



**MASSACHUSETTS BAY TRANSPORTATION AUTHORITY**

REQUEST FOR PROPOSALS (RFP)

RFP#: 105F-26

DESCRIPTION: SHUTTLE BUS SERVICES

Date Issued: September 15, 2026



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Attn: Bidder/s  
Request for Proposals (RFP) # **105F-26**  
RFP Description: **Description**

Dear Madam/Sir,

The Massachusetts Bay Transportation Authority (“MBTA” or “Authority”), a corporate and a political subdivision of the Commonwealth of Massachusetts, existing pursuant to Mass. Gen. Laws, ch 161A (as amended) invites Bidders to participate in the competitive bid for **Description**. The Scope of Work is outlined below in Section 2. The MBTA may at its own discretion award the contracts (s) to one or multiple Bidders. All formal communication with the MBTA during the bidding period shall be only through the designated point of contact.

The MBTA’s prime point of contact for this solicitation will be:

Sourcing Manager name  
Massachusetts Bay Transportation Authority  
10 Park Plaza, Room 2810  
Boston, MA 02116  
Email: moconnor2@mbta.com

The RFP shall be launched through COMMBUYS and proposals must be submitted electronically no later than 11/04/2026 2:00 PM, in full compliance with this RFP including but not limited to Section 3, Bidders Instructions and Procurement Process. This RFP shall remain in force until the execution of the Contract, or until modified or cancelled by the MBTA.

Respectfully,  
Mellissa O’Connor

Massachusetts Bay Transportation Authority  
RFP # **105F-26**



## 1. INTRODUCTION

### Description of Procurement

The Massachusetts Bay Transportation Authority (“MBTA” or “Authority”) is soliciting proposals from qualified Bidders to join a pool of operators, who will operate turnkey replacement Shuttle Bus Service, including drivers, vehicles, and supervision.

Shuttle Bus Service is used by the MBTA for various reasons including:

- Bus service for a portion of the subway or commuter rail system so that construction and/or maintenance activities can be performed
- Bus service for a portion of the subway or commuter rail system to allow the system to shut down for unplanned repairs or emergencies, such as derailments, fallen trees, equipment issues and others
- Additional bus service in support of an MBTA operated shuttle

MBTA expects to spend approximately \$120M during the life of the contract (2 years), based on years 2025-2026, where MBTA spent an average of \$5M per month. This expenditure will be distributed amongst vendors, across multiple projects.

Shuttle services are referred to as Projects and may be required at any time during the MBTA’s hours of operation and may require any number of vehicles. Most projects are known and planned in advance and therefore will have significant advanced notice. Other needs are related to emergencies and may require an immediate response.

Project duration and number of vehicles required will vary significantly, from as few as one vehicle for one day to over twenty (20) vehicles on an established schedule for a period of weeks.

Once a pool of operators has been established, the MBTA will assign specific Projects to contractors based on the project-specific requirements including vehicle types, contractor availability, contractor past performance, and cost. Each Project will clearly state what are the requirements and deciding parameters for assignment.

All contractors in the pool will have established hourly rates for (a) vehicles with drivers and (b) supervisors. For some Projects, the MBTA may offer all contractors or a subset of qualified contractors the opportunity to provide a project-specific bid.

The term is for a Two-year period (April 1<sup>st</sup> 2027 through March 2029), with a three one-year option (April 2029 through March 2032+).

- Following the awarding of this RFP, MBTA will re-open, at its discretion, every year, a selection process for new vendors to join the vendor pool, pending review.

The MBTA reserves the right to award contracts to multiple bidders. Each contract will be assigned an expected cost value, which may be amended throughout the life of the contract. The total contract value assigned to each vendor is determined by the MBTA at our discretion.



### **Project Assignment**

MBTA will assign Projects to one or more Contractors, entirely at its discretion. MBTA may choose, at its discretion, to present Projects to some or all Contractors, to allow them to reduce their rates for that Project (Contractors will not be allowed to increase their rate, above their contracted rate, as bid in this RFP). Contractors will not be obligated to reduce their rates, however, MBTA may choose to assign Projects based in part, or entirely, on the total estimated cost for the Project. MBTA may choose to include additional parameters for Project assignment, at its discretion. These additional parameters, may include, but are not limited to:

- Accessibility – number of ramp-equipped low floor, transit style vehicles. Ramp equipped vehicles may be required or preferred, based on the project conditions.
- Customer complaints and/or data from the Internal Access Monitoring Program on previous services provided by Contractor
- Past experience in similar projects

MBTA will provide Contractors with comprehensive operational information on each project, and MBTA decision parameters for each project.

MBTA may award a contract to any vendor deemed capable of meeting the requirements of this RFP.

Any contract awarded as a result of this RFP, will supersede and cancel any previous existing contract that the Contractor may have with the MBTA for the same services.

### **Project Notice**

MBTA will attempt to provide ample and reasonable notice for Projects, to the best of its ability. The majority of projects are construction projects with six (6) or more weeks of notice prior to operational needs.

However, some Projects may require shorter notice, due to the operational, safety or emergency needs related to the projects. In such event, MBTA will contact Contractors, at its discretion to secure operational support, per specific project needs.

### **Project Cancellation**

In the event of a cancelled Project, MBTA will attempt to provide Contractor with cancellation notice as soon as possible. In the event that cancellation notice was not provided to Contractor at a reasonable time, MBTA will reimburse Contractor for incurred costs that are directly related to late cancellation notice. Contractor must provide documentation and support for these claimed costs.

The Request for Proposal (RFP) is comprised of the following documents:

- RFP 16-24, and Form Enclosures including:
  - Enclosure 1 – Bid Cover Letter
  - Form A – Pre-Award Bidder Evaluation Data Form
- Attachments
  - Attachment A – Prohibited Acts
  - Attachment B – MBTA Vehicle Condition report Form
  - Attachment C – MBTA 2026 Transit Safety Plan
  - Attachment D – MBTA Drug and Alcohol Policy
  - Form C – Bidder Price Response



- Form B – Scope of Work
- Detailed SLA

## 2. SCOPE OF WORK

The Scope of Work is attached as a separate document in Form B attached to this RFP.

MBTA may update operational requirements defined in this RFP, including those related to safety, accessibility, and emergency operations. Contractors will be notified of changes and have an opportunity to comment. Once changes are confirmed, Contractors will have a minimum of thirty (30) calendar days for implementation.

### **Compensation**

The MBTA will reimburse the Contractor based on the agreed-upon hourly rates and the number of hours of bus service, as well as supervision utilized for each Project, net of any penalties contractor may have incurred based on Service Level Agreement.

Within 15 days of the close of each project, the Contractor will be required to submit an invoice to the MBTA. The MBTA agrees to pay amounts not in dispute within thirty (30) days of receipt of said bill and all required documentation.

MBTA prefers minimum 5-hour shift requirements.

### **Record-keeping, Reporting, and Data Ownership**

The Contractor shall be required to maintain all records necessary to document all charges made to the Authority for provision of Services.

The Contractor shall also maintain any and all additional statistics and documents necessary to comply with the Federal Transit Act of 1964 as amended to include compilation of the National Transit Database Report, etc. The report shall be in a digital format, which has been approved by the authority.

Statistics kept by Contractor and reported to the MBTA shall include, but not limited to:

- Bus number, driver name, shift start/end time, date, shuttle location.
- Supervisor's name, shift start/end time, date, location.
- Trip start times and total passengers per trip.
- Safety data (Any data generated to comply with the requirements outlined in Sections 17 (Safety Program) and 18.5 (Safety Specific Reporting))
- Total revenue hours and revenue miles
- Total non-revenue hours and non-revenue miles (related to providing shuttle service, e.g. deadheads)
- Total cost for the month
- Monthly depreciation of fleet used
- Quarterly DBE/MWBE spend reported per quarter

The Contractor will provide all information and reports as required from time to time by the MBTA and will permit access to all books, records, accounts, other sources of information and facilities related to performing the contract as may be requested by MBTA.



The listed reports and formats of the reports may be revised, reorganized, deleted or changed as directed by the MBTA. The Contractor shall make available any and all special reports that are required. These reports include, but are not limited to, accident reports, incident reports, emergency reports, reports of vehicles exceeding the maintenance downtime limit, and any or all reports deemed necessary by MBTA. Such a requirement shall not be considered a change of the Agreement.

## **2.1 Additional Services**

Additional, directly related services may be added to this Agreement prior to the start or throughout the duration of this Agreement if agreed to in writing by the Parties.

## **3. BIDDERS INSTRUCTIONS AND PROCUREMENT PROCESS**

### **3.1 Procurement Method**

This procurement is conducted pursuant to applicable state and federal laws including, but not limited to, FTA 4220.1G.

Bidder shall be responsible for making itself fully aware of, complying with, and in its Response addressing the impact of and compliance with all applicable laws and regulations.

This RFP will be launched and managed via COMMBUYS. Instructions for log-in and use of COMMBUYS are described in <http://www.mass.gov/anf/docs/osd/forms/instructions-for-vendors-responding-to-bids.docx>

Bidders may also contact the COMMBUYS Helpdesk at COMMBUYS@state.ma.us or the COMMBUYS Helpline at 1-888-MA-STATE. The Helpline is staffed from 8:00 a.m. to 5:00 p.m. Monday through Friday (Eastern Time), except on federal, state, and Suffolk county holidays.

It is the responsibility of Bidders to maintain an active registration in COMMBUYS and to keep current the email address of the Bidder's Designated Representative and to monitor that email inbox for communications from the MBTA, including responses to Bidder questions. The MBTA and the Commonwealth assume no responsibility if a Bidder's designated email address is not current, or if technical problems, including those with Bidder's computer, network, or internet service provider ("ISP") cause email communications sent to or from Bidder and the MBTA to be lost or rejected by any means including email or spam filtering.

Bidder shall review and study all documents thoroughly and report any discrepancies, omissions, technical queries, or other clarifications via COMMBUYS.

Questions and clarification requests submitted by Bidder will, together with MBTA's responses, be made available to all Bidders via COMMBUYS.

### **3.1.1 MBTA DESIGNATED REPRESENTATIVE**

Unless specifically stated otherwise in this RFP, Bidder must submit changes to Bidder's designated representative and any other communications in writing to the MBTA's Designated Representative via COMMBUYS. The MBTA's Designated Representative is Mellissa O'Connor, moconnor2@mbta.com.

### **3.1.2 IDENTIFICATION OF BIDDER DESIGNATED REPRESENTATIVE**

When submitting a Bid, the Bidder must identify to the MBTA's designated representative its own Designated Representative to act on behalf of the Bidder relating to this procurement.



### 3.2 RFP Calendar and Delivery Instructions

Bidder is required to prepare and submit all required documents to MBTA electronically via COMMBUYS.

The MBTA anticipates carrying out the procurement process in accordance with the schedule noted in the table below. All times are local Boston, Massachusetts, USA, times unless otherwise indicated. The schedule is subject to modification at the sole discretion of the MBTA. Bidders will be notified of any change by an addendum to this RFP.

| TABLE 2-1: RFP CALENDAR                                        |                         |            |
|----------------------------------------------------------------|-------------------------|------------|
| Procurement Activity                                           | Date                    | Time       |
| RFP issued                                                     | 9/16/2026               |            |
| Pre-Bid conference                                             | 9/22/2026               | 12:00 p.m. |
| Deadline for submission of Proposer questions via COMMBUYS Q&A | 10/10/2026              | 2:00 p.m.  |
| Official Answers for Bid Q&A published by MBTA on COMMBUYS     | 10/15/2026              | 2:00 p.m.  |
| Response Due Date                                              | 11/4/2026               | 2:00 p.m.  |
| Virtual Public Bid Opening (see Section 3.11)                  | 11/4/2026               | 2:30 p.m.  |
| In-person or virtual presentations to MBTA (estimated)         | 12/1/2026(if required ) |            |
| Contract Execution (estimated)                                 | 4/1/2027                |            |
| Project Start Date (estimated)                                 | 4/1/2027                |            |

### 3.3 Pre-Bid Conference

A Pre-Bid Conference is scheduled on 22<sup>nd</sup> September at 12:00pm. It will be held virtually on Microsoft Teams at the link below:

#### Microsoft Teams meeting

**Join:** <https://teams.microsoft.com/meet/21819811409984?p=PQmltip4T5ZGC9AscX>

Meeting ID: 218 198 114 099 84

Passcode: jp2sv3it

The MBTA reserves the right to hold one or more Pre-Bid Conferences with all Bidders at any time prior to the Response Date. Pre-Bid Conferences may be held either in person or by telephonic or electronic means. If held telephonically or electronically, the Pre-Bid Conference will permit interactive communication between all Bidders and the MBTA. The MBTA will provide written notice of any Pre-Bid Conference via COMMBUYS. If a Pre-Bid Conference is conducted by telephonic or electronic means, the notice will inform Bidders of the manner of the meeting.

Each Bidder, by submittal of its Response, acknowledges the opportunity to attend any Pre-Bid Conference, if held, was offered to all Bidders, and waives any right to challenge this procurement based on its attendance at, or failure to attend, a Bidders' conference.



Each Bidder is encouraged to attend Pre-Bid Conferences, if held, with appropriate members of its proposed staff, and if requested by the MBTA, senior representatives of proposed team members identified by the MBTA. Nothing stated at any Pre-Bid Conference or included in a written record or summary of a Pre-Bid Conference will modify this RFP or any other part of the RFP unless it is incorporated in an addendum issued.

### **3.4 Dissemination of Confidential Information**

Pursuant to this RFP, the MBTA will provide to Bidders certain information, which the MBTA deems Confidential ("Confidential information"). In order to obtain the Confidential Information necessary to the development of Responses, Bidders are required to obtain and execute a Confidentiality and Non-Disclosures Agreement. Bidders can obtain the Confidentiality and Non-Disclosure Agreement via COMMBUYS. Please execute and return the Confidentiality and Non-Disclosure Agreement by Click here to enter a date. to the MBTA's Designated Representative by submitting it to [moconnor2@mbta.com](mailto:moconnor2@mbta.com), so that the MBTA can provide Bidders with the Confidential Information in a timely manner.

### **3.5 Examination of RFP**

Each Bidder shall be solely responsible for examining, with appropriate care and diligence, the RFP, including RIDs and any addenda and material made available to Bidders by the MBTA, and for informing itself with respect to any and all conditions that may in any way affect the amount or nature of its Response, or the performance of the Contractor's obligations under the Contract with the MBTA. Failure of the Bidder to so examine and inform itself shall be at its sole risk, and the MBTA will provide no relief for any error or omission.

The submission of a Response shall be considered prima facie evidence that the Bidder has made the above-described examination and is satisfied as to the conditions to be encountered in performing the Work and as to the requirements of the Contract.

### **3.6 Rules of Contact**

Starting on the date the RFP is issued and ending on the earliest of (a) the award and execution of the Contract, (b) rejection of all Responses by the MBTA, or (c) cancellation of the procurement, the following rules of contact shall apply. These rules are designed to promote a fair and unbiased procurement process. Contact includes face-to-face, telephone, email, or formal written communication.

The specific rules of contact are as follows:

- i. No Bidder, or any of its team members, may communicate with another Bidder or its team members with regard to this RFP or either team's Response, except that subcontractors that are shared between two or more Bidder teams may communicate with their respective team members so long as those Bidders establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams. This prohibition does not apply to public discussions regarding the RFP at any MBTA sponsored Bidders' conferences.
- ii. No Bidder or representative thereof shall have any ex parte communications regarding the RFP, the Contract, or the procurement described herein with any member of the MBTA's Board of Directors, the Massachusetts Department of Transportation ("MassDOT") Board of Directors, or with any MassDOT or MBTA staff, advisors, contractors, or consultants involved with the procurement, except for communications expressly permitted by the RFP or except as approved in advance at the MBTA's Point of Contact's sole discretion. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP, Contract, or procurement or from participation in public meetings of the MBTA or MassDOT Boards of Directors or any public or Bidder workshop related to this RFP.



- iii. The Bidders shall not contact employees, representatives, and members who worked on the procurement process regarding this RFP, the Contract, or the procurement.
- iv. Any communications determined by the MBTA, in its sole discretion, to be improper may result in disqualification.
- v. Any official information regarding this RFP will be disseminated from the MBTA's Point of Contact via COMMBUYS.
- vi. The MBTA will not be responsible for or bound by any oral exchange or any other information or exchange that occurs outside the official process specified herein.
- vii. The MBTA will not be bound by, and Bidders should not rely on, any oral communications regarding the RFP. Use of any information gathered or received from other agencies or entities shall be at the Bidder's own risk.

### **3.7 Clarifications of Specifications, Questions and Answers**

Bidders shall review the RFP and any addenda issued by the MBTA prior to the Response Date, and request written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error, or omission contained therein, or of any provision which the Bidder fails to understand or to which the Bidder is suggesting a change. Failure of the Bidder to so examine and inform itself shall be at its sole risk, and no relief for error or omission will be provided by the MBTA. Bidders shall submit, and the MBTA will respond to, questions and requests for written clarification in accordance with this Section.

Questions and clarification requests shall be minimized or aggregated to the extent possible. All questions and clarification requests shall be made by Bidder through the "Bid Q&A" tab in COMMBUYS. Such comments and questions may be submitted at any time prior to the applicable date specified in Section 3.3 or such later date as may be specified in any addendum and shall: (i) identify the document; (ii) identify the relevant section number and page number) or, if it is a general question, indicate so; and (iii) not identify the Bidder in the body of the question or contain proprietary or confidential information. Questions submitted in any other format or method than that described above will not be considered.

Responses to requests for clarification or questions will be provided in writing and issued by the MBTA's Point of Contact via the COMMBUYS. In addition, the MBTA reserves the right to, in its sole discretion, not answer all questions submitted by Bidders.

It is the Bidder's responsibility to verify the MBTA's receipt of questions and clarification requests.

### **3.8 RFP Addendum**

The MBTA reserves the right to issue addenda to the RFP after initial publication.

It is each Bidder's responsibility to monitor COMMBUYS for any addenda and any Bid Q&A records related to this RFP. The MBTA and the Commonwealth accept no responsibility and will provide no accommodation to Bidders who submit their Response based on an out-of-date RFP or on information received from a source other than COMMBUYS.

The Bidder shall acknowledge in its Technical Proposal Cover Letter (see Enclosure 1) receipt of all addenda and question and answer responses. Failure to acknowledge such receipt may cause the Response to be deemed non-responsive and be rejected.



### **3.9 Due Date**

Bids are due electronically through [COMMBUYS](#) no later than the date and time listed in Table 1 above for the work described herein. Bidder is required to prepare and submit all required documents requested in this IFB to MBTA electronically via [COMMBUYS](#), including all Bid forms contained in this package. Bidders shall complete the [Enclosure 1 – Bid Cover Letter](#) and complete the check boxes to indicate the bid documents that constitute their bid.

**Note:** Bid packages that do not follow instructions above may be disqualified.

### **3.10 Virtual Public Bid Opening**

Bids will be publicly opened for this procurement via Microsoft Teams.

Date: 4<sup>th</sup> November 2026

Time: 2:30 p.m. ET

[Join the meeting now](#)

Meeting ID: 288 068 910 384 1

Passcode: nZ62LA2E

### **3.11 MBTA Standard Contract and Terms & Conditions**

**The MBTA does not encourage attempts to negotiate the Section 9.0 Massachusetts Bay Transportation Authority Standard Contract Terms & Conditions.** Many of these provisions are required by law; others are longstanding MBTA policy / practice. Accordingly, Bidders / proposers should only redline or object to provisions that they find absolutely unacceptable. Any rejection or modification of these provisions may disqualify a Bid / proposal as being non-responsive or non-compliant

### **3.12 Confidentiality / Public Information Act Disclosure Requests**

#### **3.12.1 Disclosure Waiver**

Each Bidder, by submitting a Response to the MBTA in response to the RFP, consents to the disclosures described in this RFP, including this Section and all other disclosures required by law, and expressly waives any right to contest, impede, prevent, or delay such disclosure, or to initiate any proceeding that may have the effect of impeding, preventing, or delaying such disclosure, under Mass. Gen. Laws, ch. 66 (the Massachusetts Public Records Law or “Public Records Law”) or any other law relating to the confidentiality or disclosure of information. Under no circumstances will the MBTA be responsible or liable to a Bidder or any other party as a result of disclosing any such materials. Each Bidder hereby further agrees to assist the MBTA in complying with these disclosure requirements.

#### **3.12.2 Public Disclosure of Response Documents**

After execution of the Contract, or in the event that the procurement is cancelled by the MBTA, the MBTA shall have the right to publicly disclose any and all portions of all the Responses. The MBTA will not disclose material deemed confidential by the MBTA in accordance with Section 3.12.3, unless otherwise required by law

#### **3.12.3 Disclosure Process for Requests Under the Public Records Law**



All written correspondence, exhibits, reports, printed material, photographs, tapes, electronic disks, and other graphic and visual aids submitted to the MBTA during this procurement process, including as part of the response to this RFP, become the property of the MBTA upon their receipt by the MBTA and will not be returned to the submitting parties. Except as provided in the Public Records Law, all materials submitted to the MBTA are subject to release as public records. Bidders shall familiarize themselves with the provisions of the Public Records Law. In no event shall the MBTA, or any of their agents, representatives, consultants, directors, officers, or employees, be liable to a Bidder or Bidder team member for the disclosure of all or a portion of a Response or related information submitted during this procurement.

If a Bidder has special concerns about information which it desires to make available to the MBTA but which it believes constitutes a trade secret, proprietary information, or other information excepted from disclosure, such responding Bidder shall specifically and conspicuously designate that information **by placing “TRADE SECRET - PROPRIETARY” in the header or footer of each such page affected** and by identifying such trade secret, proprietary information in the Technical Proposal Cover Letter (see Enclosure 1). Nothing contained in this provision shall modify or amend requirements and obligations imposed on the MBTA by the Public Records Law or other applicable law. The provisions of the Public Records Law or other laws shall control in the event of a conflict between the procedures described above and the applicable law.

If the MBTA receives a request for public disclosure of all or any portion of a Response or its related information that is designated as “Trade Secret - Proprietary,” the MBTA will endeavor to use reasonable efforts to notify the applicable Bidder of the request. The Bidder can assert, in writing and at its sole expense, a claimed exception under the Public Records Law or other applicable law, within the time period specified in the notice issued by the MBTA and allowed under the Public Records Law. The Bidder can choose to defend any action seeking release of the records it believes to be confidential information. The Bidder shall indemnify, defend, and hold harmless the MBTA and its agents and employees from any judgments awarded against the MBTA and its agents and employees in favor of the party requesting the records, including any and all costs connected with that defense. This indemnification survives the MBTA’s cancellation or termination of this procurement or award and subsequent execution of a Contract. In submitting a Response, the Bidder agrees that this indemnification survives as long as the trade secret, proprietary information is in the possession of the MBTA.

The MBTA shall not under any circumstance be responsible for securing a protective order or other relief enjoining the release of information marked “Trade Secret – Proprietary” in any Response, nor shall the MBTA be in any way financially responsible for any costs associated with securing any such order or for any loss associated with the release of information marked “Trade Secret – Proprietary” or otherwise.

### **3.13 Business Conduct**

All Responses submitted by a Bidder to the MBTA shall be made without collusion with any other Bidder(s) submitting a Response to this RFP.

Bidder shall not directly or indirectly, in relation to this RFP, give, promise, attempt to give, or approve or authorize the giving of anything of value, including by transferring all or part of the remuneration payable under any Contract, to:

- a) any person employed or representing the MBTA;
- b) any other person, including any public official;
- c) a political party or a labor union controlled by any governmental authority or political party; or
- d) a charitable or other organization, or an officer, director, or employee thereof, or any person acting directly or indirectly on behalf of the same



for the purpose of (i) securing any improper advantage for either Bidder or the MBTA; (ii) inducing or influencing a public official improperly to take any action or refrain from taking any action in order for either Bidder or the MBTA to obtain or retain business, or to secure the direction of business to either Bidder or the MBTA, or (iii) inducing or influencing a public official to use his or her influence with any governmental authority or public international organization for any such purpose.

### **3.14 Collusion**

By the submission of a Bid in response to the RFP, the Bidder represents and certifies that its Bid is made without collusion with any other Bidder submitting a Bid on the same commodity / service and is in all respects fair and without fraud.

### **3.15 Prices**

Each Bid must contain the unit price(s) / rate(s) or lump sum price, extended price(s). Bidders shall submit their pricing using **Form C: Requested RFP Pricing Form**. The unit price / rate shall prevail in case of an error in price extension. Prices submitted shall be valid throughout the Acceptance Period.

### **3.16 Acceptance Period**

From and after the Response Due Date identified in Section 3.3 (as amended) the MBTA shall have one hundred and eighty (180) calendar days to award a Contract based on this RFP. Such 180-day period is the “Acceptance Period.” The Bidder’s Bid is irrevocable and shall remain open and available for acceptance by the MBTA during the entirety of the Acceptance Period. The MBTA reserves the right to extend the Acceptance Period with respect to any or all Bidders upon obtaining the applicable Bidder’s written consent to such extension.

### **3.17 Eligible Entities**

Any contract resulting from this Bid will be open for use by all MassDOT Divisions.

### **3.18 Pre-Contractual Expenses**

The MBTA shall not be liable for any pre-contractual expenses incurred by the Bidder in the preparation of its proposal. The Bidder shall not include any such expenses as part of its proposal. Pre-contractual expenses are defined as expenses incurred by the Bidder including but not limited to preparing its Bid in response to this solicitation, submitting its Bid to the MBTA, negotiating with the MBTA any matter related to this Bid, inspection, testing, shipping, and return shipping of proposed goods samples, or any other expenses incurred by the Bidder prior to date of award, if any, of the Agreement.

### **3.19 Tax Exemption**

The MBTA is exempt from Federal Excise Tax, including Transportation Tax, and will furnish properly executed tax exemption certificates upon request. The MBTA is also exempt from Massachusetts State Sales Tax — Exemption Number E-042-323-989. Such taxes should not be included in Bid prices.

The Bidder alone shall be responsible for payment of all federal, state and local taxes of all types and kinds applicable to such fees incurred under this Agreement.

### **3.20 Insurance**

The insurance policies that the successful bidder shall carry are outlined in the **attached MBTA Minimum Insurance Requirements** document with this solicitation. The successful bidder shall submit proof of insurance for the requirements detailed at the time of submitting their bid. If in the case they are not available at the time of preparing their Bid, the successful bidder certifies that they will carry such insurance policies and all costs resulting from this are included in their pricing. The successful bidder shall provide proof of insurance within three business days of conditional notice of award.



### 3.21 **Build America, Buy America Requirements**

Build America, Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000). The successful bidder agrees to comply with 49 U.S.C. 5323(j) as amended by MAP-21, 49 U.S.C. 5323(h), 49 CFR Part 661, and FAST Act (Pub. L. 114-94) which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. See *Section 9.1.20.3 Build America, Buy America Requirements* for complete information on Build America, Buy America requirements.

Bidders must complete **Form H: Build America, Buy America Certification Form** to submit with their bid.

## 4. **SUBMISSION RESPONSE**

### 4.1 **Response Submissions**

Responses shall be submitted via the COMMBUYS.

**Each Response shall be submitted in the following two parts along with Enclosure 1 Bid Cover Letter:**

#### **a)The Technical Proposal**

- Bid Cover Letter
- Power of Attorney (as described in Section 4.2 of this RFP)
- Proof of Insurance
- Bidder and Subcontractor Information Form(s) (one for each bidder and subcontractor, as separate files)
- Responding to Form B

#### **b)The Price Proposal**

- Form C: Price Response

**The specific requirements for submission of the Technical Proposal are set forth in Form B of this RFP.**

**The specific requirements for submission of the Price Proposal are set forth in Form C of this RFP.**

If a Bidder is a team, whether or not legally formed, the Bid Cover Letter shall be signed by all parties to the Bidder so that the Response is legally binding upon each member of the Bidder.

Any interlineations, erasures or overwriting in the Response will only be valid if they are initialed by the Authorized Signatories.

Bidders shall submit Responses including all forms and schedules and shall not remove pages from the provided forms. **The Technical Proposal and Price Proposal shall be completely separate documents. Bidder Financials shall be included in Technical Proposal only.**



Any Response which materially fails to meet the Response requirements of the RFP will be found non-responsive without further evaluation unless the evaluation team, at its discretion, determines that the non-compliance is insubstantial and can be corrected. In these cases, the evaluation team may allow the Bidder to make minor corrections to the Response.

#### **4.2 Power of Attorney**

Bidder shall enclose a power of attorney in its own form, duly signed by a legally authorized officer of the Bidder authorizing the Authorized Signatories to sign the Response and bind the Bidder to the Response.

#### **4.3 Acceptance of Response**

The Response constitutes a binding offer by the Bidder to perform the Scope of Work on the terms of the Response, and the MBTA shall have the right to accept or reject such offer and/or any conditions proposed in full or in part. If the Response is accepted, the Bidder shall conclude the Contract with the MBTA, based on the RFP, any addenda, the Response and any agreed amendments thereto. Until the formal Contract is signed, Bidder has no authority to proceed with the Scope of Work or to incur any costs for which MBTA may be held liable. MBTA shall have no obligations towards Bidder until a formal contract has been entered into.

#### **4.4 Incomplete Response**

If Bidder does not fully comply with this RFP, or if the Response is incomplete or vague, the Response may not be considered, unless the MBTA in its absolute discretion decides otherwise.

### **5. MBTA POLICIES**

Reserved

### **6. SELECTION PROCESS AND EVALUATION**

#### **6.1 Response Opening and Confidentiality**

All information received from each Bidder will be treated as confidential information and will not be distributed prior to Contract execution, other than for the purpose of evaluation of the Response.

#### **6.2 Responsiveness Review and Basis of Award**

The MBTA reserves the right, in its sole discretion, to determine if a Bid is responsive and the Bidder is responsible. In determining whether a Bidder has the ability to perform successfully under the terms and conditions of the proposed procurement, the MBTA will consider such matters as the Bidder's integrity, compliance with public policy (e.g., EEO record, debarment status, etc.), record of past performance, and financial and technical resources. Bidder is required to complete **Form A: Pre-Award Bidder Evaluation Data Form**.

Upon receipt, the Technical Proposals will be reviewed for responsiveness to the RFP requirements. The Technical Proposals will be reviewed for (i) deficiencies and minor informalities, irregularities, and apparent clerical mistakes which are unrelated to the substantive content of the Response; (ii) conformance to the RFP instructions regarding organization and format; and (iii) the responsiveness of the Bidder to the requirements set forth in this RFP. The MBTA may request Bidder clarification of any minor informalities, irregularities, and apparent clerical mistakes, after which the MBTA may evaluate the Response, at the MBTA's sole discretion.

Those Technical Proposals not responsive to this RFP may at the MBTA's sole discretion be excluded from further consideration and the Bidder will be so advised.



After completion of the evaluation of the remaining Technical Proposals, the remaining Price Proposals will be reviewed for responsiveness to the RFP requirements. The Price Proposals will be reviewed for (i) deficiencies and minor informalities, irregularities, and apparent clerical mistakes which are unrelated to the substantive content of the Response; (ii) conformance to the RFP instructions regarding organization and format; and (iii) the responsiveness of the Bidder to the requirements set forth in this RFP. The MBTA may request Bidder clarification of any minor informalities, irregularities, and apparent clerical mistakes after which the MBTA may evaluate the Response, at the MBTA's sole discretion.

Those Price Proposals not responsive to this RFP may at the MBTA's sole discretion be excluded from further consideration and the Bidder will be so advised.

The MBTA may also exclude from consideration any Bidder whose Response contains a material misrepresentation.

### **6.3 Evaluation and Notification**

Based on the information provided in each Response, the MBTA will perform Response evaluation and seek clarifications as necessary through requests for clarification or in meetings to be arranged at MBTA discretion. The MBTA will evaluate **Responses based on a combination of Pass/Fail Criteria, Technical Evaluation Criteria, and Price Evaluation Criteria.** The process may, at the MBTA's sole discretion, include requests for additional written information or clarification from any Bidder to assist in evaluation, include oral interviews, include a request for best and final offers ("BAFOs"), and include a negotiations phase with the selected Bidder

### **6.4 Pass/Fail Evaluation**

The Proposal will be evaluated based on the Pass/Fail Evaluation Criteria identified below. Each Bidder must obtain a "pass" on all Pass/Fail Evaluation Criteria in order for its Response to be eligible for selection. The MBTA may request Bidder clarification on a Pass/Fail Evaluation Criteria, after which MBTA may re-evaluate the Response, at MBTA's sole discretion.

| <b>Criteria</b>     | <b>Evaluation Methodology</b> | <b>Evaluation Basis</b> |
|---------------------|-------------------------------|-------------------------|
| Legal               | Pass/Fail                     | Form A response         |
| Financial Stability | Pass/Fail                     | Form A response         |
|                     |                               |                         |

### **6.5 Technical Response and Evaluation**

Each criterion will be evaluated considering all of the information included in the Technical Proposal related to the criterion, as well as other information gathered from references, presentations, and on-site visits.

The MBTA may at its own expense and upon reasonable notice, visit and inspect current operations of the Bidder and/or any proposed subcontractors, including the premises, facilities, equipment, personnel and other resources, and carry out related appraisals as part of the Response evaluation prior to entering into any Contract.

The Technical Evaluation Criteria are identified and detailed below, in order of importance.



| Technical Response and Evaluation Criteria          |
|-----------------------------------------------------|
| Bidder Experience, Capabilities, and Qualifications |
| Operations and Service Delivery                     |
| Vehicle Maintenance and Service Continuity          |
| Low Floor Vehicle Availability                      |
| Accessibility, Safety, and Regulatory Compliance    |
| Vehicle Communications, GPS and Technology          |

The Technical Evaluation Criteria will be rated using a numerical rating approach. This will be based on the following scoring scale.

- a) **Excellent (5 Points Awarded):** The Bidder has presented and supported an approach that is considered to significantly exceed stated criteria in a way that is beneficial to the MBTA. This rating indicates a consistently outstanding level of quality, with very little or no risk that this Bidder would fail to meet the requirements of the solicitation. There are no weaknesses.
- b) **Good (4 Points Awarded):** The Bidder has presented and supported an approach that is considered to meet the stated criteria. This rating indicates a generally better than acceptable quality, with little risk that this Bidder would fail to meet the requirements of the solicitation. Weaknesses, if any, are very minor and not material to the Response. Correction of the weaknesses would not be necessary before the Response would be considered further.
- c) **Satisfactory (3 Points Awarded):** The Bidder has presented and supported an approach that is considered to possibly meet the stated criteria. This rating indicates a level of risk to the MBTA. Weaknesses exist but may be corrected through requests for clarification.
- d) **Fair (2 Point Awarded):** The Bidder has presented and supported an approach that fails to meet stated criteria and would pose a clear risk to the MBTA. The issues may be susceptible to correction through major and lengthy discussions. Such a response is considered marginal in terms of the basic content or amount of information provided for evaluation.
- e) **Poor (1 Points Awarded):** The Bidder has presented and supported an approach that indicates significant weaknesses or unacceptable quality, or fails to include evidence that it is capable of providing the services requested. The Response fails to meet the stated criteria or lacks essential information. There is no reasonable likelihood of success; weaknesses are so major or extensive that a major revision to the Response would be necessary.



## **6.6 Price Proposal Evaluation**

Price will be evaluated in combination with The Technical Evaluation Criteria listed above. While the MBTA seeks to minimize costs, the selection of a winning Proposal will be made on a best-value basis.

## **6.7 Basis of Award: Best – Value Proposal**

Bidder is advised that the MBTA shall not be bound to accept the lowest priced Response or the Response with the highest technical Proposal Score. The selection will be made on a best-value basis, evaluating price along with other factors. For purposes of this procurement, all evaluation factors other than price, when combined, are more important than the lowest price. Therefore, the MBTA may decline to select the lowest-priced, technically acceptable Proposal, if the MBTA determines that another, higher-priced Proposal demonstrates sufficient additional technical merit to justify the additional cost. Similarly, price will be an important factor in differentiating between Proposals of comparable technical merit.

In order to make a selection, the MBTA will determine whether the Responses are responsive and evaluate both the Pass/Fail Evaluation Criteria and Technical Evaluation Criteria, and assign an overall Technical Proposal Score. After the determination of the Technical Proposal Score, the MBTA will evaluate the Price Evaluation Criteria of the remaining Bidders and, if applicable, determine the best value by analyzing whether the perceived benefits of the higher priced Response merit the additional cost.

The MBTA will not select any Bidder that receives a rating of fail on any Pass/Fail Evaluation Criteria or less than an average of 2 on any Technical Evaluation Criteria. The MBTA will not select any Bidder that the MBTA determines has submitted a non-responsive Technical or Price Proposal or to have submitted any pricing information that is not reasonable. The MBTA reserves the right to accept or reject, at its sole discretion, any or all Responses in full or in part.

## **6.8 Successful Bidder**

The successful Bidder(s) will be posted in COMMBUYS. All unsuccessful Bidders shall immediately return all confidential information to the MBTA.

## **6.9 MBTA Reserved**

In connection with this RFP, the MBTA reserves to itself all rights (which rights shall be exercisable by the MBTA in its sole discretion) available to it under applicable laws, including without limitation, with or without cause and with or without notice, the right to:

- a) Modify the RFP process in its sole discretion to address applicable law and/or the best interests of the MBTA.
- b) Develop the work to be performed under the Contract in any manner that it, in its sole discretion, deems necessary. If the MBTA is unable to negotiate a Contract to its satisfaction with a Bidder, it may negotiate with the Bidder with the next highest ranked proposal, terminate this RFP and pursue other developments or solicitations relating to the work to be performed under the Contract, or exercise such other rights under the provisions of Massachusetts law as it deems appropriate.



- c) Cancel this RFP in whole or in part at any time prior to the execution by the MBTA of a Contract, without incurring any cost, obligations, or liabilities.
- d) Issue a new Request for Proposals after withdrawal of this RFP.
- e) Not select any Bidder or cancel this procurement.
- f) Reject any and all submittals and Responses received at any time.
- g) Modify all dates set or projected in this RFP.
- h) Terminate evaluations of Responses received at any time.
- i) Exclude any potential Bidder from submitting any response to the RFP based on failure to comply with any requirements of those documents.
- j) Suspend and terminate Contract negotiations at any time, elect not to commence Contract negotiations with any responding Bidder, and engage in negotiations with the Bidder with the next highest ranked proposal if negotiations are unsuccessful with the apparent successful Bidder.
- k) Issue addenda, supplements, and modifications to this RFP.
- l) Appoint an Evaluation Team to evaluate Responses, make recommendations to the MBTA and MassDOT Boards of Directors, and seek the assistance of MBTA, MassDOT, and consultant technical experts in Response evaluations.
- m) Require confirmation or clarification of information furnished by a Bidder, require revised or additional information from a Bidder concerning its Response, and require additional information to clarify the Response submitted in response to this RFP.
- n) Conduct presentations with Bidders, identify a short-list of Bidders, and conduct on-site visits at Bidder facilities.
- o) Declare a competitive range, conduct discussions, and request Response revisions and best and final offers.
- p) Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFP.
- q) Add or delete Bidder responsibilities from the information contained in this RFP.
- r) Waive deficiencies in a Response, accept and review a non-conforming Response, or permit clarifications, revisions, or supplements to a Response.
- s) Negotiate with a Bidder without being bound by any provision in its Response, or choose to award and/or execute the Contract without negotiations.
- t) Disqualify any Bidder that changes its submittal without MBTA approval.
- u) Disqualify any Bidder under this RFP for violating any rules or requirements of the procurement set forth in this RFP or in any other communication from MBTA.
- v) Delay issuance of notice to proceed after execution of the Contract.
- w) Conduct all or any portion of the Scope of Work itself.
- x) Exercise any other right reserved or afforded to the MBTA under this RFP or available pursuant to applicable law.

This RFP does not commit the MBTA to enter into a Contract or proceed with the procurement described herein. The MBTA assumes no obligations, responsibilities, and liabilities, fiscal or otherwise, to



reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFP. All of such costs shall be borne solely by each Bidder.

In no event shall the MBTA be bound by, or liable for, any obligations with respect to the work to be performed under the Contract until such time (if at all) as the Contract, in form and substance satisfactory to the MBTA, has been executed and authorized by the MBTA and, then, only to the extent set forth therein; provided, however, that the foregoing disclaimer in this sentence shall not apply to the obligations of the MBTA to the Bidders during the procurement process, which obligations are expressly set forth in this RFP. In submitting a Response to the RFP, each Bidder is specifically acknowledging these disclaimers.

#### **6.10 Appeal / Protest Procedures**

Bid appeals / protests relative to this procurement will be reviewed and adjudicated in accordance with the MBTA's Appeals / Protest Procedure - Goods & Services. A copy of this procedure is available by contacting the Buyer assigned to this procurement and available online at [www.mbtta.com](http://www.mbtta.com).

### **7. CONTRACT STRUCTURE**

The contract ("Contract") between the MBTA and the winning Bidder shall be formed by the following sections ("Sections") of RFP #105F-26 in order of precedence.

- A.Any change orders or amendments, the most recent having precedence
- B.Memorandum of Contract
- C.Standard Contract and Terms & Conditions
- D.Scope of Work
- E.Insurance Requirements
- F.Contractors Proposal
- G.Contractors Fee for Service; Pricing & Invoicing



## Enclosure 1 – Bid Cover Letter

Massachusetts Bay Transportation Authority  
Attention: Procurement and Logistics Department  
10 Park Plaza, Suite 2810  
Boston, MA 02116

**Instructions:** Bidders shall complete the Bid Cover Letter below with their company name, total bid amount, and completed check boxes to indicate the bid documents that constitute their bid. **All responses are to be submitted to the MBTA via COMMBUYS.**

|                               |                               |
|-------------------------------|-------------------------------|
| <b>RFP #:</b>                 | 105F-26                       |
| <b>Project Name:</b>          | Shuttle Bus Services for MBTA |
| <b>Bidder (Company Name):</b> |                               |

The undersigned Bidder having carefully examined and understood the documents included in the Request for Proposals (“RFP”), hereby offers to MBTA the “*Bid*” as contained in the following responses enclosed with this letter:

| Forms                                                                                                           | Check to Indicate Submitted Bid Documents |
|-----------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| Form A: Pre-Award Bidder Evaluation Form                                                                        | <input type="checkbox"/>                  |
| Form B: Technical Response                                                                                      | <input type="checkbox"/>                  |
| Form C: Pricing Form (as a separate attachment)                                                                 | <input type="checkbox"/>                  |
| Signed Section 9.1 Massachusetts Bay Transportation Authority Standard Terms and Conditions                     | <input type="checkbox"/>                  |
| Proof of Insurance                                                                                              | <input type="checkbox"/>                  |
| Bidder and Subcontractor Information Form(s)<br>(one for each Bidder and each Subcontractor, as separate files) | <input type="checkbox"/>                  |

We confirm that our Bid is in exact accordance with the solicitation with no exceptions to, or comments upon, the solicitation documents. We confirm that the submission of our Bid with the signature below makes all certifications as outlined in the solicitation documents. This Bid shall constitute a binding offer open for acceptance by the MBTA.

We confirm that this Bid has been prepared and is compliant with the solicitation instructions and agree to conduct ourselves in accordance with the solicitation. We confirm receipt of all addenda related to this solicitation. We confirm the 120 days Acceptance Period of this Proposal.



The undersigned certifies under penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this paragraph the word “person” shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

The undersigned are authorized to sign on behalf of and to bind \_\_\_\_\_  
(include Bidder’s name) to the provisions of this Bid.

Bidder (company name): \_\_\_\_\_

Authorized Representative Name: \_\_\_\_\_

\_\_\_\_\_  
(BLOCK LETTERS)

Authorized Representative’s Signature: \_\_\_\_\_

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

Date: \_\_\_\_\_

# Form A: Pre-Award Bidder Evaluation Data Form



| Pre-Award Bidder Evaluation Data                                                                                                                                                                                                                                              |  |                     |                          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------|--------------------------|
| Name of Firm:                                                                                                                                                                                                                                                                 |  |                     |                          |
| Federal Identification Number:                                                                                                                                                                                                                                                |  |                     |                          |
| Legal Address:                                                                                                                                                                                                                                                                |  |                     |                          |
| Contact Name:                                                                                                                                                                                                                                                                 |  |                     |                          |
| Telephone Number:                                                                                                                                                                                                                                                             |  |                     |                          |
| Email:                                                                                                                                                                                                                                                                        |  |                     |                          |
| <b>Please select one:</b><br><input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Joint Venture                                                                                             |  |                     |                          |
| Date Organized:                                                                                                                                                                                                                                                               |  | State Incorporated: |                          |
| Names of Officers or Partners:                                                                                                                                                                                                                                                |  |                     |                          |
| <b>Please provide details of any litigation, suits, or court action taken or pending against Bidder below:</b>                                                                                                                                                                |  |                     |                          |
|                                                                                                                                                                                                                                                                               |  |                     |                          |
| <b>Please provide the following information that demonstrates that the Bidder together with its selected Affiliates and or Subcontractors has the required capabilities to successfully execute the Work. Please submit as attachments the following requested documents:</b> |  |                     | <b>Check Attachment</b>  |
| Audited financial statements for the last 3 financial years                                                                                                                                                                                                                   |  |                     | <input type="checkbox"/> |
| Attach, if applicable, a list of similar current contracts that demonstrates your technical proficiency, each with contract value amount, name of contracting party, type of work completed, and percentage of work complete to date.                                         |  |                     | <input type="checkbox"/> |
| Attach, if applicable, a list of all principal subcontractors and the percentage and nature and value of work each will perform on this project. Principal items of work shall include, but not be limited to, those listed in the solicitation.                              |  |                     | <input type="checkbox"/> |

|                                                           |              |
|-----------------------------------------------------------|--------------|
| <b>Please provide answers to the following questions:</b> | <b>Check</b> |
|-----------------------------------------------------------|--------------|



|                                                                                                                                   | Answer                                                      |
|-----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|
| Do you have any outstanding indebtedness or unsecured loans or debts or trading losses not reported within the financial reports? | Yes <input type="checkbox"/><br>No <input type="checkbox"/> |
| Do you have any contracts over the last two years that were assessed liquidated damages or terminated for non-performance?        | Yes <input type="checkbox"/><br>No <input type="checkbox"/> |

If the Bidder or subcontractor is a joint venture, submit this Pre-Award Bidder Evaluation Data form for each member of the joint venture.



## Form B: Technical Response

The requirements set forth here describe the minimum technical information to be submitted by the Bidder to the MBTA as part of the Response. The Bid shall enable the MBTA to assess and evaluate the technical components of the Bid. Wherever possible, deliverables below should be representative of work similar in context to the Scope of Services in Attachment B,

The Technical Response shall have the following general requirements:

- PDF format
- Documents provided should be free from hyperlinks and external references that would direct the reader to any information beyond the submitted Technical Response
- Bidder's Technical Response shall include complete and accurate responses to this RFP and shall consist of the following sections, with the associated page limits. The MBTA may choose to ignore materials submitted beyond the page limits specified below:

| Section |                                                     | Page Limit |
|---------|-----------------------------------------------------|------------|
| B1      | Bidder Experience, Capabilities, and Qualifications | 10         |
| B2      | Operations and Service Delivery                     | 20         |
| B3      | Vehicle Maintenance and Service Continuity          | 10         |
| B4      | Vehicle Availability (Low Floor)                    | 5          |
| B5      | Accessibility Safety and regulatory Compliance      | 10         |
| B6      | Vehicle Communication and GPS Technology            | 5          |

Responses that exceed the above page limits may /may not be reviewed.

### B1 – Bidder Experience, Capabilities, and Qualifications

Bidders shall clearly describe their overall qualifications, organizational capabilities, and relevant past performance demonstrating their ability to successfully deliver shuttle or transportation services of similar size, scope, and complexity.

The response should address, at a minimum, the following:

#### 1. Introduction to the Firm

Bidders shall provide a brief overview of their firm, including:

- Core business lines and transportation-related services provided.
- Organizational structure, guiding principles, and approach to service delivery.
- Overall number of employees and number of employees supporting services similar to those required under this RFP.
- Organizational capabilities, resources, and experience relevant to the MBTA's requirements.



- Key strengths, capabilities, technologies, or approaches that distinguish the Bidder and may provide additional value to the MBTA.

## 2. Relevant Experience and Past Performance

- Bidders shall describe recent contracts or projects of similar size, scope, and complexity that demonstrate their ability to successfully manage and deliver the required services. Preference will be given to experience operating comparable shuttle or transportation services involving five (5) or more buses within the past three (3) years.
- Bidders should provide information for three (3) to five (5) comparable contracts or projects, including:
  - Customer name and identifying information.
  - Project description and scope of services.
  - Number and type of vehicles operated.
  - Project management and operational approach.
  - Contract or project timeline.
  - Number of personnel/resources assigned.
  - Roles and responsibilities performed by the Bidder.
  - Capabilities and ability to provide accessible service and comply with applicable ADA and MBTA requirements for accessible transportation services.
  - Project outcomes, performance results, notable successes, and lessons learned.

## 3. Capabilities and Required Timeframes

- Bidders shall describe capabilities and required timeframes to respond to MBTA planned and emergency Projects
- Bidders shall describe required timeframes for MBTA to cancel Projects without requiring reimbursement by MBTA; include full cancellation policy, including weather provisions and uncontrollable events.

## **B2 – Operations and Service Delivery**

Bidders shall describe their approach to managing, staffing, supervising, and delivering reliable shuttle services. The response should demonstrate the Bidder's ability to maintain qualified personnel, effective operational oversight, and continuity of service throughout the Contract term.

The response should address, at a minimum, the following:

### **1. Management and Operations**

- Proposed management structure and qualifications of key personnel.



- Vehicle housing, staging, and operational locations.
- Proposed shift structure and supervisory coverage.
- Approach to maintaining adequate management and operational oversight. Describe approach to manage the operation, including maintaining the required number of buses in service, as specified during each time period, while managing operators, staff breaks, and shift changes within daily hours-of-service regulations.
- Approach to meeting MBTA's Complaint Management Requirements.

## **2. Dispatch and Daily Operations**

- Line supervision and additional supervisory personnel capacity.
- Dispatch capabilities, process, and scheduling/ staffing. Include any relevant digital tools utilized in operating the service. Include policies to ensure compliance for hours of service requirements.
- Minimum shift length requirements.
- Coordination among drivers, dispatchers, supervisors, and vehicles.
- Daily vehicle/circle-check procedures and recordkeeping.
- Procedures for addressing staffing shortages, vehicle issues, and other service disruptions.
- Approach to meeting MBTA Roster Report Requirements.

## **3. Staffing and Recruitment**

- Driver recruitment and retention strategies.
- Procedures for evaluating and selecting drivers, supervisors, and management personnel.
- Describe the steps to evaluate driver applicants including:
  - Appropriate Licensing
  - Acceptable driving records (and your minimum standards)
  - CORI checks
  - Drug testing
  - Medical suitability
  - Communication skills
  - Any other relevant criteria
- Describe the steps to evaluate supervisory and management applicants including:
  - Appropriate Licensing
  - Acceptable driving records (and your minimum standards)
  - CORI checks



- Drug testing
- Medical suitability
- Communication skills
- Any other relevant criteria
- Evaluation of communication and customer-service skills.
- Uniform and professional appearance standards.

#### **4. Training**

- New-employee orientation and training. Indicate any programs that are operator, supervisor, and/or dispatcher-specific.
- Driver- and dispatcher-specific training.
- Customer-service and communication training.
- Ongoing, refresher, and remedial training. indicate any programs that are operator, supervisor, and/or dispatcher-specific.
- Describe the training programs in place for Project-specific route training.

#### **5. Subcontractor Management**

- Indicate sub-contractor partnerships, if any, outlining the expected roles and responsibilities of any subcontractors.
- Please indicate any policies or procedures for maintaining service standards and quality, when partnering with subcontractors.
- Roles and responsibilities of proposed subcontractors.
- Approach to subcontractor supervision and performance monitoring.
- Procedures for addressing subcontractor performance issues and maintaining service continuity.

### **B3 – Vehicle Maintenance and Service Continuity**

Bidders shall describe their approach to maintaining a safe, reliable, clean, and accessible vehicle fleet and minimizing maintenance-related service disruptions throughout the Contract term.

The response should address, at a minimum, the following:

#### **1. Maintenance Facilities and Staffing**

- Location and capabilities of proposed maintenance facilities.
- Maintenance staffing, organizational structure, capabilities, and coverage.
- Qualifications and experience of key maintenance personnel. Include a brief biography of the key maintenance manager(s).

#### **2. Preventive and Corrective Maintenance**

- Preventive maintenance program and schedules.
- Procedures for identifying, documenting, and correcting vehicle defects.



- Corrective maintenance and repair procedures.
- Maintenance records and methods for monitoring vehicle condition.

### **3. Vehicle Accessibility Equipment**

- Inspection and maintenance processes for accessibility equipment.
- Procedures for identifying and correcting accessibility equipment defects.
- Response procedures when accessibility equipment becomes inoperable on vehicles while in service.
- Describe the actions taken to ensure that all accessibility components are operational.

### **4. Vehicle Cleaning**

- Interior and exterior cleaning procedures and frequency.
- Procedures for addressing conditions requiring immediate cleaning.
- Quality-control measures for maintaining vehicle cleanliness.

### **5. Disabled Vehicles and Service Continuity**

- Describe approach to meet MBTA required response times in situations when a bus becomes disabled, including any processes and procedures.
- Procedures for responding to disabled or out-of-service vehicles.
- Availability and deployment of spare or replacement vehicles.
- Roadside assistance and towing capabilities.
- Coordination of maintenance, dispatch, and supervisory personnel during vehicle failures.
- Measures to minimize delays, missed trips, and other service disruptions.
- Provide Continuity of Operations Plan.

## **B4 –Vehicle Availability**

Bidders shall describe their ability to provide low-floor and coach buses for MBTA service, including vehicles from both the Bidder's owned fleet and any proposed subcontracted fleet. MBTA prefers low-floor ramp-equipped transit buses at least 40' and Low Floor Vehicle Availability is a Technical Evaluation Criterion.

The response should address, at a minimum, the following:

### **1. Bidder-Owned Low-Floor Fleet**

- Total number of low-floor buses owned and available for deployment.
- Number of low-floor buses available for MBTA service.
- Vehicle make, model, model year, passenger capacity, and accessibility features.
- Current operational status and availability of proposed vehicles.

### **2. Subcontracted Low-Floor Fleet**

- Name of proposed subcontractor(s), if applicable.
- Number of low-floor buses available through each subcontractor and for MBTA service.
- Vehicle make, model, model year, passenger capacity, and accessibility features.
- Approach to ensuring availability and reliability of subcontracted vehicles.



### 3. Bidder-Owned Coach Fleet

- Total number of low-floor buses owned and available for deployment.
- Number of low-floor buses available for MBTA service.
- Vehicle make, model, model year, passenger capacity, and accessibility features.
- Current operational status and availability of proposed vehicles.

### 4. Subcontracted Coach Fleet

- Name of proposed subcontractor(s), if applicable.
- Number of low-floor buses available through each subcontractor and for MBTA service.
- Vehicle make, model, model year, passenger capacity, and accessibility features.
- Approach to ensuring availability and reliability of subcontracted vehicles.

### 3. Total Vehicle Availability

Bidders shall identify the maximum number buses available for MBTA service:

| Vehicle Source               | Maximum Low-Floor Vehicles Available | Maximum Coach Vehicles Available |
|------------------------------|--------------------------------------|----------------------------------|
| Bidder-Owned Fleet           |                                      |                                  |
| Subcontracted Fleet          |                                      |                                  |
| <b>Total Buses Available</b> |                                      |                                  |

- If no subcontracted vehicles are proposed, the Bidder shall state this in its Technical Proposal.

### B5 – Accessibility, Safety, and Regulatory Compliance – 10 Points

• Bidders shall describe their experience, capabilities, policies, and procedures for providing safe, reliable, and accessible transportation services in compliance with applicable federal requirements and MBTA accessibility, safety, Drug & Alcohol, and operating requirements.

• The response should address, at a minimum, the following:

#### 1. Accessibility Compliance and Service Delivery

- Experience providing accessible transportation services to older adults and passengers with disabilities.
- Approach to meeting MBTA accessibility-specific service standards and applicable ADA requirements.
- Procedures for assisting passengers with disabilities, including passengers using wheelchairs and other mobility devices.
- Policies and practices for providing safe, respectful, equitable, and high-quality accessible service.
- Procedures for reporting, investigating, and resolving accessibility-related service issues, including meeting MBTA Denial of Service reporting requirements.



- Management and supervisory oversight of accessibility compliance.

## **2. Accessibility Equipment and Training**

- Employee training on ADA and MBTA accessibility requirements, including the operation of wheelchair ramps/lifts, securement systems, and other accessibility equipment.
- Refresher and remedial accessibility training and documentation of required training.
- Procedures for inspecting and maintaining accessibility equipment and identifying and correcting defects.
- Response procedures for inoperable accessibility equipment and measures to minimize impacts to passengers with disabilities.

## **3. Safety Program and Drug & Alcohol Compliance**

- Overall safety program, including policies, employee education, testing, monitoring, reporting, and management oversight.
- Compliance with **49 U.S.C. § 5331, 49 CFR Parts 40 and 655, and the MBTA Drug & Alcohol Policy.**
- Drug and alcohol testing procedures, including pre-employment, random, and other required testing.
- Procedures for reporting, investigating, and addressing accidents, incidents, safety violations, and corrective actions.
- Recordkeeping, certification, and other administrative procedures necessary to demonstrate compliance.

## **4. Driver Qualifications and Employee Suitability**

- Required driver licenses, endorsements, credentials, and minimum qualification standards.
- Procedures for verifying and continuously monitoring driver qualifications, credentials, and driving records.
- CORI and other applicable background-check requirements.
- Pre-employment drug testing and applicable medical or employee-suitability requirements.
- Procedures for removing or restricting personnel who no longer meet licensing, safety, or qualification requirements.

## **5. Ongoing Compliance, Monitoring, and Reporting**

- Approach to meeting MBTA accessibility- and safety-specific reporting requirements.
- Ongoing monitoring of employee qualifications, licenses, credentials, training, and regulatory compliance.
- Periodic compliance reviews and audits.
- Management oversight and quality-control processes.



- Corrective-action procedures for identified accessibility, safety, or regulatory deficiencies.

## **B6 – Vehicle Communications, GPS, and Technology – 10 Points**

Bidders shall describe the technology, systems, and equipment proposed to support communications, dispatch, service monitoring, reporting, and effective management of shuttle operations, including own fleet and sub-contractors.

The response should address, at a minimum, the following:

### **1. Communications and GPS**

- Communications equipment and systems used on buses and vans.
- Real-time communication among drivers, dispatchers, supervisors, and management.
- GPS and real-time vehicle tracking capabilities.
- Procedures for addressing communications or GPS system failures.
- Ability to prepare vehicle GPS reports that define the location and performance evaluation of the service, as well as the ability to provide daily GPS equipment health reports which provide the operating status and last GPS vehicle location transmission for all GPS equipment used for MBTA service.

### **2. Dispatch and Service Management Technology**

- Digital tools and systems used for dispatching, scheduling, and managing daily operations.
- Ability to assign and monitor vehicles and drivers.
- Ability to identify delays, missed trips, service interruptions, and other operational issues.

### **3. Automatic Passenger Counting and Ridership**

- APC or other passenger-counting capabilities.
- Ability to collect and report boarding, alighting, and ridership information and provide an example of daily ridership data reporting.
- Ability to provide accurate ridership reports and data to the MBTA.

### **4. Performance Monitoring and Reporting**

- Tools and dashboards available for monitoring service performance.
- Ability to track on-time performance, service reliability, missed trips, vehicle utilization, and other applicable measures.
- Ability to retain and provide historical operational and performance data.
- Approach to meeting MBTA NTD Report Requirements.

### **5. Technology Reliability and Oversight**

- System reliability, maintenance, and technical-support capabilities.
- Backup procedures for critical technology or system failures.
- Ability to provide timely and accurate information to support MBTA service oversight and contract administration.



## **From C: Requested RFP Pricing Form**

Please find attached Form C Requested RFP pricing form and complete the pricing details.



## **8. MBTA STANDARD CONTRACT AND TERMS AND CONDITIONS INSTRUCTIONS FOR VENDORS**

### **8.1 MBTA Standard Contract Instructions (Section 9.0)**

**Bidder shall review and sign Section 9.0 MBTA Standard Contract Terms and Conditions to submit with their bid. Bidders Do Not sign Section 9 Massachusetts Bay Transportation Authority Standard Contract upon submission of their bid. When the MBTA plans to award contract, the MBTA buyer will fill out Section 9.0 Massachusetts Bay Transportation Authority Standard Contract and send it to the successful bidder for signature.**

### **8.2 MBTA Standard Terms & Conditions Instructions (Section 9.0)**

Each bidder must review and sign Section 9.1 Massachusetts Bay Transportation Authority Standard Terms and Conditions and submit the signed Section 9.0 with their bid for the bid to be responsive and complete.

**The MBTA does not encourage attempts to negotiate the Section 9.0 Massachusetts Bay Transportation Authority Standard Contract Terms & Conditions.** Many of these provisions are required by law; others are longstanding MBTA policy / practice. Accordingly, Bidders / proposers should only redline or object to provisions that they find absolutely unacceptable. Any rejection or modification of these provisions may disqualify a Bid / proposal as being non-responsive or non-compliant.

# 9. Massachusetts Bay Transportation Authority Standard Contract



|                                                     |                                                                                   |
|-----------------------------------------------------|-----------------------------------------------------------------------------------|
| <b>CONTRACTOR LEGAL NAME:</b><br>(and d/b/a): _____ | Massachusetts Bay Transportation Authority (MBTA)                                 |
| <b>Legal Address: (W-9, W-4, T&amp;C):</b> _____    | 10 Park Plaza Boston, MA 02116                                                    |
| <b>Contract Administrator/Manager:</b> _____        | <b>Billing Address :</b> <a href="mailto:invoices@mbta.com">invoices@mbta.com</a> |
| <b>E-Mail:</b> _____                                | <b>Contract Administrator/Manager:</b> _____                                      |
| <b>Phone:</b> _____ <b>Fax:</b> _____               | <b>Email:</b> <a href="mailto:@MBTA.COM">@MBTA.COM</a>                            |
|                                                     | <b>Phone:</b> 617-222-____                                                        |
|                                                     | <b>RFR/RFP/IFB/Procurement or Other ID Number:</b> _____                          |

  

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: center;"><b><u>NEW CONTRACT</u></b></p> <b>PROCUREMENT OR EXCEPTION TYPE: (Check one option only)</b><br><input type="checkbox"/> <b>Statewide Contract</b> (OSD or an OSD-designated Department)<br><input type="checkbox"/> <b>Collective Purchase</b> (Attach OSD approval, scope, budget)<br><input checked="" type="checkbox"/> <b>MBTA Procurement</b> Attach RFR/RFP/IFB and Response or other procurement supporting documentation)<br><input type="checkbox"/> <b>Emergency Contract</b> (Attach justification for emergency, scope, budget)<br><input type="checkbox"/> <b>Contract Employee</b> (Attach <u>Employment Status Form</u> , scope, budget)<br><input type="checkbox"/> <b>Legislative/Legal or Other:</b> (Attach authorizing language/justification, scope and budget) | <p style="text-align: center;"><b><u>CONTRACT AMENDMENT</u></b></p> Enter <b>Current Contract End Date</b> <u>Prior</u> to Amendment: _____, 20____.<br>Enter <b>Amendment Amount:</b> \$____. (or "no change")<br><b>AMENDMENT TYPE: (Check one option only. Attach details of Amendment changes.)</b><br><input type="checkbox"/> <b>Amendment to Scope or Budget</b> (Attach updated scope and budget)<br><input type="checkbox"/> <b>Interim Contract</b> (Attach justification for Interim Contract and updated scope/budget)<br><input type="checkbox"/> <b>Contract Employee</b> (Attach any updates to scope or budget)<br><input type="checkbox"/> <b>Legislative/Legal or Other:</b> (Attach authorizing language/justification and updated scope and budget) |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**The MBTA Terms and Conditions (T&C) have been executed, and are incorporated by reference into this Contract.**

**COMPENSATION:** (Check ONE option): The MBTA certifies that payments for authorized performance accepted in accordance with the terms of this Contract  
☐ **Rate Contract** (No Maximum Obligation. Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.)  
☐ **Maximum Obligation Contract** Enter Total Maximum Obligation for total duration of this Contract (or **new** Total if Contract is being amended). \$\_\_\_\_.

**PROMPT PAYMENT DISCOUNTS (PPD):** MBTA payments are issued through EFT 45 days from invoice receipt. Contractors requesting **accelerated** payments must identify a PPD as follows: Payment issued within 10 days \_\_\_\_\_% PPD; Payment issued within 15 days \_\_\_\_\_% PPD; Payment issued within 20 days \_\_\_\_\_% PPD; Payment issued within 30 days \_\_\_\_\_% PPD. If PPD percentages are left blank, identify reason: agree to standard 45 day cycle only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)

**BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT:** (Enter the Contract title, purpose, fiscal year(s) and a description of the scope of performance or what is being amended for a Contract Amendment) \_\_\_\_\_

**ANTICIPATED START DATE:** (Complete ONE option only) MBTA and Contractor certify for this Contract, or Contract Amendment, that Contract obligations:  
☐ 1. May be incurred as of the Effective Date (latest signature date below) and **no** obligations have been incurred **prior** to the Effective Date.  
☐ 2. May be incurred as of \_\_\_\_\_, 20\_\_\_\_, a date **LATER** than the Effective Date below and **no** obligations have been incurred **prior** to the Effective Date.  
☐ 3. were incurred as of \_\_\_\_\_, 20\_\_\_\_, a date **PRIOR** to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the MBTA from further claims related to these obligations.

**CONTRACT END DATE:** Contract performance shall terminate as of \_\_\_\_\_, 20\_\_\_\_, with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.

**CERTIFICATIONS:** Notwithstanding verbal or other representations by the parties, the "**Effective Date**" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the MBTA, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor makes all certifications required under the attached Contractor Certifications (incorporated by reference if not attached hereto) under the pains and penalties of perjury, agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable MBTA Terms and Conditions, this Standard Contract Form including the Instructions and Contractor Certifications, the Request for Response (RFR), Request for Proposal (RFP), Invitation for Bid (IFB) or other solicitation, the Contractor's Response, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR/RFP/IFB and the Contractor's Response only if made using the process outlined in 801 CMR 21.07, incorporated herein, provided that any amended RFR/RFP/IFB or Response terms result in best value, lower costs, or a more cost effective Contract.

|                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b><u>AUTHORIZING SIGNATURE FOR THE CONTRACTOR:</u></b><br><br>X: _____ Date: _____<br>(Signature and Date Must Be Handwritten At Time of Signature or utilize an MBTA approved electronic signature)<br>Print Name: _____<br>Print Title: _____ | <b><u>AUTHORIZING SIGNATURE FOR THE MBTA:</u></b><br><br>X: _____ Date: _____<br>(Signature and Date Must Be Handwritten At Time of Signature or utilize an MBTA approved electronic signature)<br>Print Name: _____<br>Print Title: _____ |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



## **9.1 Standard Terms and Conditions**

Upon execution by the Contractor, these Terms and Conditions will be incorporated by reference into any Contract executed by the Contractor and the Massachusetts Bay Transportation Authority (MBTA), in the absence of a superseding law or regulation requiring a different Contract form. Performance shall include services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the MBTA, programs provided or other commitments authorized under a Contract. A deliverable shall include any tangible product to be delivered as an element of performance under a Contract. The MBTA is entitled to ownership and possession of all deliverables purchased or developed with MBTA funds.

### **9.1.1 Contract Effective Start Date**

Notwithstanding verbal or other representations by the parties, or an earlier start date indicated in a Contract, the effective start date of performance under a Contract shall be the date a Contract has been executed by an authorized signatory of the Contractor, the MBTA, a later date specified in the Contract or the date of any approvals required by law or regulation, whichever is later.

### **9.1.2 Payments and Compensation**

The Contractor shall only be compensated for performance delivered and accepted by the MBTA in accordance with the specific Terms and Conditions of a Contract. Overpayments shall be reimbursed by the Contractor or may be offset by the MBTA from future payments in accordance with state finance law. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the MBTA from all claims, liabilities or other obligations relating to the performance of a Contract.

### **9.1.3 Contractor Payment Mechanism**

All Contractors will be paid using the MBTA invoicing system and Contractor will submit its invoice with all supporting documentation as prescribed in a Contract. The MBTA shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection, provided that payment periods listed in a Contract of less than forty-five (45) days from the date of receipt of an invoice shall be effective only to enable the MBTA to take advantage of early payment incentives and shall not subject any payment made within the forty-five (45) day period to a penalty.

### **9.1.4 Contract Termination or Suspension**

A Contract shall terminate on the date specified in a Contract, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon prior written notice to the Contractor. The MBTA may terminate a Contract without cause and without penalty, or may terminate or suspend a Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by a Contract, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of a Contract, or in the event of an unforeseen public emergency mandating immediate MBTA action. Upon immediate notification to the other party, neither the MBTA nor the Contractor shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence. Subcontractor failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Contractor's control.

### **9.1.5 Written Notice**

Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by the MBTA or the Contractor. Any written notice of termination or suspension delivered to the Contractor shall state the effective date and period of the notice, the reasons for the termination or suspension, if applicable, any alleged breach or failure to perform, a reasonable period to cure any alleged breach or failure to perform, if applicable, and



any instructions or restrictions concerning allowable activities, costs or expenditures by the Contractor during the notice period.

#### **9.1.6 Record-keeping and Retention, Inspection of Records**

The Contractor shall maintain records, books, files and other data as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The MBTA shall have access, as well as any parties identified under Executive Order 195, during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

#### **9.1.7 Assignment**

The Contractor may not assign or delegate, in whole or in part, or otherwise transfer any liability, responsibility, obligation, duty or interest under a Contract without the written approval of the MBTA, with the exception that the Contractor shall be authorized to assign present and prospective claims for money due to the Contractor pursuant to a Contract in accordance with M.G.L. C. 106, §9-318. The Contractor must provide sufficient notice of assignment and supporting documentation to enable the MBTA to verify and implement the assignment. Payments to third party assignees will be processed as if such payments were being made directly to the Contractor and these payments will be subject to intercept, offset, counter-claims or any other MBTA rights which are available to the MBTA against the Contractor. The sale of fifty percent (50%) or more of the equity ownership of a Contractor shall be considered an assignment requiring the prior written approval of the MBTA. Impermissible assignments shall be null and void.

#### **9.1.8 Subcontracting By Contractor**

Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under a Contract must be in writing, authorized in advance by the MBTA and shall be consistent with and subject to the provisions of these MBTA Terms and Conditions and a Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under a Contract. The MBTA is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party. Subcontracts shall note that the MBTA is not a party to the subcontract. Failure to promptly pay a Sub-Contractor for work performed where the Contractor has been paid by the MBTA shall constitute a material breach of the Contract between MBTA and Contractor.

#### **9.1.9 Affirmative Action, Non-Discrimination in Hiring and Employment**

The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law.

#### **9.1.10 Indemnification**

The Contractor shall release, defend (at the MBA's option), indemnify and hold harmless the MBTA, its agents, officers and employees (collectively the "indemnified parties") against any and all claims, demands, liabilities, judgments, penalties, costs, expenses (including attorneys' fees and experts' fees), and damages ("Claims") based on or arising out of any actual or alleged loss or injury (including death) to persons or damage to real or tangible property, or patent or copyright infringement, that are caused or alleged to be caused, in whole or in part, by, or arising out of the acts or omissions of the Contractor, its



agents, servants, employees or subcontractors. The MBTA agrees to notify the Contractor in writing within a reasonable period of time of the assertion of any Claim for which the Contractor has agreed to indemnify the MBTA pursuant to this section. The MBTA shall not be liable for any costs incurred by the Contractor arising under this section. If the MBTA incurs any cost or fees for attorneys or experts, or any other costs or expense, to enforce its right to indemnification or defense under this section, the Contractor shall fully reimburse the MBTA for such costs, fees and expense.

#### **9.1.11Waivers**

Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor shall it in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

#### **9.1.12Risk of Loss**

The Contractor shall bear the risk of loss for any Contractor materials used for a Contract and for all deliverables, MBTA personal or other data which is in the possession of the Contractor or used by the Contractor in the performance of a Contract until possession, ownership and full legal title to the deliverables are transferred to and accepted by the MBTA.

#### **9.1.13Forum, Choice of Law and Mediation**

Any actions arising out of a Contract shall be governed by the laws of Massachusetts, and shall be brought and maintained in a State or federal court in Massachusetts which shall have exclusive jurisdiction thereof. The MBTA and the Contractor may agree to voluntary mediation through the Massachusetts Office of Dispute Resolution (MODR) of any Contract dispute and will share the costs of such mediation. No legal or equitable rights of the parties shall be limited by this Section.

#### **9.1.14Interpretation, Severability, Conflicts with Law, Integration**

Any amendment or attachment to any Contract which contains conflicting language or has the effect of a deleting, replacing or modifying any printed language of these MBTA Terms and Conditions, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law. All amendments must be executed by the parties in accordance with Section 9.0 of these MBTA Terms and Conditions. The printed language of the Standard Contract Form, which incorporates by reference these MBTA Terms and Conditions, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: any applicable federal provisions, any supplemental provisions, any negotiated terms and conditions allowable pursuant to law or regulation; the printed language of the MBTA Terms and Conditions; the Standard Contract; the MBTA's Request for Response/Proposal/Bid (RFR/RFP/IFB) solicitation document; and the Contractor's Response to the RFR/RFP/IFB solicitation, excluding any language stricken by the MBTA as unacceptable.

#### **9.1.15Insurance to be Carried by the Contractor**

The successful Contractor shall submit proof of insurance for the requirements detailed in the attached **MBTA Minimum Insurance Requirements** enclosure with this solicitation. The attachment will be included with the solicitation posting on COMMBUYS. If in the case they are not available at the time of preparing their Bid, the successful Contractor certifies that they will carry such insurance policies and all costs resulting from this are included in their pricing. The successful Contractor shall provide proof of insurance within three business days of conditional notice of award.



### **9.1.16 Contractor Certifications and Legal References**

The Contractor makes all certifications required under this Contract under the pains and penalties of perjury, and agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein.

#### **9.1.16.1 MBTA and Contractor Ownership Rights**

The Contractor certifies and agrees that the MBTA is entitled to ownership and possession of all “deliverables” purchased or developed with Contract funds.

#### **9.1.16.2 Qualifications**

The Contractor certifies it is qualified and shall at all times remain qualified to perform this Contract; that performance shall be timely and meet or exceed industry standards for the performance required, including obtaining requisite licenses, registrations, permits, resources for performance, and sufficient professional, liability; and other appropriate insurance to cover the performance. If the Contractor is a business, the Contractor certifies that it is listed under the Secretary of State’s website as licensed to do business in Massachusetts, as required by law.

#### **9.1.16.3 Business Ethics and Fraud, Waste and Abuse Prevention**

The Contractor certifies that performance under this Contract, in addition to meeting the terms of the Contract, will be made using ethical business standards and good stewardship of taxpayer and other public funding and resources to prevent fraud, waste and abuse.

#### **9.1.16.4 Collusion**

The Contractor certifies that this Contract has been offered in good faith and without collusion, fraud or unfair trade practices with any other person, that any actions to avoid or frustrate fair and open competition are prohibited by law, and shall be grounds for rejection or disqualification of a Response or termination of this Contract.

#### **9.1.16.5 Public Records and Access**

The Contractor shall provide full access to records related to performance and compliance to the MBTA pursuant to G.L. c. 11, s.12 for seven (7) years beginning on the first day after the final payment under this Contract or such longer period necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. Access to view Contractor records related to any breach or allegation of fraud, waste and/or abuse may not be denied and Contractor cannot claim confidentiality or trade secret protections solely for viewing but not retaining documents. Routine Contract performance compliance reports or documents related to any alleged breach or allegation of non-compliance, fraud, waste, abuse or collusion may be provided electronically and shall be provided at Contractor’s own expense. Reasonable costs for copies of non-routine Contract related records shall not exceed the rates for public records under the Massachusetts Public Records Law.

#### **9.1.16.6 Debarment**

The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulation.

#### **9.1.16.7 Applicable Laws**

The Contractor shall comply with all applicable state laws and regulations including but not limited to the applicable Massachusetts General Laws; Code of Massachusetts Regulations 801 CMR 21.00 (Procurement of Commodity and Service Procurements); M G.L. c. 66A; and the Massachusetts Constitution Article XVIII if applicable.



#### **9.1.16.8 Tax Law Compliance**

The Contractor certifies under the pains and penalties of perjury tax compliance with Federal tax laws; state tax laws including but not limited to G.L. c. 62C, G.L. c. 62C, s. 49A; compliance with all state tax laws, reporting of employees and contractors, withholding and remitting of tax withholdings and child support and is in good standing with respect to all state taxes and returns due; reporting of employees and contractors under G.L. c. 62E, withholding and remitting child support including G.L. c. 119A, s. 12; TIR 05-11; New Independent Contractor Provisions and applicable TIRs.

#### **9.1.16.9 Bankruptcy, Judgments, Potential Structural Changes, Pending Legal Matters and Conflicts**

The Contractor certifies it has not been in bankruptcy and/or receivership within the last three calendar years, and the Contractor certifies that it will immediately notify the Department in writing **at least 45 days prior** to filing for bankruptcy and/or receivership, any potential structural change in its organization, or if there is **any risk** to the solvency of the Contractor that may impact the Contractor's ability to timely fulfill the terms of this Contract or Amendment. The Contractor certifies that at any time during the period of the Contract the Contractor is required to affirmatively disclose in writing to the Department Contract Manager the details of any judgment, criminal conviction, investigation or litigation pending against the Contractor or any of its officers, directors, employees, agents, or subcontractors, including any potential conflicts of interest of which the Contractor has knowledge, or learns of during the Contract term. Law firms or Attorneys providing legal services are required to identify any potential conflict with representation of any Department client in accordance with Massachusetts Board of Bar Overseers (BBO) rules.

#### **9.1.16.10 Federal Anti-Lobbying and Other Federal Requirements**

If receiving federal funds, the Contractor certifies compliance with federal anti-lobbying requirements including 31 USC 1352; other federal requirements; Executive Order 11246; Air Pollution Act; Federal Water Pollution Control Act and Federal Employment Laws.

#### **9.1.16.11 Protection of Commonwealth Data, Personal Data and Information**

The Contractor certifies that all steps will be taken to ensure the security and confidentiality of all Commonwealth/MBTA data for which the Contractor becomes a holder, either as part of performance or inadvertently during performance, with special attention to restricting access, use and disbursement of personal data and information under M.G.L. c. 93H and c. 66A and other applicable state and federal privacy requirements. The Contractor shall comply with M.G.L. c. 93I for the proper disposal of all paper and electronic media, backups or systems containing personal data and information. The Contractor shall also ensure that any personal data or information transmitted electronically or through a portable device is properly encrypted using (at a minimum) the Commonwealth's "Cryptographic Management Standard" set forth in the Enterprise Information Security Policies and Standards published by the Executive Office for Technology, Services and Security (TSS), or a comparable Standard prescribed by the MBTA. Contractors with access to credit card or banking information of Commonwealth/MBTA customers certify that the Contractor is PCI compliant in accordance with the Payment Card Industry Council Standards, and shall provide confirmation compliance during the Contract. The Contractor shall immediately notify the MBTA in the event of any security breach including the unauthorized access, disbursement, use or disposal of personal data or information, and in the event of a security breach, the Contractor shall cooperate fully with the MBTA and provide access to any information necessary for the MBTA to respond to the security breach and shall be fully responsible for any damages associated with the Contractor's breach including but not limited to G.L. c. 214, s. 3B.

For all Contracts involving the Contractor's access to personal information, as defined in G.L. c. 93H, and personal data, as defined in G.L. c. 66A, or access to MBTA or Commonwealth systems containing such



information or data, Contractor certifies under the pains and penalties of perjury that the Contractor (1) has read M.G.L. c. 93H and c. 66A and agrees to protect any and all personal information and personal data; and (2) has reviewed all of the Enterprise Information Security Policies and Standards published by the Executive Office for Technology Services and Security (TSS), or stricter standards prescribed by the MBTA. Notwithstanding any contractual provision to the contrary, in connection with the Contractor's performance under this Contract, for all public authorities, executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the Contractor shall: (1) obtain a copy, review, and comply with any pertinent security guidelines, standards, and policies; (2) comply with all Enterprise Information Security Policies and Standards published by the Executive Office for Security Services and Technology (TSS), or a comparable set of policies and standards ("Information Security Policy") as prescribed by the MBTA; (3) communicate and enforce such security guidelines, standards, policies and the applicable Information Security Policy among all employees (whether such employees are direct or contracted) and subcontractors; (4) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information and data to which the Contractor is given access by the MBTA from the unauthorized access, destruction, use, modification, disclosure or loss; (5) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or subcontractors during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract; (6) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information or personal data (collectively referred to as the "unauthorized use"): (a) immediately notify the MBTA if the Contractor becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for the MBTA to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for the MBTA and the Contractor to fulfill any notification requirements. Breach of these terms may be regarded as a material breach of this Contract, such that the Commonwealth and MBTA may exercise any and all contractual rights and remedies, including without limitation indemnification under Section 9.1.10 of MBTA's [Terms and Conditions](#), withholding of payments, Contract suspension, or termination. In addition, the Contractor may be subject to applicable statutory or regulatory penalties, including and without limitation, those imposed pursuant to G.L. c. 93H and under [G.L. c. 214, § 3B](#) for violations under M.G.L. c. 66A.

#### **9.1.16.12 Corporate and Business Filings and Reports**

The Contractor certifies compliance with any certification, filing, reporting and service of process requirements of the [Secretary of State](#) and other Departments as related to its conduct of business in the Commonwealth; and with its incorporating state (or foreign entity).

#### **9.1.16.13 Employer Requirements**

Contractors that are employers certify compliance with applicable state and federal employment laws or regulations, including but not limited to [G.L. c. 5, s. 1](#) (Prevailing Wages for Printing and Distribution of Public Documents); [G.L. c. 7, s. 22](#) (Prevailing Wages for Contracts for Meat Products and Clothing and Apparel); [minimum wages and prevailing wage programs and payments](#); [unemployment insurance and contributions](#); [workers' compensation and insurance](#), child labor laws, [AGO fair labor practices](#); [G.L. c. 149](#) (Labor and Industries); [G.L. c. 150A](#) (Labor Relations); [G.L. c. 151 and 455 CMR 2.00](#) (Minimum Fair Wages); [G.L. c. 151A](#) (Employment and Training); [G.L. c. 151B](#) (Unlawful Discrimination); [G.L. c. 151E](#) (Business Discrimination); [G.L. c. 152](#) (Workers' Compensation); [G.L. c. 153](#) (Liability for Injuries); [102 CMR 12.00](#) (Dependent Care Assistance Program); [29 USC c. 8](#) (Federal Fair Labor Standards); [29 USC c. 28](#) and the [Federal Family and Medical Leave Act](#) and M.G.L. c. 175M (Family and Medical Leave).

#### **9.1.16.14 Federal And State Laws And Regulations Prohibiting Discrimination**

Contractors certify compliance with applicable state and federal anti-discrimination laws including but



not limited to the Federal Equal Employment Opportunity (EEO) Laws the Americans with Disabilities Act; 42 U.S.C Sec. 12,101, et seq., the Rehabilitation Act, 29 USC c. 16 s. 794; 29 USC c. 16. s. 701; 29 USC c. 14, 623; the 42 USC c. 45; (Federal Fair Housing Act); G. L. c. 151B (Unlawful Discrimination); G.L. c. 151E (Business Discrimination); the Public Accommodations Law G.L. c. 272, s. 92A; G.L. c. 272, s. 98 and 98A, Massachusetts Constitution Article CXIV and G.L. c. 93, s. 103; 47 USC c. 5, sc. II, Part II, s. 255 (Telecommunication Act; Chapter 149, Section 105D, G.L. c. 151C, G.L. c. 272, Section 92A, Section 98 and Section 98A, and G.L. c. 111, Section 199A, and Massachusetts Disability-Based Non-Discrimination Standards For Executive Branch Entities, and related Standards and Guidance, authorized under Massachusetts Executive Order or any disability-based protection arising from state or federal law or precedent. See also MCAD and MCAD links and Resources.

#### **9.1.16.15 Right-to-Know Law**

As applicable, the Contractor shall submit proof of compliance with the Massachusetts Right-to-Know law MGL c 111F, Massachusetts hazard communication standards 105 CMR 670 and 454 CMR 21.00, and federal OSHA Hazard Communication Standard 29 CFR 1920.1200, which include but are not limited to requirements for communication of chemical hazards, safety data sheet (SDS) access, personal protective equipment, chemical labeling, management and storage, and employee training.

#### **9.1.16.16 Small Business Purchasing Program (SBPP)**

A Contractor may be eligible to participate in the SBPP, created pursuant to Executive Order 523, if qualified through the SBPP COMMBUYS subscription process at: [www.commbuys.com](http://www.commbuys.com) and with acceptance of the terms of the SBPP participation agreement.

#### **9.1.16.17 Other Damages**

The term “other damages” shall include, but shall not be limited to, the reasonable costs the MBTA incurs to repair, return, replace or seek cover (purchase of comparable substitute commodities and services) under a Contract. “Other damages” shall not include damages to the MBTA as a result of third party claims, provided, however, that the foregoing in no way limits the MBTA’s right of recovery for personal injury or property damages or patent and copyright infringement under *Section 9.1.10* nor the MBTA’s ability to join the contractor as a third party defendant. Further, the term “other damages” shall not include, and in no event shall the contractor be liable for, damages for the MBTA’s use of contractor provided products or services, loss of MBTA records, or data (or other intangible property), loss of use of equipment, lost revenue, lost savings or lost profits of the MBTA. In no event shall “other damages” exceed the greater of \$100,000, or two times the value of the product or service (as defined in the Contract scope of work) that is the subject of the claim. *Section 9.0* sets forth the contractor’s entire liability under a Contract. Nothing in this section shall limit the MBTA’s ability to negotiate higher limitations of liability in a particular Contract, provided that any such limitation must specifically reference *Section 9.0* of the MBTA Terms and Conditions. In the event the limitation of liability conflicts with accounting standards which mandate that there can be no cap of damages, the limitation shall be considered waived for that audit engagement.

#### **9.1.16.18 Northern Ireland Certification**

Pursuant to G.L. c. 7 s. 22C for state agencies, state authorities, the House of Representatives or the state Senate, by signing this Contract the Contractor certifies that it does not employ ten or more employees in an office or other facility in Northern Ireland and if the Contractor employs ten or more employees in an office or other facility located in Northern Ireland the Contractor certifies that it does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and it promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and the Contractor is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.



#### **9.1.16.19 Pandemic, Disaster or Emergency Performance**

In the event of a serious emergency, pandemic or disaster outside the control of the MBTA, the MBTA may negotiate emergency performance from the Contractor to address the immediate needs of the MBTA even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

#### **9.1.16.20 Subcontractor Performance**

The Contractor certifies full responsibility for Contract performance, including subcontractors, and that comparable Contract terms will be included in subcontracts, and that the Department will not be required to directly or indirectly manage subcontractors or have any payment obligations to subcontractors.

#### **9.1.17 Executive Orders**

For covered Executive state Departments, the Contractor certifies compliance with applicable Executive Orders (see also Massachusetts Executive Orders), including but not limited to the specific orders listed below. A breach during period of a Contract may be considered a material breach and subject Contractor to appropriate monetary or Contract sanctions.

##### **9.1.17.1 Executive Order 481. Prohibiting the Use of Undocumented Workers on State Contracts**

For all state agencies in the Executive Branch, including all executive offices, boards, commissions, agencies, Departments, divisions, councils, bureaus, and offices, now existing and hereafter established, by signing this Contract the Contractor certifies under the pains and penalties of perjury that they shall not knowingly use undocumented workers in connection with the performance of this Contract; that, pursuant to federal requirements, shall verify the immigration status of workers assigned to a Contract without engaging in unlawful discrimination; and shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker

##### **9.1.17.2 Executive Order 130. Anti-Boycott**

The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company, as hereafter defined, participates in or cooperates with an international boycott (See IRC § 999(b)(3)- (4), and IRS Audit Guidelines Boycotts) or engages in conduct declared to be unlawful by G.L. c. 151E, s. 2. A breach in the warranty, representation, and agreement contained in this paragraph, without limiting such other rights as it may have, the MBTA shall be entitled to rescind this Contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the Contractor, or which directly or indirectly owns at least 51% of the ownership interests of the Contractor.

##### **9.1.17.3 Executive Order 346. Hiring of State Employees By State Contractors**

Contractor certifies compliance with both the conflict of interest law G.L. c. 268A specifically s. 5 (f) and this order; and includes limitations regarding the hiring of state employees by private companies contracting with the MBTA. A privatization contract shall be deemed to include a specific prohibition against the hiring at any time during the term of Contract, and for any position in the Contractor's company, any state management employee who is, was, or will be involved in the preparation of the RFP, the negotiations leading to the awarding of the Contract, the decision to award the Contract, and/or the supervision or oversight of performance under the Contract.

##### **9.1.17.4 Executive Order 444. Disclosure of Family Relationships with Other State Employees**

Each person applying for employment (including Contract work) within the Executive Branch under the



Governor must disclose in writing the names of all immediate family related to immediate family by marriage who serve as employees or elected officials of the Commonwealth. All disclosures made by applicants hired by the Executive Branch under the Governor shall be made available for public inspection to the extent permissible by law by the official with whom such disclosure has been filed.

#### **9.1.17.5 Executive Order 599**

Executive Order 599. Reaffirming Programs to Ensure Diversity, Equity, and Inclusion for Diverse and Small Massachusetts Businesses in State Procurement and Contracting. All procurements and purchases of goods and services shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. The Contractor and any subcontractors may not engage in discriminatory employment practices. The Contractor certifies compliance with applicable federal and state laws, rules, and regulations governing fair labor and employment practices. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.

#### **9.1.17.6 Laws and Regulations Prohibiting Discrimination and Human Trafficking**

Contractors acknowledge and certify as a condition of this Contract that they are responsible for complying fully with all state and federal laws prohibiting discrimination, human trafficking, and forced labor, including but not limited to Chapter 178 of the Acts of 2011.

#### **9.1.18 Cyber Security and Operations Requirements**

The following cyber security and operations requirements shall apply to Contractor's provision of products and/or services to the Massachusetts Bay Transportation Authority ("MBTA"). Failure to comply with any of these provisions may result in suspension or termination of Contractor's agreement. Any such suspension or termination shall be at the sole discretion of the MBTA. Reinstatement of a suspended contract may require compliance with an MBTA-established corrective action plan. References herein to EOTSS Enterprise Security Policies shall be interpreted to mean such policies as in effect from time to time. The Contractor agrees to meet with the MBTA Information Security Office on a quarterly basis to review ongoing progress and compliance with the requirements specified below.

##### **9.1.18.1 Contractor Security Policy**

Contractor shall provide the MBTA with a copy of its Enterprise Security Policy on an annual basis. The MBTA reserves the right to request related security policy documents at any time during the contract term.

##### **9.1.18.2 Process Documentation**

Contractor shall maintain current written documentation of the following:

###### **(i) Incident Management Process:**

- a. As used herein, a computer security incident is a violation or imminent threat of violation of computer security policies, acceptable use policies, or standard security practices.

[Source: NIST Computer Security Incident Handling Guide]

- b. Contractor's documented Incident Management Process must specifically address or refer to a separately documented Cyber Incident Response Process. The Cyber Incident Response process must include prompt notification to the MBTA and incorporate regular communications and information-sharing with key contacts at the MBTA both during and after a cyber incident event. Contractor shall notify the MBTA of any security incident



that potentially impacts MBTA data, including but not limited to damage, loss, or breach. Initial notification must be given in the most expedient manner possible, but not later than 24 hours after declaration of a security incident. This includes but is not limited to operational availability. An incident status summary must be provided in writing no later than 24 hours after confirmation of an incident and every twenty-four (24) hours thereafter until incident resolution. During any Cyber Incident Response, Contractor shall provide twice-daily updates to key MBTA personnel and shall make available technical subject matter experts to promptly respond to any MBTA questions. Contractor shall provide a written incident summary to the MBTA no later than one week after resolution of the cyber incident. This summary shall include a plan of action that describes improvements Contractor will make to help prevent a similar incident from occurring in the future. Relaxation of the schedules described in this section may be authorized by the MBTA's CISO.

- (ii) Information Security Risk Management Process,
- (iii) Vulnerability Management Process, and
- (iv) Supplier/Vendor Control Process

(collectively, "Process Documentation"). During the contract term, Contractor shall provide annual updated versions to the MBTA of each element of its Process Documentation.

- a. Contractor shall maintain a Disaster Recovery Plan that describes the procedure for recovering the entire technology solution to be provided by Contractor under the Agreement in the event of a disaster.
- b. Contractor shall conduct a third-party security assessment or penetration test annually and share the report from these engagements with the MBTA within 30 days of the completion of the assessment.
- c. Contractor shall provide an Annual SOC 2 Type 2 report for services provided under the Agreement within 30 days of delivery by the assessor. Contractor must provide a schedule for the planned SOC 2 Type 2 assessment and release the report within 30 days of delivery by the assessor to the contractor. A Bridge Letter will be required for any gaps in the SOC 2 Type 2 assessment period.
- d. Contractor shall have a password policy that requires a minimum of fifteen (15) characters in length. Contractor must use multi-factor authentication for all remote access connections into its network, including, but not limited to VPN, and virtual workspaces where MBTA data is accessed. Contractor shall ensure that regular user accounts of its employees, contractors and/or subcontractors that are used for office suite and web browsing shall not have privileged access to MBTA systems and/or any systems containing MBTA/Commonwealth Data.
- e. Contractor shall have Endpoint Protection software installed and active on all systems. The software must be designed to detect the execution of exploits and behavioral techniques in addition to traditional file scanning.

#### **9.1.18.3 Disaster Recovery Plan**

On an annual basis, Contractor must provide the MBTA with relevant Disaster Recovery ("DR") Plan documentation. The plan must address procedures to restore the systems environment to an operational state. At a minimum the plan must also perform a risk assessment of critical information assets associated with MBTA scope of services, conduct a business impact analysis, develop business continuity plans that address automated processes and document minimum operating requirements to resume critical



functions/and sustain full implementation lifecycle operations associated with the delivery and support of the application as provided to the MBTA, in an appropriate period of time. Contractor's Business Continuity Plan ("BCP") shall implement adequate business recovery and risk mitigation strategies, including the definition of acceptable recovery time frames. Contractor shall ensure that the ability to recover critical assets will likely exceed the established recovery time and/or recovery point objectives. Contractor's DR Plan must include not only recovery of critical MBTA information assets, but also providing interim means for performing critical business processes.

#### **9.1.18.4 Security and Regulatory Certifications**

Prior to contract execution, Contractor must provide planned dates for obtaining certificates or attestations of all applicable security or regulatory certifications identified below. Contractor's continued compliance with such security or regulatory certifications is an ongoing and material obligation of this Agreement.

| Certificate/Attestation | Required  |
|-------------------------|-----------|
| SOC1                    | Yes       |
| SOC2 Type 2             | Preferred |
| PCI                     | No        |
| FedRAMP                 | No        |

#### **9.1.18.5 Security Awareness Training**

Contractor must ensure that all employees and contractors undergo Security Awareness Training at the time of hiring and regularly thereafter. Contractor must include mandatory participation in periodic social engineering (e.g., phishing) training exercise and maintain records sufficient to demonstrate the completion of such training. Periodic training exercises shall occur on a regular basis.

#### **9.1.18.6 Criminal Background Checks**

Contractor shall conduct or cause to be conducted for all current and future employees, contractors and subcontractors performing work that involves access to MBTA systems and/or data under this Contract, a legally available criminal background check, including a Criminal Offender Record Information (CORI) background check with the Massachusetts Criminal History Systems Board for any employees or contractors located in Massachusetts. Upon request, the Contractor shall provide written documentation to the MBTA that demonstrates the Contractor's compliance with the aforementioned requirements. Furthermore, the Contractor shall conduct these background checks at least once every two (2) years. Any employee of the Contractor's with a history that includes a felony conviction, any conviction for theft, or who appears otherwise unsuitable to perform the work that is the subject of this Agreement throughout the Term of this Agreement or any extensions thereof, shall not be assigned by the Contractor to perform work under this Agreement.

Contractor shall at all times during the term of the Agreement maintain a code of conduct applicable to individuals that have access to or may have access to Customer's data, systems, or security sensitive information that requires use of ethical business practices and encourages reporting of suspected fraudulent activities. Contractor shall not knowingly grant access to Customer's data, systems, or security sensitive information to any employee, agent, contractor or subcontractor that has been previously convicted of a felony, any conviction involving theft, or who appears otherwise unsuitable to perform the work that is the subject of this Agreement. If, during term of the Agreement, Contractor becomes aware of any individual having access to Customer's data, systems, or security sensitive information who has



been charged, arrested, indicted, incarcerated or convicted of any felony, or crime involving theft, Contractor shall immediately take all reasonable measure to: (1) remove such individual's access to Customer's data, systems and security sensitive information, and (2) inform Customer in the event any activities relating to Customer's account are subject to investigation.

Self-reporting requirements:

For covered employees, contractors and subcontractor personnel, all contractors must have and enforce a self-reporting requirement for all employees, contractors and subcontractors to report any of the below before the start of the next shift of work (except to extent protected by law)

- o Any charge, arrest, indictment, incarceration, or conviction of any criminal offense.

#### **9.1.18.7 Security Requirements for Remote Access**

Contractor must use multi-factor authentication for all remote access connections into their network, including, but not limited to VPN, and virtual workspaces containing MBTA data or systems used to support the MBTA.

#### **9.1.18.8 Third Party Security Assessment**

Pursuant to EOTSS Vulnerability Management Standard IS0.16: <https://www.mass.gov/doc/is016-vulnerability-management-standard/download>, Section 6.2.1.9, Contractor must conduct internal and third-party network-layer and application-layer penetration testing for each major release at least annually or collect evidence to attest that the third party has a vulnerability assessment performed. Contractor must share resulting assessment reports with the MBTA Information Security Office, at a minimum, on an annual basis. Additionally, Contractor must certify compliance with remediation timelines applicable to the designated severity level established in Section 6.1.4 of the Standard. Failure to comply with such requirements may result in immediate contract suspension or termination, at the sole discretion of the MBTA.

#### **9.1.18.9 Password Security**

Pursuant to Section 6.4.1.1 of the EOTSS Access Management Standard, IS.003, Contractor must ensure that all user passwords must be a minimum of fifteen (15) characters. Privileged accounts shall require passwords with a minimum of fifteen (15) characters.

#### **9.1.18.10 Endpoint Protection**

Contractor must have Endpoint Protection software installed and active on all systems. The software must be designed to detect the execution of exploits and behavioral techniques in addition to traditional file scanning.

#### **9.1.18.11 Privileged Access**

Contractor shall at all times ensure that regular user accounts of its employees, contractors and/or subcontractors supporting the MBTA will follow appropriate procedures for privileged access including the use of systems that are secured and protected with current anti-virus and anti-malware software. Furthermore, systems that are used for office suite and web browsing shall not have privileged access to any system.



#### **9.1.18.12 Service Level/Operations Disruptions**

In the event of a problem that impacts operations, specifically, contractor's ability to meet agreed upon service levels or the security of data associated with the contracted products and/or services, Contractor must conduct meetings with the MBTA to provide status and a forum for questions twice per day until resolution.

#### **9.1.18.13 Information Security Framework Requirements**

Contractor agrees to achieve and maintain compliance with the Moderate baseline of the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-53 Revision 5 "Security and Privacy Controls for Information Systems" and to provide quarterly updates regarding identified control gaps and mitigation activities.

#### **9.1.18.14 Policy Compliance Requirements**

The solution must limit the accessibility of customers' Personal Information and Personally Identifiable Information (PII) and mobility data to different types of users in accordance with M.G. L. chapters 93H, 93I, and 66A, EOTSS Enterprise and MBTA Security Policies.

#### **9.1.18.15 Vendor Risk Assessment Questionnaire and Annual Attestation Requirements**

Contractor agrees to complete the MBTA Vendor Risk Assessment (VRA) Questionnaire on an annual basis. The Questionnaire must be signed by an authorized official of the Contractor organization attesting to the completeness and accuracy of the responses provided including any planned mitigation actions.

### **9.1.19 Supplemental Provisions**

#### **9.1.19.1 Applicability**

Where applicable, these Supplemental Provisions shall apply to this RFP. In the event of a conflict or disparity between these Supplemental Provisions and Standard Terms & Conditions, the Supplemental Provisions govern.

#### **9.1.19.2 Right-of-Way Safety Requirements**

In the event the Contractor's work is to be performed in proximity (within 10 feet) of MBTA rail transit lines, tracks, yards, or any other parts of the Green, Orange, Blue, Red, and Mattapan Lines, Contractor personnel shall obtain and maintain appropriate Right of Way (ROW)/Roadway Worker Protection (RWP) safety training, including recertifications, from the MBTA before commencing work.

Alternately, in the event that the Contractor requires access to a bus tunnel, busway, and/or bus yard the Contractor shall obtain and maintain appropriate Right of Way (ROW)/Roadway Worker Protection (RWP) safety training, including recertifications, from the MBTA before commencing work.

Additionally, the Contractor shall:

- (a) Ensure its personnel who access or work near the ROW attend an initial eight (8) hour ROW/RWP Safety course to receive a ROW/RWP license and maintain ROW/RWP Safety certification in compliance with the 24-month recertification training renewal schedule.
- (b) personal protective equipment as outlined in the current ROW/RWP Safety policies and summarized at <https://www.mbta.com/engineering/safety-resources>



- (c) Supply its personnel with personal protective equipment that meets the MBTA's requirements and ensure that its personnel properly utilize such equipment in accordance with MBTA requirements.

The MBTA retains the right to update ROW/RWP guidance, policies, and practices at its discretion and in alignment with related government regulations and rulebooks.

#### **9.1.19.3 Performance Guarantee**

There is no Performance Guarantee required for this contract.

#### **9.1.19.4 Liquidated Damages**

There are no Liquidated Damages required for this contract.

#### **9.1.19.5 Security Requirements**

The Contractor shall certify that it will comply with the MBTA's Security Requirements as stated herein. The selected Contractor shall:

1. Submit a complete list of Contractor's employees, subcontractors, and agents that will perform work for the MBTA under this Contract. This list must be submitted prior to eligibility consideration for payment of delivery or completion of the first milestone. At a minimum, the list shall include:
  - a) Name and Employee Number/Identifier
  - b) Address
  - c) Job Title
  - d) Hours and Location of Work

Note: Immediate notification, in writing, is required for listed employees, subcontractors, and agents who leave Contractor's (direct or indirect) employment and/or any new employees, subcontractors or agents who are to be added to this list. Contractor is required to provide, upon request by the MBTA, periodic updates of the list throughout the life of the Contract.

2. Conduct for all current and future employees performing work under this Contract, a legally available criminal background check, including a Criminal Offender Record Information (CORI) background check with the Massachusetts Criminal History Systems Board and a driver's history check with the Massachusetts registry of Motor vehicles (if applicable). The CORI check shall include a Level II Sex Offenders Registry check. To the extent not already available to the Contractor, the Contractor shall apply for and make best efforts to obtain CORI access. The Contractor shall provide written documentation to the Authority that demonstrates the Contractor's compliance with the aforementioned requirements. Furthermore, the Contractor shall conduct these background and driver history checks at least once every two (2) years, or as otherwise specified by the MBTA. Any employee of the Contractor's with a history that includes a felony conviction, any conviction for theft, or who appears otherwise unsuitable to perform the work that is the subject of this solicitation throughout the Term of this Agreement or any extensions thereof, shall not be assigned by the Contractor to perform work under this Agreement.

The MBTA reserves the right to have MBTA Transit Police perform the required background checks, and shall promptly notify the Contractor in writing of any such action.



3. Distribute an MBTA-issued photograph Contractor identification badge to all Contractor employees, subcontractors, and agents who work on MBTA property. The contractor shall provide a current (less than 1 year old) photograph to the MBTA, along with the required completed badge issuance paperwork prior to being issued the badges. The following information shall be listed on the back of the contractor identification badges: training certifications, safety training, and other related security training required by the MBTA. No employee, subcontractor or agent of the Contractor will be allowed on MBTA property without clearly displaying the MBTA-issued identification badge on their person.
4. Insure that Contractor's employees, subcontractors, and agents:
  - a) Are not allowed on MBTA property except as required for stated work;
  - b) Are not allowed on MBTA property before and after service hours unless explicitly, contractually required to be there; and
  - c) Are forbidden from carrying firearms on MBTA property.
5. Provide to the MBTA, upon its request, any documents that pertain to:
  - a) Contractor employee, subcontractor or agent conduct on MBTA property;
  - b) Security training; and
  - c) Monitoring/auditing of Contractor employees or agents while on MBTA property.
6. If, at any time during the term of this Agreement, and also during any and all extensions thereof, the MBTA establishes new or revised security policies and procedures as they relate to the Contractor's performance under this Agreement, the Contractor shall comply with such policies and procedures as deemed reasonable by the MBTA and the Contractor.

#### **9.1.19.6 Lobbying**

**31 U.S.C. 1352**

**49 CFR Part 19**

**49 CFR Part 20**

**Applicability to Contracts:** The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

**Flow Down Requirements:** The Lobbying requirements mandate the maximum flow down pursuant to Byrd Anti-Lobbying Amendment 31 U.S.C. §1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

**Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]** - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of a Federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier certifies to the tier above that it will not and has not taken any action involving the Project or the Underlying Agreement for the Project, including any award, extension, or modification. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to MBTA.



#### 9.1.19.7 Access to Records and Reports

49 U.S.C. 5325  
18 CFR 18.36(i)  
49 CFR 633.17

**Applicability to Contracts:** Reference Chart "Requirements for Access to Records and Reports by Type of Contracts," Item 6 of this Section.

**Flow Down Requirements:** FTA does not require the inclusion of these requirements in subcontracts.

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

- 1.The Contractor agrees to provide MBTA, 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 MBTA or a sub-grantee of MBTA 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 MBTA, 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.
- 3.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.
- 4.The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) 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 MBTA, 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).
- 5.FTA does not require the inclusion of these requirements in subcontracts.

#### 6.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>Non-State Grantees</u>                              |                  |                                    |     |     |     |     |
| <b>a) Contracts below SAT (\$100,000)</b>              | Yes <sup>1</sup> | Those imposed on non-state Grantee | Yes | Yes | Yes | Yes |
| <b>b) Contracts above \$100,000 / Capital Projects</b> | Yes <sup>1</sup> | pass thru to Contractor            | Yes | Yes | Yes | Yes |

Sources of Authority: 1 18 CFR 18.36 (i)

#### 9.1.19.8 Federal Changes

##### 49 CFR Part 18

**Applicability to Contracts:** The Federal Changes requirement applies to all contracts.

**Flow Down Requirements:** The Federal Changes requirement flows down appropriately to each applicable changed requirement.

**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 MBTA 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.

#### 9.1.19.9 Bonding Requirements

This section applies only to construction or facility improvement contracts exceeding \$100,000.

#### 9.1.19.10 Clean Air

##### 42 U.S.C. 7401 – 7601(q)

##### 40 CFR 15.61

##### 49 CFR Part 18

**Applicability to Contracts:** The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

**Flow Down Requirements:** The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

##### Clean Air:

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7601(q) et seq . The Contractor agrees to report each violation to MBTA and understands and agrees that MBTA, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### 9.1.19.11 Recycled Products

##### 42 U.S.C. 6962



**40 CFR Part 247**  
**Executive Order 12873**

**Applicability to Contracts:** The Recycled Products requirements apply to all contracts for items designated by the EPA, when the Contractor procures \$10,000 or more of one (1) of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds.

**Flow Down Requirements:** These requirements flow down to all contractor and sub-contractor tiers.

**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. The contractor agrees to comply with the U.S. Environmental Protection Agency (US EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 CFR part 247.

**9.1.19.12 Davis-Bacon and Copeland Anti-Kickbacks Acts**

**49 U.S.C. 5333**  
**40 U.S.C. 3141 – 3144**  
**40 U.S.C. 3146 – 3147**  
**18 U.S.C. 874**  
**40 U.S.C. 3145**

**Applicability to Contracts:** The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, et seq. and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i) (5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (see 29 FR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

**Flow Down Requirements:** Applies to third party contractors and sub-contractors

1. **Minimum Wages:**

- (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than Monthly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one (1) classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the



time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its sub-contractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

- (A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
  - (1) Except with respect to helpers as defined as 29 CFR 5.2(n) (4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (2) The classification is utilized in the area by the construction industry; and
  - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
  - (4) With respect to helpers as defined in 29 CFR 5.2(n) (4), such a classification prevails in the area in which the work is performed.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and shall advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and shall advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.



- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
2. **Withholding:** MBTA 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 the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any sub-contractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, MBTA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
3. **Payrolls and Basic Records:**
- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (ii)
- (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to MBTA for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a) (3) (i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S.



Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all sub-contractors.

- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or sub-contractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
    - (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a) (3) (i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
    - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
    - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
  - (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
  - (D) The falsification of any of the above certifications may subject the contractor or sub-contractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The contractor or sub-contractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or sub-contractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. **Apprentices and Trainees:**

- (i) **Apprentices** - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a



contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Sub-contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) **Trainees** - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (iii) **Equal Employment Opportunity** - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.
- 5. **Compliance with Copeland Act requirements:** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- 6. **Subcontracts:** The contractor or sub-contractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the sub-contractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any sub-contractor or lower tier sub-contractor with all the contract clauses in 29 CFR 5.5.



7. **Contract termination: Debarment:** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a sub-contractor as provided in 29 CFR 5.12.
8. **Compliance with Davis-Bacon and Related Act Requirements:** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
9. **Disputes Concerning Labor Standards:** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its sub-contractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
10. **Certification of Eligibility:**
  - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or Contractor who has an interest in the contractor's Contractor is a person or Contractor ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
  - (ii) No part of this contract shall be subcontracted to any person or Contractor ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
  - (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) **Contract Work Hours and Safety Standards Act.** The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by §5.5(a) or §4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.
1. **Overtime requirements.** No contractor or sub-contractor 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 (1.5) times the basic rate of pay for all hours worked in excess of forty (40) 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 (b)(1) of this section the contractor and any sub-contractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and sub-contractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 (b)(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 (b)(1) of this section.
3. **Withholding for unpaid wages and liquidated damages.** The (write in the name of the Federal agency or the loan or grant recipient) 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 sub-contractor 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 sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

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

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in §5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or sub-contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or sub-contractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or sub-contractor will permit such representatives to interview employees during working hours on the job.

The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

**OMB Control Number**

(a)(1)(ii)(B) 1215-0140

(a)(1)(ii)(C) 1215-0140

(a)(1)(iv) 1215-0140

(a)(3)(i) 1215-0140, 1215-0017

(a)(3)(ii)(A) 1215-0149

(c) 1215-0140,

1215-0017

[48 FR 19540, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008]

Effective Date Note: At 58 FR 58955, Nov. 5, 1993, §5.5 was amended by suspending paragraph (a)(1)(ii) indefinitely.

### **9.1.19.13 Contract Work Hours and Safety Standards Act**

**29 CFR Part 5**

**40 U.S.C. 3701 et seq.**

**40 U.S.C. 3702**



**Applicability to Contracts:** The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, et seq. The Act applies to grantee contracts and subcontracts “financed at least in part by loans or grants from ... the [Federal] Government.” 40 USC 3701(b) (1) (B) (iii) and (b) (2), 29 CFR 5.2(h), 49 CFR 18.36(i) (6).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ “laborers or mechanics on a public work” with a value greater than \$100,000. These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed “commercial items.” 40 USC 3707, 41 USC 403 (12)

**Flow Down Requirements:** Applies to third party contractors and sub-contractors.

- a. **Overtime Requirements:** No contractor or sub-contractor 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 (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- b. **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 sub-contractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and sub-contractor 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 (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- c. **Withholding for Unpaid Wages and Liquidated Damages:** MBTA 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 sub-contractor 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 sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- d. **Subcontracts:** The Contractor or sub-contractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the sub-contractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any sub-contractor or lower tier sub-contractor with the clauses set forth in paragraphs (1) through (4) of this section.

#### **9.1.19.14 No Government Obligation to Third Parties**

**Applicability to Contracts:** Applicable to all contracts.

**Flow Down Requirements:** 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.

**No Obligation by the Federal Government.**

1. MBTA and the 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 MBTA, 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 sub-contractor who will be subject to its provisions.

#### **9.1.19.15 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**

**Applicability to Contracts:** These requirements are applicable to all contracts.

**Flow Down Requirements:** These requirements flow down to contractors and sub-contractors who make, present, or submit covered claims and statements.

#### **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 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 (2) 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 sub-contractor who will be subject to the provisions.

#### **9.1.19.16 Termination & Cancellation**

**49 CFR Part 18**  
**FTA Circular 4220.1F**

For termination, see Item 5 of the Federal Section of the MBTA Purchase Order Terms and Conditions. For cancellation, see Section 8 of the MBTA Purchase Order Terms and Conditions.

#### **9.1.19.17 Government-Wide Debarment and Suspension (Non-Procurement)**

**49 CFR 18**



**2 CFR 1200**

**2 CFR 180**

**Executive Orders 12549 and 12689**

**31 U.S.C. 6101**

**Background and Applicability:** In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, sub-contractor, supplier, Contractor, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Transportation under a covered non-procurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the Department of Transportation non-procurement suspension and debarment requirements to all lower tiers of subcontracts under covered non-procurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180). This government-wide regulation implements Executive Order 12549, Debarment and Suspension, Executive Order 12689, Debarment and Suspension, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

These provisions apply to all MBTA contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for federally required auditing services. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and sub-contractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System (EPLS), (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract.

Grantees, contractors, and sub-contractors who enter into covered transactions also must require the entities they contract with to comply 2 CFR 180 and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

**Flow Down Requirements:** These requirements flow down to contractors and sub-contractors at all levels.

**Suspension and Debarment:** This contract is a covered transaction for purposes of 49 CFR Part 18. As such, the contractor is required to verify that none of the contractor, its principals, are excluded or disqualified as defined under Executive Orders Nos. 12549 and 12689.

The contractor is required to comply with 2 CFR 1200, and must include the requirement to comply with 2 CFR 1200, Subpart C in any lower tier covered transaction it enters into.

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

The certification in this clause is a material representation of fact relied upon by MBTA. If it is later determined that the Firm knowingly rendered an erroneous certification, in addition to remedies available to MBTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Firm agrees to comply with the requirements 2 CFR 180 while this offer is valid and throughout the period of any contract that may arise from this offer. The Firm further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### **9.1.19.18 Privacy Act**

**5 U.S.C. 552**

**Applicability to Contracts:** When MBTA maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

**Flow Down Requirements:** The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.



**Contracts Involving Federal Privacy Act Requirements:** The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- a. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

#### **9.1.19.19 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.**

The MBTA is an Equal Opportunity Employer. As such, the MBTA agrees to comply with all applicable civil rights statutes and implementing regulations issued by the FTA. Apart from inconsistent requirements imposed by Federal statutes or regulations, the MBTA agrees to comply with the requirements of 49 U.S.C. § 5323(h)(2) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

- a. The Contractor will be required to comply with these applicable civil rights, nondiscrimination, and equal employment opportunity laws and regulations:
  1. 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 26, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, et seq., 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6101 – 6107, 42 U.S.C. § 12101, et seq., 42 U.S.C. § 12132, 49 U.S.C. § 5307 (c)(1)(D)(ii), 49 U.S.C. § 5332,
  2. 29 CFR Part 1630, 41 CFR Part 60, 29 U.S.C. § 623, 42 U.S.C. § 2000e, 42 U.S.C. § 12112,
  3. 49 U.S.C. § 5325 (k).
  4. Fixing America's Surface Transportation (FAST) Act, Public Law No: 114-94, as may be amended.
- b. The Civil Rights requirements flow down to all third party sub-contractors and their subcontracts at every tier.
- c. The following requirements apply to a contract awarded as a result of this solicitation:
  1. **Nondiscrimination** - In accordance with U.S. Department of Transportation (DOT), Federal, the Rehabilitation Act of 1973, as amended, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6102, 42 U.S.C. § 6101 – 6107, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, 42 U.S.C. § 12132, Federal transit law 49 U.S.C. § 5307 (c)(1)(D)(ii), Federal transit law 49 U.S.C. § 5332, FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients.", and DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (70 FR 74087, Dec. 14, 2005), the Unruh Civil Rights Act, the Contractor agrees that it will comply with the identified Federal laws



and regulations, pertaining to MBTA programs and activities, to ensure that no person will be denied the benefits of, or otherwise be subjected to, discrimination (particularly in the level and quality of transportation services and transportation-related benefits) on the bases of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, gender expression, age, marital status, genetic information, medical condition, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations, other implementing requirements that DOT or FTA may issue, and any other applicable Federal statutes and/or regulations that may be signed into law or promulgated.

2. **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to a contract awarded as a result of this solicitation:
  - a. **Race, Color, Ancestry, Marital Status, Medical Condition, Genetic Information, Religion, National Origin, Sex, Sexual Orientation, Gender Identity, Gender Expression** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 49 U.S.C. § 5332, FTA Circular 4704.1, "Equal Employment Program Guidelines for Grant Recipients", and , the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, including "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60, et seq., Fair Employment and Housing Act, and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the Project. 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, ancestry, religion, marital status, medical condition, genetic information, national origin, sex, sexual orientation, gender identity, gender expression, 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 that DOT or FTA may issue, and any other applicable Federal statutes that may be signed into law or Federal regulations that may be promulgated.
  - b. **Sex** – The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1975, as amended, 20 U.S.C. § 1681, and 49 CFR part 25. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.
  - c. **Age** - The Contractor agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, 45 CFR part 90, the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, and Equal Employment Opportunity Commission (EEOC) implementing regulations 29 CFR part 1625. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.
  - d. **Disabilities** - The Contractor agrees to comply with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794(d), 36 CFR part 1194, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, 49 CFR parts 27, 37, 38, and 39, and FTA Circular 4710.1, "Americans with Disabilities Act: Guidance". In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.



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

#### **9.1.19.20 ADA Access Requirements**

##### **49 U.S.C. § 5301, 29 U.S.C. § 794, 42 U.S.C. § 12101**

**Applicability to Contracts:** The Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

Contractor shall also comply with the following regulations, as applicable, and any amendments thereto:

- 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.U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38;
- 4.Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- 5.Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
6. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
7. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
8. 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; and
9. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609.

#### **9.1.19.21 Breaches and Dispute Resolution**

##### **2 CFR Part 1201**

##### **FTA Circular 4220.1G**

##### **2 CFR 200.327**



**Applicability to Contracts:** All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

**Flow Down Requirements:** The Breaches and Dispute Resolutions requirements flow down to all tiers.

**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 MBTA. 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 MBTA. 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 MBTA shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by MBTA, 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 or damage.

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the MBTA 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 the MBTA 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 MBTA 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.

#### **9.1.19.22 Patent and Rights in Data**

**37 CFR Part 401**

**49 CFR Parts 18 and 19**

**2 CFR 200.327**

**Applicability to Contracts:** Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

**Flow Down Requirements:** The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

#### **CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK**

(A) **Rights in Data** - The following requirements apply to each contract involving experimental, developmental or research work:

1. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications



or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
  - a. Except for its own internal use, MBTA or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may MBTA or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
  - b. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
    - i. Any subject data developed under that contract, whether or not a copyright has been obtained; and
    - ii. Any rights of copyright purchased by MBTA or Contractor using Federal assistance in whole or in part provided by FTA.
  - c. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, MBTA and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for MBTA or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.
  - d. Unless prohibited by state law, upon request by the Federal Government, MBTA and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by MBTA or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither MBTA nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.



- e. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
  - f. Data developed by MBTA or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that MBTA or Contractor identifies that data in writing at the time of delivery of the contract work.
- 3. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
  - 4. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), MBTA and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Contractors under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
  - 5. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- (B) Patent Rights** - The following requirements apply to each contract involving experimental, developmental, or research work:
- 1. General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, MBTA and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
  - 2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), MBTA and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Contractors Under" Government Grants, Contracts and Cooperative Agreements,; 37 C.F.R. Part 401.
  - 3. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

### **9.1.19.23 Transit Employee Protective Agreements**

#### **49 U.S.C. § 5310, § 5311, and § 5333 29 CFR Part 215**

**Applicability to Contracts:** The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)



**Flow Down Requirements:** These provisions are applicable to all contracts and subcontracts at every tier.

1. General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to MBTA's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
2. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub-recipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
3. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

#### **9.1.19.24 Incorporation of Federal Transit Administration (FTA) Terms)**

##### **FTA Circular 4220.1G**

**Applicability to Contracts:** The incorporation of FTA terms applies to all contracts and subcontracts at every tier.

**Flow Down Requirements:** The incorporation of FTA terms has unlimited flow down.

**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 the most current



FTA Circular 4220, 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 MBTA requests which would cause MBTA to be in violation of the FTA terms and conditions.

#### **9.1.19.25 Safe Operation of Motor Vehicles**

**Executive Order 13043**

**Executive Order 13513**

**23 U.S.C. 402**

**US DOT Order 3902.10**

**Applicability to Contracts:** Applicable to all contracts.

**Flow Down Requirements:** These requirements flow down to all contractor and sub-contractor tiers.

Safe Operation of Motor Vehicles. As provided by Executive Order Nos. 13043 and 13513:

Contractor shall:

1. Adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented, or personally operated vehicles and require use of seat belts in all such vehicles during operations; and
2. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Contract, or when performing any work for or on behalf of the Contract; and
3. Conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and
4. Include the above provisions in third-party agreements at all tiers.

#### **9.1.19.26 Drug and Alcohol Testing**

**49 U.S.C. §5331**

**49 CFR Part 655**

**49 CFR Part 382**

**Applicability to Contracts:** The Drug and Alcohol testing provisions apply to Operational Service Contracts.

**Flow Down Requirements:** Anyone who performs a safety-sensitive function for the recipient or sub-recipient is required to comply with 49 CFR 655 as amended by MAP-21, with certain exceptions for contracts involving maintenance services. Maintenance CONSULTANTS for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance sub-contractors.

**Drug and Alcohol Testing:** The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, or MBTA, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and



review the testing process. The contractor agrees further to certify annually its compliance with Part 655 before June 30 and to submit the Management Information System (MIS) reports before January 15 to MBTA. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

#### **9.1.19.27 Transit Vehicle Manufacturer (TVM) Certifications**

##### **49 CFR Part 26**

49 CFR §26.49 Contractor must submit to MBTA a certification from each transit vehicle manufacture that desires to bid or propose upon a DOT-assisted transit vehicle procurement that it has complied with the requirements of 49 CFR §26.49.

#### **9.1.19.28 Metric Requirements**

##### **15 U.S.C. §§205**

##### **2007-Pub. L. 110-69**

As required by U.S. DOT or FTA, MBTA agrees to use the metric system of measurement in its Project activities, pursuant to the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other U.S. DOT or FTA regulations, guidelines, and policies. To the extent practicable and feasible, the MBTA agrees to accept products and services with dimensions expressed in the metric system of measurement.

#### **9.1.19.29 National Intelligent Transportation Systems (ITS) Architecture and Standards**

##### **23 U.S.C. Section 517(d)**

##### **23 U.S.C. §502**

Intelligent transportation system (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C. Section 517(d) and FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 et seq., January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements.

#### **9.1.19.30 Corridor Preservation**

##### **49 U.S.C. 5323(q)**

The Recipient agrees not to develop right-of way acquired under 49 U.S.C. § 5323(q), as amended by MAP-21, in anticipation of its Project until all required environmental reviews for that Project have been completed.

#### **9.1.19.31 Veterans Employment**

##### **49 U.S.C. 5325 (k)**

Veterans Employment. As provided by 49 U.S.C. § 5325(k):

To the extent practicable, Contractor agrees that it:

1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and



2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and

Contractor also assures that its sub-contractor will:

1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and
2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

#### **9.1.19.32 Air Quality / EPA and Fuel Economy**

Applicable requirements of EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93.

The Contractor should be aware that the following EPA regulations, among others, may apply to its Project: "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines," 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600.

#### **9.1.19.33 Federal Tax Liability and Recent Felony Convictions**

##### **Consolidated Appropriations Act 2019, Pub. L. 116-6, div. D, Title VII, Sections 744-745**

**Applicability to Contracts:** The requirements apply to any Third-Party Agreement with any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association ("Third-Party Participant").

The Third-Party Participant must provide a certification that the Third-Party Participant:

1. Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
2. Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

MBTA shall not enter into any agreement with a Third-Party Participant unable to provide such certification without written FTA approval.

**Flow Down Requirements:** The requirements flow down from MBTA to first tier contractors, who are responsible for ensuring that all lower tier contractors and sub-contractors are in compliance, without regard to the value of any subagreement.

#### **9.1.19.34 Compliance with the National Defense Authorization Act**



## **Public Law 115-232**

### **Applicability to Contracts:**

On all contracts, the “Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment” Regulation (2 CFR 200.216) prohibits the Contractor from using or furnishing the following telecommunications equipment or services:

1. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
2. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
3. Telecommunications or video surveillance services provided by such entities or using such equipment.
4. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

This prohibition applies to all products manufactured by the aforementioned companies, including any individual components or parts.

By submitting a bid, the Contractor certifies that all services, equipment and work will be in compliance with the terms of 2 CFR 200.216.

## **9.1.20 Federal Requirements – Disadvantaged Business Enterprises**

### **9.1.20.1 Policy Statement**

The Massachusetts Bay Transportation Authority, hereinafter referred to as “the Authority” or “the MBTA,” has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. The Authority has received Federal financial assistance from the USDOT, and as a condition of receiving this assistance, the Authority has signed an assurance that it will comply with 49 CFR Part 26.

### **9.1.20.2 Definitions**

Terms and definitions applicable to the USDOT DBE Program and these Provisions may be found at 49 CFR Part 26.

### **9.1.20.3 Contractor Assurances**

The Authority has signed the following assurances, applicable to all USDOT-assisted contracts and their administration:

The Authority shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The Authority shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts.

The contractor or any 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 USDOT-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 the contractor or such other remedy as the Authority deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments.
2. Assessing sanctions.
3. Liquidated damages; and / or
4. Disqualifying the contractor from future Bidding as non-responsible.

**The Contractor/Consultant/Vendor agrees to include this assurance in all subcontracts and require its Subcontractors to include these assurances in their subcontracts.**

#### **9.1.20.4 Required Subcontract Provisions**

The contractor shall include the provisions of *Section 9.3.42.3 - Contractor Assurances* above in every FTA-assisted subcontract, making those provisions binding on each subcontractor. The contract also shall include a copy of these Provisions, in their entirety, in every FTA-assisted subcontract. All subcontracts or agreements to supply labor or materials, including but not limited to lower tier subcontracts, must be performed in accordance with these Provisions and 49 CFR Part 26 ("49 CFR 26").

#### **9.1.20.5 Requirements and Procedures after Contract Award**

##### **(a) General Provisions for Proposal and Approval of Subcontractors**

1. The Authority retains the right to approve or disapprove of any or all subcontractors.
2. Upon request of the Authority, the contractor must provide a copy of an executed agreements for all subcontractors to Contract Administration.

- (b) Prompt Payment and Release of Retainage.** The contractor must promptly pay each subcontractor under this contract for satisfactory performance of its contract within ten (10) business days from the receipt of each payment the contractor receives from the Authority. The contractor further agrees to make payment in full, including retainage, to each Subcontractor no later than ten (10) business days after the Subcontractor has satisfactorily completed all of the work required under its subcontract. Prompt payment must be reported in B2Gnow, or other contract compliance system in use and designated by the MBTA.

Failure to comply with this requirement may result in the withholding of payment to the Prime contractor until such time as all payments due under these Provisions have been received by the subcontractor(s) and, if appropriate, referral to the Prequalification Committee for action, which may affect the contractor's prequalification status.

#### **9.1.21 Terms & Conditions Signature**

**IN WITNESS WHEREOF, the Contractor certifies under the pains and penalties of perjury that it shall comply with these MBTA Terms and Conditions under Section 9.0 for any applicable Contract executed with the MBTA as certified by their authorized signatory below:**



**Contractor Authorized Signatory:** \_\_\_\_\_

Print Name: \_\_\_\_\_

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

Date: \_\_\_\_\_