Program Notes and Guidelines:

When placing an order to use Voith's X-Change Rebuild Program it is very important to provide the following information, which can be found on your unit's transmission tag:

- SERIAL NUMBER
- TYPE
- MODEL NUMBER
- PATTERN NUMBER

Important Information:

- It is essential that the transmission is properly prepared or “groomed” as outlined in the instructions in this handbook. Failure to properly groom the unit could cause delays in processing and result in additional charges. Customer's will be charged for shipping costs associated with the return of items that should have been retained at your location.
- You should have a return goods authorization number (RGA Number) from Voith prior to shipping the transmission to the specified location.
- Voith pays the freight cost to ship your transmission both to and from your location. Voith will specify the carrier of choice.
- It is the Customer's responsibility to contact the carrier to arrange pick up at your location.
- Please follow Voith's requirement for warranty registration.

On behalf of Voith, we thank you for using Voith's X-Change Rebuild Program. Your transmission will be completely overhauled in Voith's ISO 9001:2008 certified facility, incorporating the latest upgrades by our factory trained technicians, using only genuine Voith spare parts. Voith X-Change Program transmissions are overhauled in strict compliance with Voith specifications.

SECTION 2.2 - SOFTWARE REQUIREMENTS

ATTENTION: ALL CUSTOMERS WHO HAVE DIWA .3 and .3E UNITS.

It is essential that your FLEET meets the the Software Level Requirement 18.27.1. This software upgrade includes many enhanced features that increase the operational life of the Voith transmission. Software 18.27.1 is needed for all units, in and out of warranty. The loading of units under warranty will be handled by the Cummins Distributor in your area. Please contact Cummins to schedule your units.

The customer is responsible for loading non-warranty units. All files and software are provided by Voith free of charge. The software can be found at: http://www.voithusa.com/road/e_vti.php
You will need to Sign In to access this software. After you sign-in “click on” the category: Technical Documents. You can then “Request ECU Control and Dataset” to have the software sent to you.

Please confirm that you have loaded the 18.27.1 software upgrades. You may find the current ECU information in the “A” screen of DIWAgnosis.

Failure to comply with this requirement could result in limited base warranty coverage. This requirement is applicable to all X-Change transmission customers. 18.27.1 must be in use to activate your X-Change transmission warranty coverage.

Any questions regarding the software of your transmission ECU should be directed to the Road Service Group: VTIroadservice@voith.com

SECTION 3.0 - X-CHANGE REBUILD PROGRAM

CORE ACCEPTANCE STANDARDS

1. The transmission core must be the same TYPE, MODEL and DESIGN as the unit purchased!

NOTE: The Transmission Type, Design Pattern Number, Model Number, and Serial Number must be supplied when placing an order for an X-Change unit. This information can be found on the transmission tag. An example of the transmission tag is shown below.

PREPARING YOUR TRANSMISSION FOR SHIPMENT TO VOITH

The only items to be returned are:

DIWA .2 Transmission, Heat Exchanger and ECU.

DIWA .3, .3E, .5 .Transmission and Heat Exchanger (For .3, .3E, & .5, do not send the ECU).

2. **DIWA .2, .3 & .3E transmissions shall be prepared in accordance with the following steps:**

- a. Remove and save all oil hose lines.
- b. Remove and save any external oil filter assemblies and mounting brackets.
- c. Remove the heat exchanger (Heat Exchanger is to be returned to Voith).
- d. Remove and save any heat exchanger brackets and any oil or water fittings.
- e. Remove and save any oil temperature switches and or fittings from the oil pan.
- f. Remove and save the low oil level sensor.
- g. Remove and save the Spring Coupling and/or the Hydrodamp (this is bolted to the engine flywheel).
- h. Remove and save the transmission Bell Housing (also known as the Mounting / Connection Flange).
- i. Remove and save any Special Fittings or Hardware Provided by the Customer or Bus Manufacturer (Non Standard Voith Components)
- j. Properly plug any holes for shipping so oil does not leak out while in-transit

PLEASE NOTE: Do not remove the Yoke. The Yoke stays on the transmission. The heat exchanger must be returned with the transmission.

3. **DIWA .5 transmissions shall be prepared in accordance with the following steps:**

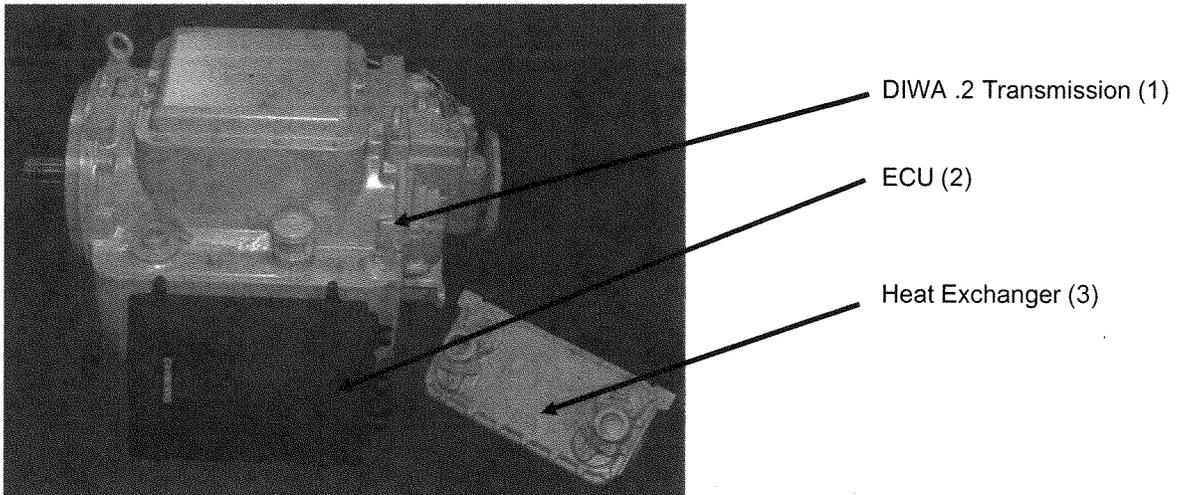
- a. Remove and save all oil hose lines.
- b. Remove and save any external oil filter assemblies and mounting brackets.
- c. Remove and save any oil or water fittings.
- d. Remove and save the Spring Coupling and/or the Hydrodamp (this is bolted to the engine flywheel).
- e. Remove and save the transmission Bell Housing (also known as the Mounting / Connection Flange).
- f. Remove and save any Special Fittings or Hardware Provided by the Customer or Bus Manufacturer (Non Standard Voith Components)
- g. Properly plug any holes for shipping so oil does not leak out while in-transit
- h. Leave the heat exchanger attached to the transmission (Heat Exchanger is to be returned to Voith).

PLEASE NOTE: Do not remove the Output Flange / End Yoke. To reiterate, for DIWA .5 units, do not detach the heat exchanger. Leave it attached to the transmission.

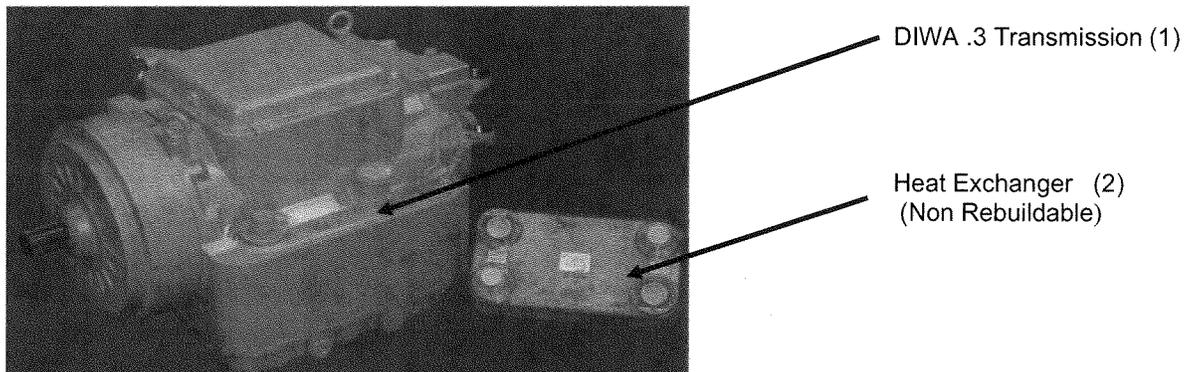
ADDITIONAL INFORMATION

1. **NOTE:** Transmission cores must be returned without the above listed components. Removed items should be reinstalled on the new rebuilt transmission shipped on the order. This applies to all transmissions unless prior arrangements are made with Voith in advance.
 2. **NOTE:** Transmissions shipped with any of the above components, without special prior arrangements, will incur additional charges. If the Heat Exchanger is not returned with your shipment you will incur a charge for the Heat Exchanger.
 3. **NOTE:** Please ship your core within 3 business days after placement of the order with Voith. After your transmission has been prepared for shipment to Voith, it is your responsibility to contact the carrier to arrange a pick-up.
 4. **NOTE:** Please do not disassemble the transmission prior to shipment to Voith. All Transmissions must be shipped to Voith fully assembled.
4. Transmission cores are to be shipped with the following items:

DIWA .2 Transmission (1), ECU (2), Heat Exchanger (3).



DIWA .3 and .3E: Transmission (1), Heat Exchanger (2), (No ECU).



NOTES

(1) Missing or damaged components will be replaced at cost. Major cost adders are noted in Voith's price list.

(2) For the DIWA .2, the ECU serial number must match the transmission serial number. Transmissions shipped without ECU's or mismatched ECU's will incur additional charges. Cost adders are identified in Voith's price list.

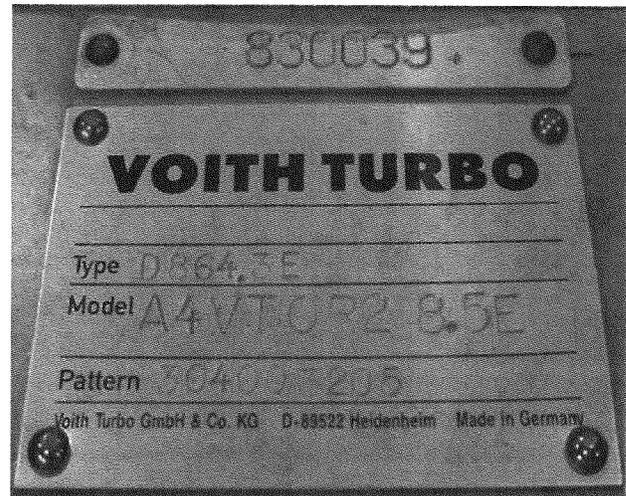
5. Housing must not be cracked or repaired. See Voith's price list for possible price adders.

These housings include:

- a. Main Transmission Case
- b. Transfer Case Assembly
- c. Pinion Assembly

6. Transmissions must be free of non-operational damages or customer modifications .

Transmission Tag Example	
1)	Top Tag
a)	Serial Number
2)	Bottom Tag
a)	Transmission Type
b)	Model Number
c)	Pattern Number



SECTION 4.0 - PACKAGING & IDENTIFICATION

Due to recent developments in environmental laws it is requested that the transmission be reasonably cleaned prior to packaging and shipment to Voith.

The X-Change Core is a major investment. The improper packaging of your investment may result in:

1. Damage to your Core
2. Core credit being reduced or denied for a particular component or group of components.
3. Injury to an employee or associate.

IMPROPER PACKAGING ACCOUNTS FOR THE MAJORITY OF CORE REJECTS DUE TO ROUGH HANDLING. IN AN EFFORT TO REDUCE CORE AND COMPONENT DAMAGE DURING TRANSIT, VOITH REQUEST THAT ALL UNITS ARE SHIPPED FULLY ASSEMBLED!

Please review these guidelines when packaging your core for shipment to Voith Transmissions, Inc.

4.1 - PACKAGING REQUIREMENTS FOR COMPLETE X-CHANGE TRANSMISSIONS

1. Open Pallet (Skid):

An open pallet may be used to ship the transmission. If used, the following must be observed:

- a. The Pallet must be of sufficient length and width to provide enough coverage for the transmission so there is NO over-hang. An insufficient surface could result in damage to the unit during transportation. The transmission should be secured using banding (preferably metal) designed for that purpose.
- b. All fluids have been drained and the transmission is firmly secured to the pallet.
- c. All peripheral components (heat exchanger, lifting rings, ECU) are securely wrapped, boxed, and secured to the pallet.

NOTE: Package heavier items on the bottom of the box and lighter items on the top. Each individual item should be separately wrapped in Plastic Bubble Wrap or Kimpak.
- d. Identify the transmission appropriately and please indicate the Return Goods Authorization (RGA) number. Voith will provide you with an RGA Number after you place your X-Change Rebuild Order. The RGA number should be written on any additional boxes used for the peripheral components. Failure to properly identify your core could result in lost core credit(s).

2. Box/Pallet (Skid) Combination:

A box/pallet combination can be used to ship the transmission. If used, the following must be observed:

- a. The transmission is firmly secured inside the box.
 - b. All peripheral components (heat exchanger, lifting rings, ECU) are securely wrapped, individually boxed or separated in the transmission box by packing material (such as corrugated sheet or bubble plastic).
 - c. The box is securely fastened to the pallet using either plastic or metal banding material designed for this purpose.
 - d. Identify each transmission appropriately and please indicate the Return Goods Authorization (RGA) number. Voith will provide you with an RGA Number after placement of your X-Change Rebuild order. Failure to properly identify your core could result in lost core credit.
3. **Do not use wrap-around boxes.** This is defined as a box that has a completely removable top and bottom, allowing only the material around the sides of the box to contain the components inside. This type of packaging has resulted in injuries in the past, and will no longer be accepted.

SECTION 5.0 - WARRANTY FOR X-CHANGE REBUILD PROGRAM (TRANSMISSIONS AND SPARE PARTS COVERAGE)

Products Warranted

This warranty applies to all Voith X-Change Transmissions marketed by Voith, sold to their dealers, and delivered to the first user on or after June 1, 1992, that are used in bus applications in the United States and Canada.

Base Transmission Warranty

The Base Transmission Warranty covers any failures of the transmission that result under normal use and service, from defects in workmanship, or material.

The X-Change unit warranty for a DIWA .3 or .3E transmission is 18 months / 150,000 miles from the date of installation and shall not exceed 24 months from the date of sale.

The X-Change unit warranty for a DIWA .5 transmission is 18 months / 150,000 miles from the date of installation and shall not exceed 24 months from the date of sale.

The X-Change unit warranty for the DIWA .2 is 12 months from the date of installation, and shall not exceed 18 months from the date of sale.

The Warranty Certificate must be filed online at: http://www.voithusa.com/road/e_vti.php

Completion of the Warranty Certificate should occur no later than 14 days after installation and filing of the same at Voith Turbo, Inc. through the Voith dealer within 30 days of installation is required to validate any warranty. DIWA .2 customers are responsible for the installation of the replacement Cable One Assembly. This is required to qualify for full warranty coverage.

The Base Transmission Warranty purchased by the first user covers only those failures that result from defects in workmanship or material.

VOITH RESPONSIBILITIES

During the Base Transmission Warranty

Voith will pay for all parts and labor needed to repair the damage to the transmission resulting from a failure covered by Voith's warranty. All labor costs will be paid in accordance with published Voith Repair Order Guidelines.

Voith will pay for the lubrication oil, filter elements, and other transmission maintenance items that are damaged or not reusable due to the warrantable failure.

Voith will pay reasonable labor costs for transmission removal and reinstallation when necessary to make the warranty repair as outlined in the standard repair order times published by Voith. Voith will pay the Voith distributors' billable labor rates.

OWNER RESPONSIBILITIES

During the Base Warranty Period

Owner is responsible for the cost of non-transmission repairs and the cost of ATF's, filter elements, hoses, and other maintenance items replaced during warranty repairs unless such items are not reusable due to warrantable failure.

Owner is responsible for the operation and maintenance of the transmission as specified in the Voith Servicing Schedule for Service Exchange transmissions. In addition the owner must have software 18.27.1 or higher loaded into the Voith electronic control unit (ECU). Faults or failures arising from non-compliance are not covered under warranty.

In the event of a fault or failure before the expiration of the applicable warranty, the Owner must notify a Voith distributor, authorized dealer, or other authorized dealer or other repair location approved by Voith, of any warrantable fault or failure. **The Voith repair representative must be able to evaluate the transmission in the bus where the fault or failure occurred prior to removal of the transmission. If the transmission is removed from the bus prior to evaluation by a Voith representative, warranty coverage may be limited or void.**

Owner is responsible for communication expenses, meals, lodging, and incidental costs incurred by Owner or employees of Owner as a result of warrantable failure.

Limitations

The provisions of Voith's base transmission warranty and Service Exchange spare parts warranty do not apply, and warranty coverage is not provided, with respect to failures which have been caused or contributed to by improper use, maintenance or storage; failure to comply with operating, maintenance, or service instructions; use of inadequate, improper or incompatible coolants or lubricants; accident, other casualty or negligence; modification so as to substantially alter the operating characteristics of the equipment or its components; improper repair or repair with parts not approved or supplied by Voith; improper installation; or other circumstances beyond Voith's control. Not covered is repair and replacement of: electronic parts including electronic cables, the ECU and pushbutton selectors, or towing.

The owner is required to notify Voith of any failures which may be covered by this Warranty immediately after such failure is discovered or by reasonable care could have been discovered. Voith is not responsible for damages resulting from a delay in notifying Voith, or for damages which could have been prevented by a timely notification.

No Consequential Damages

Voith's liability with respect to breaches of warranty shall be limited to repair or replacement as provided in Voith's warranty, and in no event shall Voith's liability, whether for breach of contract or warranty or otherwise, exceed the purchase price of the warranted product or component involved. Voith shall not be subject to any other obligations or liabilities, whether arising out of breach of contract, warranty, tort (including negligence), strict liability or other theories of law, with respect to transmissions or component parts sold by Voith or any undertaking, acts, or omissions relating thereto. Without limiting the generality of the foregoing, Voith specifically disclaims any liability for property damages, penalties, special or punitive damages, damages for lost profits or revenues, loss of use of products or any associated equipment, cost of capital, facilities or services, down-time, shut-down or slow-down costs, spoilage of material or for any other types of economic losses. VOITH SHALL NOT BE LIABLE FOR AND SPECIFICALLY DISCLAIMS ALL CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER.

No Implied Warranties

VOITH'S WARRANTIES AS STATED ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The exclusive remedy of repair or replacement shall not be deemed to have failed its essential purpose so long as Voith is willing and able to repair or replace a defective part or component within a reasonable time after owner establishes to Voith's satisfaction that a defect covered by Voith's warranty is involved.

VOITH X-CHANGE PROGRAM WARRANTY ADMINISTRATION SECTION

The provisions for warranty administration for the Voith X-Change Program, be it parts or transmissions, are the same as those outlined in Section 2 of the Voith Administration Manual for original Voith spare parts and new DIWA transmissions with the following exceptions:

- The warranty claim form should be clearly marked to be for the X-Change Program. It should also be clearly marked as to whether it is for parts or transmissions.
- Please be aware of the limitations on components covered, especially on X-Change Program transmissions. Be sure that the warranty repairs that you are performing are on components which are part of the service exchange transmission scope of supply.
- Your handling fee on parts for warranty repairs covered under the X-Change Program will be 12.5% percent. However, Voith Turbo, Inc reserves the right to supply a replacement unit (be it spare parts or complete transmission) on a free of charge basis. No handling charge permitted.
- All parts or transmissions removed as a result of warranty repair must be returned to Voith Turbo, Inc. with your claim and clearly marked with a RGA (Returned Goods Authorization.)
- **X-Change Program transmissions repairs which any distributors estimates to be in excess of \$3,000.00 must have a repair authorization from Voith Turbo, Inc., Attention: DIWA Service Department. Or on the web at: http://www.voithusa.com/road/e_vti.php**
- All warranty repairs are subject to restrictions and provisions outlined in the Voith Warranty for the X-Change Rebuild Program.

NOTE: All inquiries for warranty administration for the Voith X-Change Program must be directed to:

Voith Turbo, Inc.
Attn: DIWA Service Department
25 Winship Road
York, PA 17406-8419

Or call Toll Free: 1-877-374-1339 and ask for the DIWA Service Department Warranty Administrator.

WARRANTY ACTIVATION

The Voith X-Change Warranty Certificate is now Online and can be accessed using the following link: http://www.voithusa.com/road/e_vti.php

1. The On-Line Warranty
 - a. serves as an installation check list, and
 - b. warranty activation record
2. Service Schedule for the transmission,
3. Approved Oil List.
4. Service bulletin (# 92A Oil & Filter Change Intervals for New Transmissions)
5. A new Cable One assembly is provided for DIWA .2 Units only

The **Warranty Certificate Activation and Check Sheet** must be completed and submitted on-line to activate your warranty. Filing is the responsibility of the customer or Voith Distributor.

The customer must install the new Cable One assembly for DIWA .2 transmissions to receive full credit for claims under warranty.

Please be sure to include the VTI Sales Order Number when you fill out your warranty information. The Sales Order Number can be found on the Packing List of the unit shipped to you. It typically begins with an S and has 6 digits.

If you encounter any problems or have any questions regarding your warranty certificate and activation please call: 1-877-374-1339 and ask for the DIWA Service Department Warranty Administrator.

6. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 18

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Flow Down

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA.

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

CITY OF LINCOLN/STARTRAN
ACCESS FOR INDIVIDUALS WITH DISABILITIES

Access for Individuals with Disabilities. The Recipient agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with FTA Master Agreement MA(15), 10-1-2008 33 disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations any later amendments thereto, and agrees to follow applicable Federal directives except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;

- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and FTA Master Agreement MA(15), 10-1-2008 34
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

12. FEDERAL CHANGES

49 CFR Part 18

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language

No specific language is mandated. The following language has been developed by FTA.

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

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicable to all contracts.

Flow Down

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language

While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government.

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

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

24. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

29 CFR Part 1630, 41 CFR Parts 60 et seq.

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shorten the lengthy text.

Civil Rights - The following requirements apply to the underlying contract:

(1) **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.

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

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

(b) 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.

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

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

CITY OF LINCOLN/STARTRAN
PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS
AND RELATED ACTS

31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307

Program Fraud and False or Fraudulent Statements or Related Acts.

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

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 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.

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

CITY OF LINCOLN/STARTRAN
ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 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. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract 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 the Purchaser, 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.

5. 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.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>I State Grantees</u>						
a. Contracts below SAT (\$100,000)	None	Those imposed on state pass thru to Contractor	None	None	None	None
b. Contracts above \$100,000/Capital Projects	None unless ¹ non-competitive award		Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
<u>I Non State Grantees</u>						
a. Contracts below SAT (\$100,000)	Yes ³	Those imposed on state pass thru to Contractor	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects	Yes ³		Yes	Yes	Yes	Yes

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

CITY OF LINCOLN/STAR TRAN
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
WITHOUT CONTRACT GOAL
49 CFR Part 26

Disadvantaged Business Enterprises

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%. The agency's overall goal for DBE participation is **9.3 %**. 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 **City of Lincoln/StarTran** deems appropriate. Each Subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

The successful Bidder 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 **City of Lincoln/StarTran**. In addition, the Contractor is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the City of Lincoln/StarTran and contractor's receipt of the partial retainage payment related to the subcontractor's work.

e. The contractor must promptly notify **City of Lincoln/StarTran**, 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 **City of Lincoln/StarTran**.

CITY OF LINCOLN/STARTRAN
INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA)
TERMS
FTA Circular 4220.1E

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 (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

CITY OF LINCOLN/STARTRAN
CARGO PREFERENCE REQUIREMENTS

46 U.S.C. 1241

46 CFR Part 381

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

CITY OF LINCOLN/STARTRAN
GOVERNMENT-WIDE DEBARMENT AND SUSPENSION
(NONPROCUREMENT)

Suspension and Debarment

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

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

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by **City of Lincoln/StarTran**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **City of Lincoln/StarTran**, 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.

City of Lincoln - Bid Protest Procedures

1062

2.18.035

(5) To those bidders who maintain a bona fide business office in the City of Lincoln, whose products may be made outside the confines of the County of Lancaster;

(6) To those bidders who maintain a bona fide business office in the County of Lancaster, whose products may be made outside the confines of the County of Lancaster;

(7) To those bidders whose commodities are manufactured, mined, produced or grown within the State of Nebraska and to all firms, corporations, or individuals doing business as Nebraska firms, corporations, or individuals when quality is equal or better and delivered price is the same or less than the other bids received; provided, however, the above preferences shall not be given where the purchase is made in whole or in part with federal funds and the applicable federal procurement regulations prohibit the giving of any local preference, in which case, in the event of more than one low tie bid, the tie shall be broken by the drawing of lots.

(8) To those bidders whose commodities are manufactured, mined, produced or grown within the United States of America and to all firms, corporations, or individuals doing business as firms registered in states other than Nebraska, when quality is equal or better and delivered price is the same or less than the other bids received; provided, however, the above preferences shall not be given where the purchase is made in whole or in part with federal funds and the applicable federal procurement regulations prohibit the giving of any local preference, in which case, in the event of more than one low tie bid, the tie shall be broken by the drawing of lots.

(l) In case of actual emergency, and with the consent of the Purchasing Agent, the head of any using agency may purchase directly any supplies whose immediate procurement is essential to prevent delays in the work of the using agency. The head of such using agency shall send to the Purchasing Agent a requisition and a copy of the delivery record, together with a full written report of the circumstances of the emergency.

(m) The Purchasing Agent shall prescribe by rules and regulations the procedure under which emergency purchases by heads of using agencies may be made.

(n) The Purchasing Agent shall have the authority with approval of the Mayor to declare vendors who default on their bids and contracts irresponsible bidders and to disqualify them from receiving any business from the municipality for a stated period of time.

(o) The Purchasing Agent shall have the authority to join with other units of government in cooperative purchasing when the best interests of the city would be served thereby; provided, however, such purchases shall be made to the extent possible by giving notice and preference to qualified local bidders in accordance with the rules and regulations established in this chapter and the policies of the Purchasing Division.

(p) The Purchasing Agent shall keep a commodity record showing commodities purchased, from whom purchased, and the price paid. (Ord. 17697 §2; July 17, 2000: prior Ord. 17044 §1; August 19, 1996: Ord. 15980 §2; September 30, 1991: Ord. 15384 §3; January 8, 1990: P.C. §2.44.030: Ord. 13561 §1; March 21, 1983: Ord. 12934 §1; June 9, 1980: Ord. 12472 §1; January 8, 1979: Ord. 12327 §1; June 19, 1978: Ord. 9036 §3; June 13, 1966).

2.18.035 Bid Protests; Definitions; Appeals Board; Fees.

(a) Definitions.

(1) Interested party shall mean an actual or prospective bidder whose direct economic interest would be affected by the award of a contract by the City to another party, or by the failure of the City to award a contract to such actual or prospective bidder.

(2) Protest shall mean a written objection by an interested party on any phase of the bidding process, including specification preparation, bid solicitation, and intent to award, for the acquisition of supplies or services.

(3) Protester shall mean an interested party who has filed a protest pursuant to subsection (b).

(4) Procurement Appeals Board shall mean an independent panel of five disinterested individuals appointed by the Mayor, which individuals shall have a thorough knowledge of the purchasing process and practices, and laws applicable thereto. Members of such board shall be appointed for three-year, staggered terms; provided, however, two of the members first appointed shall serve for a period of one year, two shall serve for a period of two years, and one for a period of three years, with each appointee thereafter, except for appointees filling a vacancy, serving for a period of three years.

(b) Right to Protest. An interested party may protest to the City Purchasing Agent, which protest shall be submitted in writing on company letterhead. Protests based on alleged apparent improprieties in a solicitation or other request for proposals must be filed before bid opening. In all other cases, the protest must be filed within five working days following the

Cont'd bid protest

bid opening or if the protest is based on the selection of the lowest responsible bidder, not later than five working days following the selection of the lowest responsible bidder. To expedite handling of protests, the envelope containing the protest should be clearly labeled "Protest".

The written protest shall include as a minimum the following:

- (1) The name and address of the interested party;
- (2) Appropriate identification of the relevant solicitation, and if a bid has been opened, its number, and date of opening;
- (3) A statement of reasons for the protest;
- (4) Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated.

Upon timely receipt of a protest, the City shall not proceed further with the solicitation or with the award of the contract and shall suspend performance under the contract until the Mayor has made a decision on the protest.

(c) Authority to Resolve Protests. Prior to the commencement of an appeal to the Procurement Appeals Board concerning any protest, the Purchasing Agent shall attempt to resolve any protest filed by an interested party concerning any solicitation. If the protest is not resolved by mutual agreement, the Purchasing Agent shall issue a decision in writing within five working days. The decision shall (1) state the reasons for the action taken, and (2) inform the interested party of their right to the administrative review as provided by the Procurement Appeals Board. A copy of the decision shall be mailed or otherwise furnished immediately to the protester and all other bidders. If not satisfied with the decision of the Purchasing Agent, any protester may appeal to the Procurement Appeals Board, but the decision shall be final unless the protester files a timely appeal with the Procurement Appeals Board.

(d) Appeals Board Procedures. Any protester, within five working days of receipt of a decision of the Purchasing Agent, may file with the Finance Director a written notice of appeal for a hearing before the Procurement Appeals Board. The Notice of Appeal shall be accompanied by a deposit of \$500.00 to defray the cost of processing such appeal, which deposit shall be returned if the Mayor decides in favor of the protester filing the appeal. The Notice of Appeal must clearly state the action protested and the basis of appeal.

Upon receipt of an appeal from an protester, the Finance Director shall convene the Board within ten working days or as soon thereafter as reasonably possible to conduct an administrative review of the appeal. The Board shall decide whether the solicitation being appealed was in accordance with all applicable laws and regulations and the terms and conditions of all applicable specifications, and whether waiver of specifications, conditions or defects in a bid, if any, were justified and in the best interest of the City.

Within ten working days of hearing such appeal, the Board shall submit its findings and recommendations to the Mayor. If all five members are present, an affirmative vote of three shall be required to pass the recommendation on to the Mayor. If only three members are present, only an affirmative vote of two shall be required to pass the recommendation on to the Mayor. Should it become impossible to obtain a quorum of three members, the appeal shall proceed directly to the Mayor without Procurement Appeals Board action.

No determination by the Board concerning an issue of law or fact shall be final or binding on the City.

(e) Finality of Decision. The Mayor shall consider the recommendations of the Purchasing Agent, the Procurement Appeals Board, and the Department Head or agency for which the solicitation was made and shall make the final decision on the protest. The Mayor's decision shall be final and binding upon the City. (Ord. 18495 §1; January 31, 2005; prior Ord. 16442 §1; August 9, 1993).

2.18.040 Surplus or Obsolete Stock.

All using divisions shall submit to the Purchasing Agent reports showing stocks of supplies or equipment which are no longer used or which have become obsolete, worn out, or scrapped.

The Purchasing Agent shall have authority to sell all supplies or equipment which have become unsuitable for public use, or to exchange the same for, or trade in the same on new supplies or equipment. Sales under this section shall be made to the highest responsible bidder.

The Purchasing Agent shall have authority to transfer the declared surplus stock of one using division to another using division which may have need for its use. (Ord. 15384 §4; January 8, 1990: P.C. §2.44.040: Ord. 9036 §4; June 13, 1966).

**CITY OF LINCOLN/STARTRAN
RECYCLED PRODUCTS
42 U.S.C. 6962
40 CFR Part 247
Executive Order 12873**

Recovered Materials - 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.

CITY OF LINCOLN/STARTRAN
BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18
FTA Circular 4220.1F

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Star Tran's Manager. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by Star Tran, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Star Tran and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which Star Tran is located.

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

CITY OF LINCOLN/STARTRAN
CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Contract Work Hours and Safety Standards

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - The City of **Lincoln/StarTran** shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

CITY OF LINCOLN/STARTRAN
TERMINATION FOR CAUSE

- a) The City may terminate the Contract if the Contractor:
 - 1. Refuses or fails to supply enough properly skilled workers or proper materials;
 - 2. Fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
 - 3. Disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
 - 4. Otherwise commits a substantial breach of any provision of the Contract Documents.
- b) When any of the above reasons exist, the City without prejudice to any other rights or remedies of the City may (after giving the Contractor and the Contractor's surety, if any, seven days' written notice) terminate employment of the Contractor. In addition the City may (subject to any prior rights of the surety):
 - 1. Take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
 - 2. Accept assignment of subcontracts; and
 - 3. Finish the Work by whatever reasonable method the City may deem expedient.
- c) If the Contract is terminated by City as provided in this section, Contractor shall not be entitled to receive any further payment until the expiration of 35 days after Final Completion and acceptance of all Work by City.
- d) If the unpaid balance of the Contract Sum exceeds the cost of completing the Work, including all additional costs and expenses made necessary thereby, including costs for City staff time, plus all losses sustained, including any liquidated damages provided under the Contract Documents, such excess shall be paid to Contractor. If such costs, expenses, losses, and liquidated damages exceed the unpaid balance of the Contract Sum, Contractor shall pay such excess to City.
- e) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination has been issued for the convenience of the City.
- f) No termination or action taken by City after termination shall prejudice any other rights or remedies of City provided by law or by the Contract Documents upon such termination; and City may proceed against Contractor to recover all losses suffered by City.

CITY OF LINCOLN/STARTRAN
TERMINATION BY THE CITY FOR CONVENIENCE

- a) The City may at its option, terminate this Contract in whole or in part at any time without cause by written notice thereof to the Contractor.
- b) Upon any such termination, the Contractor agrees to waive any claims for damages, including loss of anticipated profits, on account thereof, and as the sole right and remedy of the Contractor, the City shall pay Contractor in accordance with this Paragraph. The provisions of the Contract which by their nature survive final acceptance of the Work, shall remain in full force and effect after such termination to the extent provided in such provisions.
- c) Upon receipt of any such notice of termination, the Contractor shall, unless the Notice directs otherwise, immediately:
 - 1. Discontinue the Work to the extent specified by the City;
 - 2. Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of that portion of the Work, if any, the City has directed not to be discontinued;
 - 3. Promptly make every reasonable effort to procure cancellation upon satisfactory terms as determined by the City of all orders and subcontracts not related to that portion of the Work, if any, the City has directed not to be discontinued;
 - 4. Do only such other activity as may be necessary to preserve and protect work already in progress and to protect materials and plants and equipment on the Project Site or in transit thereto.
- d) Upon such termination, the obligations of the Contract shall continue as to portions of the Work already performed and as to bona fide obligations the Contractor assumed prior to the date of termination.
- e) Upon termination, the City shall pay the Contractor the full cost of all Work properly done by the Contractor to the date of termination not previously paid for by the City. If at the date of such termination the Contractor has properly prepared or fabricated off site any goods for subsequent incorporation in the Work, the City may direct the Contractor to deliver such goods to the Site or to such other place as the City may reasonably determine, whereupon the City shall pay to the Contractor the cost for such goods and materials.
- f) Upon such termination, City shall pay to Contractor the sum of the following:
 - 1. The amount of the Contract Sum allocable to the portion of the Work properly performed by Contractor as of the date of termination, less sums previously paid to Contractor.
 - 2. Previously unpaid costs of any items delivered to the Project site which were fabricated for subsequent incorporation in the Work.
 - 3. Any proven losses with respect to materials and equipment directly resulting from such termination.
 - 4. Reasonable demobilization costs.
- g) The above payment shall be the sole and exclusive remedy to which Contractor is entitled in the event of termination of the Contract by City pursuant to this provision; and Contractor will be entitled to no other compensation or damages and expressly waives same.

TERMINATION FOR LACK OF FUNDING.

The City may terminate this Agreement in whole or in part when funding is not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, or otherwise not forthcoming through no fault of City. In the event of unavailability of funds to pay any amounts due under this Agreement, City shall immediately notify the Program Provider and this Agreement shall terminate without penalty or expense to City. Upon termination, the City shall pay Program Provider for any approved and documented services completed up to the date of termination, but not to exceed the maximum amount allowed by this Agreement.

INDEMNIFICATION

To the fullest extent permitted by law, Service Provider shall indemnify, defend and hold harmless the City, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional or negligent act or omission of Service Provider, or anyone for whose acts any of them may be liable. This section will not require Service Provider to indemnify or hold harmless the City for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of the City. The City does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. This section survives any termination of this Agreement.

**SPECIAL PROVISIONS
FOR
TERM CONTRACTS**

**PURCHASING DEPARTMENT
CITY OF LINCOLN/LANCASTER COUNTY, NEBRASKA**

1. ESTIMATED QUANTITIES

- 1.1 The quantities set forth in the line items and specification document are approximate and represent the estimated requirements for the contract period.
- 1.2 Items listed may or may not be an inclusive requirements for this category.
- 1.3 Category items not listed, but distributed by bidder are to be referred to as kindred items. Kindred items shall receive the same percentage of discount or pricing structure as items listed in the specification document.
- 1.4 The unit prices and the extended total prices shall be used as a basis for the evaluation of bids. The actual quantity of materials necessary may be more or less than the estimates listed in the specification document, but the City/County shall be neither obligated nor limited to any specified amount. If possible, the Owners will restrict increases/decreases to 20% of the estimated quantities listed in the specification document.

2. CONTRACT PERIOD

- 2.1 The material shall be delivered as ordered during the contract period, beginning from the date of contract execution and ending as indicated in the specifications or in the Attribute Section of the bid.
- 2.2 Bidder must indicate in the Bid, if extension renewals are an option.
- 2.3 By mutual consent of both parties it is understood and agreed that the contract may be renewed at the same prices and/or under the same conditions governing the original contract.

3. BID PRICES

- 3.1 Bidders must state in the Attribute Section if the bid prices will remain firm for the full contract period; or if the bid prices will be subject to escalation/de-escalation.
- 3.2 Escalation/De-escalation Clause: In the event that prevailing market conditions warrant an adjustment in bid prices contained in the contract, the following escalation/de-escalation clause shall be the only clause applicable or acceptable:
 1. Contractor shall give written notice to the Purchasing Agent of any proposed changes from contract prices not less than thirty (30) calendar days prior to the effective date of said price changes.
 2. Such notice must be accompanied by a certified copy of the supplier's advisory or notification to the contractor of price changes.
 3. No price escalation will be authorized in excess of the amount of the increase referred to on the supplier's notice.
 4. Purchasing shall issue a contract Addendum with revised pricing upon receipt and approval. The Addendum will be executed by both parties for the remaining term of the contract.
 5. The approved price change shall be honored for all orders received by the contractor after the effective date of such price change.
 6. Approved price changes are not applicable to orders already issued and in process at time of price change.

7. Purchasing reserves the right to audit and/or examine any pertinent books, documents, papers, records or invoices relating directly to the contract transaction in question after reasonable notice and during normal business hours.
8. The Purchasing Agent retains the right to determine whether or not such proposed price changes are in the best interests of the City/County.
9. If in the opinion of the Purchasing Agent any proposed increase is found unacceptable, the Purchasing Agent reserves the right to cancel the contract upon thirty (30) calendar days written notice.
10. Contractors must tie any price change clause to an industry-wide or otherwise nationally recognized index, or some other form of verifiable document. Contractor will put the Purchasing Agent on the mailing lists for such publication so that the Purchasing Agent can monitor said changes. Such membership will be no cost to the Owners.

4. CONTRACT ADMINISTRATION

- 4.1 The Purchasing Division will issue a Contract to all successful bidders. Such contract will incorporate the specifications and all other forms used during the bid process.
- 4.2 Orders for materials will be made as needed by the various Agencies following execution by all parties.
- 4.3 Contractor may be asked to assist the Purchasing Agent with the development of a list of repetitively purchased commodities, to periodically update such list, and to assist in the development of a list of suitable substitutions.
- 4.4 Contractor shall provide technical advice upon request, and assist in the evaluation of new products.
- 4.5 Contractor shall monitor orders to ensure the highest possible fill rate and minimize back-orders.

5. QUARTERLY REPORT

- 5.1 Upon request, the contractor shall provide to the Purchasing Agent a quarterly report, showing all purchases made under the terms and conditions of the contract.
- 5.2 Such quarterly report shall itemize the following information:
 1. Each ordering department.
 2. Items and quantities purchased by department.
 3. Total dollar amount of purchases by department.

INSTRUCTIONS TO BIDDERS

CITY OF LINCOLN, NEBRASKA

E-Bid

1. BIDDING PROCEDURE

- 1.1 Sealed bid, formal and informal, subject to Instructions and General Conditions and any special conditions set forth herein, will be received in the office of the Purchasing Division, 440 So. 8th St., Lincoln, NE 68508, until the bid closing date and time indicated for furnishing the City of Lincoln, hereinafter referred to as "City", the materials, supplies, equipment or services shown in the electronic bid request.
- 1.2 Bidders shall use the electronic bid system for submitting bids and must complete all required fields.
- 1.3 Identify the item you will furnish by brand or manufacturer's name and catalog numbers. Also furnish specifications and descriptive literature if not bidding the specific manufacturer or model as listed in the specifications.
- 1.4 Any person submitting a bid for a firm, corporation, or other organization must show evidence of his authority so as to bind such firm, corporation, or organization.
- 1.5 Bids received after the time and date established for receiving bids will be rejected.
- 1.6 The Bidders and public are invited, but not required, to attend the opening of bids. At the opening, prices will be displayed electronically and/or read aloud to the public. The pricing is also available for immediate viewing on-line. No decisions related to an award of a contract or purchase order will be made at the opening.
- 1.7 If bidding on a construction contract, the City's most current Standard Specifications for Municipal Construction shall apply.
 - 1.7.1 Bidders may obtain this document from the City's Design Engineering Division of the Public Works & Utilities Department for a small fee.
 - 1.7.2 Said document can be reviewed at Design Engineering or at the office of the Purchasing Division.
 - 1.7.3 Said document is available on the web site.
<http://www.lincoln.ne.gov/city/pworks/engine/dconst/standard/stnds-spec/index.htm>

2. BID SECURITY

- 2.1 Bid security, as a guarantee of good faith, in the form of a certified check, cashier's check, or bid bond, may be required to be submitted with this bidding document, as indicated on the bid.
 - 2.1.1 Bid security, if required, shall be in the amount specified on the bid. The bid security must be scanned and attached to the "Response Attachments" section of your response or it can be faxed to the Purchasing Division at 402-441-6513. The original bid security should then be sent or delivered to the office of the Purchasing Division, 440 S. 8th St., Ste. 200, Lincoln, NE 68508 within three (3) days of bid closing.
 - 2.1.2 If bid security is not received in the office of the Purchasing Division as stated above, the vendor may be determined to be non-responsive.
- 2.2 If alternates are submitted, only one bid security will be required, provided the bid security is based on the amount of the highest gross bid.
- 2.3 Such bid security will be returned to the unsuccessful Bidders when the award of bid is made.
- 2.4 Bid security will be returned to the successful Bidder(s) as follows:
 - 2.4.1 For single order bids with specified quantities: upon the delivery of all equipment or merchandise, and upon final acceptance by the City.
 - 2.4.2 For all other contracts: upon approval by the City of the executed contract and bonds.
- 2.5 City shall have the right to retain the bid security of Bidders to whom an award is being considered until either:
 - 2.5.1 A contract has been executed and bonds have been furnished.
 - 2.5.2 The specified time has elapsed so that the bids may be withdrawn.
 - 2.5.3 All bids have been rejected.
- 2.6 Bid security will be forfeited to the City as full liquidated damages, but not as a penalty, for any of the following reasons, as pertains to this bidding document:
 - 2.6.1 If the Bidder fails or refuses to enter into a contract on forms provided by the City, and/or if the Bidder fails to provide sufficient bonds or insurance within the time period as established in this bidding document.

3. BIDDER'S REPRESENTATION

- 3.1 Each Bidder by electronic signature and submitting a bid, represents that the Bidder has read and understands the bidding documents, and the bid has been made in accordance therewith.
- 3.2 Each Bidder for services further represents that the Bidder has examined and is familiar with the local conditions under which the work is to be done and has correlated the observations with the requirements of the bidding documents.

4. CLARIFICATION OF BIDDING DOCUMENTS

- 4.1 Bidders shall promptly notify the Purchasing Agent of any ambiguity, inconsistency or error which they may discover upon examination of the bidding documents.
- 4.2 Bidders desiring clarification or interpretation of the bidding documents for formal bids shall make a written request which must reach the Purchasing Agent at least five (5) calendar days prior to the date and time for receipt of formal bids.
- 4.3 Changes made to the bidding documents will be issued electronically via addendum. All vendors registered for that bid prior to bid issuance will be notified of the addendum. Bidders registering after the bid is issued will receive the bid with the addendum included.
- 4.4 Oral interpretations or changes to the bidding documents made in any manner other than written form will not be binding on the City; and Bidders shall not rely upon such interpretations or changes.

5. ADDENDA

- 5.1 Addenda are instruments issued by the City prior to the date for receipt of bids which modify or interpret the bidding document by addition, deletion, clarification or correction.
- 5.2 Addenda notification will be made available to all registered vendors immediately via e-mail for inspection on-line.
- 5.3 No addendums will be issued later than forty-eight (48) hours prior to the date and time for receipt of bids, except an addendum withdrawing the invitation to bid, or an addendum which includes postponement of the bid.

6. INDEPENDENT PRICE DETERMINATION

- 6.1 By signing and submitting this bid, the Bidder certifies that the prices in this bid have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor; unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder prior to bid opening directly or indirectly to any other Bidder or to any competitor; no attempt has been made, or will be made, by the Bidder to induce any person or firm to submit, or not to submit, a bid for the purpose of restricting competition.

7. ANTI-LOBBYING PROVISION

- 7.1 During the period between the bid advertisement date and the contract award, Bidders, including their agents and representatives, shall not lobby or promote their bid with the Mayor, any member of the City Council, or City staff except in the course of City sponsored inquiries, briefings, interviews, or presentations, unless requested by the City.

8. BRAND NAMES

- 8.1 Wherever in the specifications or bid that brand names, manufacturer, trade name, or catalog numbers are specified, it is for the purpose of establishing a grade or quality of material only; and the term "or equal" is deemed to follow.
- 8.2 It is the Bidder's responsibility to identify any alternate items offered in the bid, and prove to the satisfaction of the City that said item is equal to, or better than, the product specified.
- 8.3 Bids for alternate items shall be stated in the appropriate space on the e-bid form, or if the proposal form does not contain blanks for alternates, Bidder MUST attach to its bid document on Company letterhead a statement identifying the manufacturer and brand name of each proposed alternate, plus a complete description of the alternate items including illustrations, performance test data and any other information necessary for an evaluation.
- 8.4 The Bidder must indicate any variances by item number from the bidding document no matter how slight.
- 8.5 If variances are not stated in the bid, it will be assumed that the item being bid fully complies with the City's bidding documents.

9. DEMONSTRATIONS/SAMPLES

- 9.1 Bidders shall demonstrate the exact item(s) proposed within seven (7) calendar days from receipt of such request from the City.
- 9.2 Such demonstration can be at the City delivery location or a surrounding community.
- 9.3 If items are small and malleable, the Bidder is proposing an alternate product, the Bidder shall supply a sample of the exact item. Samples will be returned at Bidder's expense after receipt by the City of acceptable goods. The Bidder must indicate how samples are to be returned.

10. DELIVERY (Non-Construction)

- 10.1 Each Bidder shall state on the bid the date upon which it can make delivery of all equipment or merchandise.
- 10.2 The City reserves the right to cancel orders, or any part thereof, without obligation, if delivery is not made within the time(s) specified on the bid.
- 10.3 All bids shall be based upon **inside** delivery of the equipment/ merchandise F.O.B. to the City at the location specified by the City, with all transportation charges paid.
- 10.4 At the time of delivery, a designated City of Lincoln employee will sign the invoice/packing slip. The signature will only indicate that the order has been received and the items actually delivered agree with the delivery invoice. This signature does not indicate all items met specifications, were received in good condition and/or that there is not possible hidden damage or shortages.

11. WARRANTIES AND GUARANTEES

- 11.1 Copies of the following documents shall accompany the bid proposal for all items being bid, if requested:
 - 11.1.1 Manufacturer's warranties and/or guarantees.
 - 11.1.2 Bidder's maintenance policies and associated costs.
- 11.2 Unless stated otherwise in the specifications, as a minimum requirement of the City, the Bidder will guarantee in writing that any defective components discovered within a one (1) year period after the date of acceptance shall be replaced at no expense to the City. Replacement parts of defective components shall be shipped at no cost to the City. Shipping costs for defective parts required to be returned to the Bidder shall be paid by the Bidder.

12. ACCEPTANCE OF MATERIAL

- 12.1 All components used in the manufacture or construction of materials, supplies and equipment, and all finished materials, shall be new, the latest make/model, of the best quality, and the highest grade workmanship.
- 12.2 Material delivered under this proposal shall remain the property of the Bidder until:
 - 12.2.1 A physical inspection and actual usage of the material is made and found to be acceptable to the City; and
 - 12.2.2 Material is determined to be in full compliance with the bidding documents and accepted bid.
- 12.3 In the event the delivered material is found to be defective or does not conform to the bidding documents and accepted bid, the City reserves the right to cancel the order upon written notice to the Bidder and return materials to the Bidder at Bidder's expense.
- 12.4 Awarded Bidder shall be required to furnish title to the material, free and clear of all liens and encumbrances, issued in the name of the City of Lincoln, Nebraska, as required by the bidding documents or purchase orders.
- 12.5 Awarded Bidder's advertising decals, stickers or other signs shall not be affixed to equipment. Vehicle mud flaps shall be installed blank side out with no advertisements. Manufacturer's standard production forgings, stampings, nameplates and logos are acceptable.

13. BID EVALUATION AND AWARD

- 13.1 The electronic signature shall be considered an offer on the part of the Bidder. Such offer shall be deemed accepted upon issuance by the City of purchase orders, contract award notifications, or other contract documents appropriate to the work.
- 13.2 No bid shall be modified or withdrawn for a period of ninety (90) calendar days after the time and date established for receiving bids, and each Bidder so agrees in submitting the bid.
- 13.3 In case of a discrepancy between the unit prices and their extensions, the unit prices shall govern.
- 13.4 The bid will be awarded to the lowest responsible, responsive Bidder whose bid will be most advantageous to the City, and as the City deems will best serve the requirements and interests of the City.
- 13.5 The City reserves the right to accept or reject any or all bids; to request rebids; to award bids item-by-item, with or without alternates, by groups, or "lump sum"; to waive minor irregularities in bids; such as shall best serve the requirements and interests of the City.
- 13.6 In order to determine if the Bidder has the experience, qualifications, resources and necessary attributes to provide the quality workmanship, materials and management required by the plans and specifications, the Bidder may be required to complete and submit additional information as deemed necessary by the City. Failure to provide the information requested to make this determination may be grounds for a declaration of non-responsive with respect to the Bidder.
- 13.7 The City reserves the right to reject irregular bids that contain unauthorized additions, conditions, alternate bids, or irregularities that make the bid incomplete, indefinite or ambiguous.
- 13.8 Any governmental agency may piggyback on any contract entered into from this bid.

14. INDEMNIFICATION

- 14.1 The Bidder shall indemnify and hold harmless the City of Lincoln, Nebraska from and against all losses, claims, damages, and expenses, including, attorney's fees arising out of or resulting from the performance of the contract that results in bodily injury, sickness, disease, death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom and is caused in whole or in part by the Bidder, any subcontractor, any directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This section will not require the Bidder to indemnify or hold harmless the City of Lincoln for any losses, claims damages, and expenses arising out of or resulting from the sole negligence of the City of Lincoln, Nebraska.
- 14.2 In any and all claims against the City or any of its members, officers or employees by an employee of the Bidder, any subcontractor, anyone directly or indirectly employed by any of them or by anyone for whose acts made by any of them may be liable, the indemnification obligation under paragraph 14.1 shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the Bidder or any subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

15. TERMS OF PAYMENT

15.1 Unless stated otherwise, the City will begin processing payment within thirty (30) calendar days after all labor has been performed and all equipment or other materials have been delivered, and all such labor and equipment and other materials have met all contract specifications.

16. LAWS

16.1 The laws of the State of Nebraska shall govern the rights, obligations, and remedies of the parties under this bid and any contract reached as a result of this process.

16.2 Bidder agrees to abide by all applicable local, state and federal laws and regulations, including those concerning the handling and disclosure of private and confidential information from individuals and corporations as to inventions, copyrights, patents and patent rights.

16.3 If there are any conflicts or inconsistencies between the Bidder's documents and the City's, the City's documents shall control.

17. EQUIPMENT TAX ASSESSMENT

17.1 Any bid for public improvement shall comply with Nebraska Revised Statute Sections 77-1323 and 77-1324. In that regard, every person, partnership, limited liability company, association or corporation furnishing labor or material in the repair, alteration, improvement, erection, or construction of any public improvement shall sign a certified statement which will accompany the contract. The certified statement shall state that all equipment to be used on the project, except that acquired since the assessment date, has been assessed for taxation for the current year, giving the county where assessed.

18. AFFIRMATIVE ACTION

18.1 The City of Lincoln provides equal opportunity for all Bidders and encourages minority businesses, women's businesses and locally owned business enterprises to participate in our bidding process.

19. LIVING WAGE

19.1 The Bidder shall be responsible for determining whether it is subject to the Living Wage ordinance in the event it is awarded the contract.

19.2 If the contract is subject to the City Living Wage pursuant to Section 2.81 of the Lincoln Municipal Code, the Bidder agrees to pay all employees employed in the performance of this contract, a base wage of not less than the City Living Wage. This wage is subject to change every July.

20. INSURANCE

20.1 All Bidders shall take special notice of the insurance provisions required for City contracts (see *Insurance Requirements for All City Contracts*).

21. EXECUTION OF AGREEMENT

21.1 Depending on the type of service or commodity provided, one of the following methods will be employed. The method applicable to this contract will be checked below:

a. **PURCHASE ORDER**, unless otherwise noted.

1. This contract shall consist of a City of Lincoln Purchase Order.

2. A copy of the Bidder's bid response (or referenced bid number) attached and that the same, in all particulars, becomes the contract between the parties hereto: that both parties thereby accept and agree to the terms and conditions of said bid documents.

b. **CONTRACT**, unless otherwise noted.

1. City will furnish copies of a Contract to the successful Bidder who shall prepare attachments as required. Insurance as evidenced by a Certificate of Insurance (as required), surety bonds properly executed (as required), and Contract signed and dated.

2. The prepared documents shall be returned to the Purchasing Office within 10 days (unless otherwise noted).

3. The City will sign and date the Contract and prepare an Executive Order or Directorial Order for signature.

4. Upon approval and signature, the City will return one copy to the successful Bidder.

22. TAXES AND TAX EXEMPTION CERTIFICATE

22.1 The City is generally exempt from any taxes imposed by the state or federal government. A Tax Exemption Certificate will be provided as applicable.

22.2 The Water Division of the City of Lincoln is taxable per Reg. 066.14A and no exemption certificate will be issued.

23. CITY AUDIT ADVISORY BOARD

23.1 All parties of any City agreement shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make Available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to the contract/order, as allowed by law.

24. E-VERIFY

24.1 In accordance with Neb. Rev. Stat. 4-108 through 4-114, the winning bidder agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. The winning bidder shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A 1324b. The winning bidder shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to www.uscis.gov/everify.

**Advertise 1 time
Friday August 22, 2014**

**City of Lincoln/Lancaster County
Purchasing Division
NOTICE TO BIDDERS**

Sealed bids will be received by the Purchasing Agent of the City of Lincoln/Lancaster County, Nebraska **BY ELECTRONIC BID PROCESS** until: **12:00 pm, Friday, September 5, 2014** for providing the following:

**Annual Supply of
Transit Bus Transmission Rebuild - StarTran
Bid No. 14-205**

Bidders must be registered on the City/County's E-Bid site in order to respond to the above Bid. To Register go to: lincoln.ne.gov (type: e-bid - in search box, then click "Supplier Registration").

Questions concerning this bid process may be directed to City/County Purchasing at (402) 441-7416 or (402) 441-7417.



Nebraska Resale or Exempt Sale Certificate

FORM
13

for Sales Tax Exemption

• Read instructions on reverse side/see note below

NAME AND MAILING ADDRESS OF PURCHASER				NAME AND MAILING ADDRESS OF SELLER			
Name The City of Lincoln				Name Gillig Corporation			
Street or Other Mailing Address 555 South 10th Street				Street or Other Mailing Address 25800 Clawiter Rd.			
City Lincoln	State NE	Zip Code 68508		City Hayward	State CA	Zip Code 94545	

Check Type of Certificate

Single Purchase Blanket If blanket is checked, this certificate is valid until revoked in writing by the purchaser.

I hereby certify that the purchase, lease, or rental by the above purchaser is exempt from the Nebraska sales tax for the following reason:

Check One Purchase for Resale (Complete Section A) Exempt Purchase (Complete Section B) Contractor (Complete Section C)

SECTION A—Nebraska Resale Certificate

Description of Item or Service Purchased

I hereby certify that the purchase, lease, or rental of from the above seller is exempt from the Nebraska sales tax as a purchase for resale, rental, or lease in the normal course of our business, either in the form or condition in which purchased, or as an ingredient or component part of other property to be resold.

I further certify that we are engaged in business as a: Wholesaler Retailer Manufacturer Lessor
of Description of Product Sold, Leased, or Rented

If None, State Reason

and hold Nebraska Sales Tax Permit Number 01-

or Foreign State Sales Tax Number

State

SECTION B—Nebraska Exempt Sale Certificate

The basis for this exemption is exemption category 1 (Insert appropriate category as described on reverse of this form.)

If exemption category 2 or 5 is claimed, enter the following information:

Description of Item(s) Purchased Intended Use of Item(s) Purchased

If exemption categories 3 or 4 are claimed, enter the Nebraska Exemption Certificate number. 05-

If exemption category 6 is claimed, seller must enter the following information and sign this form below:

Description of Item(s) Sold Date of Seller's Original Purchase Was Tax Paid when Purchased by Seller? Was Item Depreciable?
 YES NO YES NO

SECTION C—For Contractors Only

1. Purchases of Building Materials or Fixtures:

As an Option 1 or Option 3 contractor, I hereby certify that purchases of building materials and fixtures from the above seller are exempt from Nebraska sales tax. My Nebraska Sales or Consumer's Use Tax Permit Number is: 01-

2. Purchases Made Under Purchasing Agent Appointment on behalf of _____:
(exempt entity)

Pursuant to an **attached** Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, I hereby certify that purchases of building materials, and fixtures are exempt from Nebraska sales tax.

Any purchaser, or their agent, or other person who completes this certificate for any purchase which is other than for resale, lease, or rental in the regular course of the purchaser's business, or is not otherwise exempted from the sales and use tax under Neb. Rev. Stat. §§77-2701 through 77-27,135, shall in addition to any tax, interest, or penalty otherwise imposed, be subject to a penalty of \$100 or ten times the tax, whichever amount is larger, for each instance of presentation and misuse. With regard to a blanket certificate, this penalty shall apply to each purchase made during the period the blanket certificate is in effect. Under penalties of law, I declare that I am authorized to sign this certificate, and to the best of my knowledge and belief, it is correct and complete.

sign
here ▶

Authorized Signature

Purchasing Agent

Title

Date

NOTE: Sellers must keep this certificate as part of their records. DO NOT SEND TO THE NEBRASKA DEPARTMENT OF REVENUE.

Incomplete certificates cannot be accepted.

www.revenue.ne.gov, (800) 742-7474 (toll free in NE and IA), (402) 471-5729

NOTE: This form cannot be used for the WATER Division of the City of Lincoln. The WATER Division is taxable per Reg. 066.14A or applicable laws.

INSTRUCTIONS

WHO MAY ISSUE A RESALE CERTIFICATE. Form 13, Section A, is to be issued by persons or organizations making purchases of property or taxable services in the **normal** course of their business for the purpose of resale either in the form or condition in which it was purchased, or as an ingredient or component part of other property.

WHO MAY ISSUE AN EXEMPT SALE CERTIFICATE. Form 13, Section B can only be issued by persons or organizations exempt from payment of the Nebraska sales tax by qualifying for one of the six enumerated **Categories of Exemption** (see below). Nonprofit organizations that have a 501(c) designation and are exempt from federal and state income tax are **not** automatically exempt from **sales** tax. Only the entities listed in the referenced regulations are exempt from paying Nebraska sales tax on their purchases when the exemption certificate is properly completed and provided to the seller. Organizations claiming a sales tax exemption may do so only on items purchased for their own use. For health care organizations, the exemption is limited to the specific level of health care they are licensed for. The exemption is not issued to the entire organization when multiple levels of health care or other activities are provided or owned by the organization. Items purchased by an exempt organization that will be resold must be supported by a properly completed Nebraska Resale Certificate, Form 13, Section A.

Indicate the category which properly reflects the basis for your exemption. Place the corresponding number in the space provided in Section B. If category 2 through 6 is the basis for exemption, you must complete the information requested in Section B.

Nebraska Sales and Use Tax Reg-1-013, Sale for Resale – Resale Certificate, and Reg-1-014, Exempt Sale Certificate, provide additional information on the proper issuance and use of this certificate. These and other regulations referred to in these instructions are available on our Web site: www.revenue.ne.gov/legal/regs/slstaxregs.

Use Form 13E for purchases of energy sources which qualify for exemption. Use Form 13ME for purchases of mobility enhancing equipment on a motor vehicle.

CONTRACTORS. Form 13, Section C, Part 1, must be completed by contractors operating under Option 1 or Option 3 to document their tax-free purchase of building materials or fixtures from their suppliers. Section C, Part 2, may be completed to exempt the purchase of building materials or fixtures pursuant to a Purchasing Agent Appointment, Form 17. See the contractor information guides on our Web site www.revenue.ne.gov for additional information.

WHERE TO FILE. Form 13 is given to the seller at the time of the purchase of the property or service or when sales tax is due. The certificate must be retained with the seller's records for audit purposes. Do not send to the Department of Revenue.

SALES TAX NUMBER. A purchaser who completes Section A and is engaged in business as a wholesaler or manufacturer is not required to provide an identification number. Out-of-state purchasers can provide their home state sales tax number. Section B does not require an identification number when exemption category 1, 2, or 5 is indicated.

PROPERLY COMPLETED CERTIFICATE. A purchaser must complete a certificate before issuing it to the seller. To properly complete the certificate, the purchaser must include: (1) identification of the purchaser and seller, (2) a statement whether the certificate is for a single purchase or is a blanket certificate,

(3) a statement of basis for exemption including completion of all information for the basis chosen, (4) the signature of an authorized person, and (5) the date the certificate was issued.

PENALTIES. Any purchaser who gives a Form 13 to a seller for any purchase which is other than for resale, lease, or rental in the **normal** course of the purchaser's business, or is not otherwise exempted from sales and use tax under the Nebraska Revenue Act, shall be subject to a penalty of \$100 or ten times the tax, whichever amount is larger, for each instance of presentation and misuse.

Any purchaser, or their agent, who fraudulently signs a Form 13 may be found guilty of a Class IV misdemeanor.

CATEGORIES OF EXEMPTION

1. Purchases made directly by certain governmental agencies identified in Nebraska Sales and Use Tax Reg-1-012, Exemptions; Reg-1-072, United States Government and Federal Corporations; and Reg-1-093, Governmental Units, are exempt from sales tax. A list of specific governmental units are provided in the above regulations. Governmental units are not assigned exemption numbers.

Sales to the United States government, its agencies, and corporations wholly owned by the United States government are exempt from sales tax. However, sales to institutions chartered or created under federal authority, but which are not directly operated and controlled by the United States government for the benefit of the public, generally are taxable. Construction projects for federal agencies have specific requirements, see Reg-1-017 Contractors.

Purchases that are **not** exempt from Nebraska sales and use tax include, but are not limited to, governmental units of other states, sanitary and improvement districts, urban renewal authorities, rural water districts, railroad transportation safety districts, and county historical or agricultural societies.

2. Purchases when the intended use renders it exempt as set out in paragraph 012.02D of Reg-1-012, Exemptions. Complete the description of the item purchased and the intended use as required on the front of Form 13. Sellers of **repair parts** for agricultural machinery and equipment cannot accept a Form 13 to exempt such sales from tax.

3. Purchases made by organizations that have been issued a Nebraska Exempt Organization - Certificate of Exemption are exempt from sales tax. Reg-1-090, Nonprofit Organizations; Reg-1-091, Religious Organizations; and Reg-1-092, Educational Institutions, identify such organizations. These organizations will be issued a Nebraska state exemption identification number. This exemption number must be entered in Section B of the Form 13.

4. Purchases of common or contract carrier vehicles and repair and replacement parts for such vehicles.

5. Purchases of manufacturing machinery or equipment by a taxpayer engaged in business as a manufacturer for use predominantly in manufacturing. This includes the installation, repair, or maintenance of such qualified manufacturing machinery or equipment (see Revenue Ruling 01-08-2).

6. A sale that qualifies as an occasional sale, such as a sale of depreciable machinery and equipment productively used by the seller for more than one year and the seller previously paid tax on the item. The **seller** must sign and give the exemption certificate to the purchaser. The certificate must be retained by the purchaser for audit purposes (see Reg-1-014, Exempt Sale Certificate).