



MASSACHUSETTS
BAY
TRANSPORTATION
AUTHORITY

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

PROCUREMENT AND LOGISTICS DEPARTMENT

INVITATION FOR BIDS

IFB NO. 135-16

4/0 GROOVED BRONZE TROLLEY WIRE

Buyer: Dimitrios Martinos

DATE ISSUED: OCTOBER 31, 2016

GENERAL TERMS AND CONDITIONS

**PLEASE SUPPLY AN ORIGINAL AND A DUPLICATE
COPY (LABELED AS SUCH) OF THIS BID – ALSO
INDICATE IFB/RFP # & OPEN DATE ON ENVELOPE**



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Stephanie Pollack, MassDOT Secretary & CEO
Brian Shortsleeve, Chief Administrator and Acting General Manager



**** IMPORTANT ****

The Massachusetts Bay Transportation Authority (MBTA) is committed to provide business opportunities, whenever possible to certified Disadvantaged Business Enterprises. A listing of DBE's certified by the Commonwealth appears on the SDO website:

<https://www.sdo.osd.state.ma.us/BusinessDirectory/BusinessDirectory.aspx>. These opportunities are provided in accordance with applicable State and Federal Guidelines.

While there is no DBE goal associated with this specific procurement, the Authority strongly encourages the use of Disadvantaged Business Enterprises as prime contractors, subcontractors and suppliers in all of its contracting opportunities.

If you require any further information regarding the MBTA's DBE goals or potential sources for sub-supplier participation, please contact:

Ms. Wanda Hubbard
Deputy Director, Government Compliance
(617) 857-368-8741 or whubbard@mbta.com

Bidders are to supply an original and a duplicate copy (labeled as such) of their entire bid.

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1. INVITATION FOR BID NOTICE

Massachusetts Bay Transportation Authority
Procurement and Logistics Department, Room 2810
Ten Park Plaza, Boston, MA 02116
Gerard Polcari, Chief Procurement Officer

Project Name: 4/0 Grooved Bronze Trolley Wire
IFB No.: 135-16
Date: October 31, 2016

Buyer: Dimitrios Martinos
Tel. No.: 617-222-3111
Fax No.: 617-222-5349
Email: dmartin@mbta.com

1.1 INTRODUCTION

The MBTA seeks to purchase 4/0 Grooved Bronze Trolley Wire. To assist the MBTA in this effort, the Authority is issuing this Invitation for Bid (“IFB”) to solicit responses from qualified Bidders who can meet the project requirements stated herein.

1.2 DUE DATE

Sealed bids will be publicly opened on: **Tuesday, November 15, 2016** at the Procurement and Logistics Department, Room 2810, Ten Park Plaza, Boston, MA 02116, at 2:00 PM, EST/EDST, for the work described herein. **BIDDERS ARE REQUIRED TO SUBMIT A BID INCLUDING ALL BID FORMS CONTAINED IN THIS PACKAGE. DO NOT REMOVE PAGES.**

1.3 ACCEPTANCE PERIOD

The Authority requires a minimum Acceptance Period of one hundred and twenty (120) calendar days. “**Acceptance Period**” for purposes of this solicitation means the number of calendar days available to the MBTA for awarding a contract based on the Due Date specified in this solicitation for receipt of bids.

1.4 CANCELLATION OF BID

The Authority reserves the right to cancel this bid at any time prior to execution of the Contract by all parties and without any liability against the Authority.

2. SELECTION PROCESS

2.1 BASIS OF AWARD

Award will be made to the **lowest responsive and responsible** Bidder. 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, attainment of DBE goal, debarment status, etc.), record of past performance, and financial and technical resources. Bidder is required to complete the Pre-Award Evaluation Data Form contained in Section 7.4.

2.2 PUBLIC OPENING

Bids will be publicly opened and the total price of each bid read at the time and place indicated in Section 1.2 (Due Date).

2.3 MATERIAL LIST

Bidders are required to quote firm fixed price(s) for the following equipment and materials. The undersigned agrees to furnish and deliver the equipment and materials within the time specified and at the prices quoted, which includes transportation costs, customs, duty charges, and other associated charges. Bidders shall quote only on equipment and materials in strict accordance with the specifications.

Point of Destination: MBTA Stores, 80 Broadway, Everett, MA 02149
Requisition Number: 152-22-002

Item Number	Quantity	Material List (Fully Described)	Delivery (Days)	Unit Price	Item Total
1.	13,600 lbs.	Wire 4/0 Grooved Bronze Trolley, 1 Mile Reel (3,400 lbs. per reel), in returnable Wood Reels, IN STRICT ACCORDANCE WITH THE MBTA SPECIFICATION P-102B, dated April 28, 1986 herein attached.			

Item Number	Quantity	Material List (Fully Described)	Delivery (Days)	Unit Price	Item Total
		<p>INDICATE:</p> <p>MFR: _____</p> <p>PLANT LOCATION:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>COPPER PER 1,000 FT: _____</p> <p>_____ LBS.</p> <p>NO. OF REELS: _____</p>			

NOTE: Bidders are to include, but are not limited to, the cost of the following in their cable price, returnable reels as specified, labels, markings, testing, reel lengths, and guarantees.

Reels are to be delivered on flat bed trucks.

The contractor shall be required to provide permanently attached metal tag or painted sign on each reel of cable indicating the following:

1. Weight of the reel, exclusive of the cable.
2. Weight of the wire per foot.
3. MBTA Serial Number (if applicable).
4. MBTA Purchase Order Number.

BASIS OF AWARD

Award will be made to the lowest responsive and responsible bidder. Please quote firm fixed prices, F.O.B. Destination, including all transportation charges.

Please advise the amount of deposit for each reel that will be paid to the Authority when wood reels are returned to the factory freight collect.

\$_____ Per Reel

Reel deposit listed above will not be considered in the bid evaluation.

Any request for clarifications or change to specifications must be submitted immediately in writing within a minimum of ten (10) days prior to the scheduled bid opening date. Requests must be addressed to:

**MBTA
Procurement and Logistics Department
Ten Park Plaza
Boston, MA 02116
Attn: D. Martinos**

Should the MBTA accept any proposed changes to any specification, stipulation, requirement, or procedure, notification will be made to all bidders in the form of a written addendum and sent to all bidders.

Any request or exception to specification submitted with bidding documents will deem the bid non-responsive.

The low bidder will be required to contact the Storekeeper, telephone number (617) 222-5496, forty-eight (48) hours before delivery is scheduled. The Authority may inspect all material for acceptance prior to shipment.

Bidder's Name: _____
Address: _____
Federal Identification Number: _____
Contact's Name: _____
Telephone Number: _____
Email Address: _____

3. INSTRUCTIONS TO BIDDERS

3.1 SCOPE OF PROPOSAL

Pursuant to this Invitation for Bid (“IFB”), Bidders are required to comply with the terms and conditions stated herein in order to be deemed responsive and responsible. If a bid does not meet all of the requirements listed in the IFB, the Bidder’s proposal may be disqualified. Failure by the Bidder to examine all information pertaining to this solicitation or participate in any scheduled on-site visits will be at the Bidder’s risk.

3.2 CLARIFICATIONS OF SPECIFICATIONS

Any request for clarification to, or relief from, the specifications, must be submitted in writing to the attention of the assigned Buyer at the Procurement and Logistics Department’s office no later than five (5) business days prior to the Due Date (see Section 1.2).

Should the MBTA make changes to any specification, stipulation, requirement, or procedure, notification will be made to all Bidders in the form of written Addenda. No officer, agent, or employee of the MBTA is authorized to amend any provision contained in this IFB, including the specifications, unless such amendment is issued as an Addendum and sent to all Bidders in accordance with this Section 3.2 (Clarification of Specifications).

3.3 EXTENSION OF BID OPENING DATE

Requests for an extension of the bid Due Date (see Section 1.2) must be submitted in writing to the attention of the Buyer no later than five (5) business days prior to the Due Date. The MBTA reserves the right to determine whether an extension is justified. All Bidders will be notified in writing of any extension granted.

3.4 ACKNOWLEDGEMENT OF ADDENDA

Bidders shall acknowledge written Addenda by signing and returning the Addenda Acknowledgment Form (see Section 7.5) with the Bidder’s submission. The Bidder is responsible for verifying the number of Addenda issued, which is available at: www.mbtta.com, under “Doing Business with the T.”

If this IFB is modified by an amendment, then all terms and conditions that are not modified remain unchanged.

3.5 SUBMITTAL

Bidders responding to this IFB must fully complete, sign, and submit all the **Forms** contained in Section 7 (Submission Forms). Bidder shall provide one (1) original and one (1) copy of its bid submission.

3.6 LATE SUBMISSIONS, MODIFICATIONS AND WITHDRAWALS OF OFFERS

Any offer received at the Procurement and Logistics Department after the exact time specified for receipt as designated in Section 1.2 (Due Date) will not be considered unless it is received before award is made and:

- 3.6.1** Package was sent by registered or certified U.S. mail not later than the fifth (5th) calendar day before the Due Date; or
- 3.6.2** Package was sent by mail, or other method authorized by the Authority (e.g., facsimile) and the late receipt was due solely to the mishandling of the package

by the Authority after receipt; or

3.6.3 It is the only offer received by the Authority.

Any modification of an offer, except a modification for “best and final” offer, is subject to the same conditions stated in Sections 3.6.1, 3.6.2, and 3.6.3.

A modification resulting from a request for “best and final” offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Authority.

Notwithstanding the above, a late modification of any otherwise successful offer that makes its terms more favorable to the Authority will be considered at any time it is received and may be accepted.

Proposals may be withdraw by written notice to the Authority or in person by the Bidder or an authorized representative of the Bidder at any time before award.

3.7 **BID GUARANTY**

Bidders shall furnish with their bid a guaranty in the form of a bid bond, or certified treasurer’s or cashier’s check issued by a responsible bank or trust company, made payable to the Massachusetts Bay Transportation Authority. The amount of such guaranty shall be equal to ~~\$\$\$\$~~ or ~~XX%~~ of the total bid price.

Bid guarantees will be retained until execution of the Contract, however, in no case will any guarantee be retained longer than one hundred twenty (120) calendar days from the Due Date.

Failure by the successful Bidder to execute the Contract within the time stipulated by the Authority and agreed to by the Bidder shall result in forfeiture of the bid guaranty.

3.8 **REJECTION OF BID**

The MBTA reserves the right to reject any and all bids, in whole or in part, if such action is determined to be in the best interests of the Authority. Unless all bids are rejected, award shall be made to the lowest responsive and responsible Bidder.

3.9 **WAIVER OF INFORMALITIES, DEVIATIONS, MISTAKES, AND MATTERS OF FORM**

The MBTA reserves the right to waive any informalities, deviations, mistakes, and matters of form rather than substance of the bid documents, which can be waived or corrected without prejudice to the Bidder. No officer or agent of the MBTA is authorized to waive this reservation.

3.10 **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. In the event that this procurement is federally funded with financial assistance from the Federal Transit Administration (FTA), interested parties may elect to issue a protest to the FTA if the interested party believes that the MBTA failed to follow the protest procedures identified above. Such protests to FTA must be filed in accordance with FTA Circular 4220.1F, Section VII-I, Written Protest Procedures.

3.11 **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 in:

- 3.11.1** Preparing its bid in response to this IFB;
- 3.11.2** Submitting its bid to the MBTA;
- 3.11.3** Negotiating with the MBTA any matter related to this bid; or
- 3.11.4** Any other expenses incurred by Bidder prior to date of award, if any, of the Agreement.

3.12 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.

As an independent Contractor, the Contractor 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.

3.13 PRICES

Each Bid must contain the unit price(s), extended price(s), and the grand total of the Bid. The unit price shall prevail in case of an error in price extension. Prices submitted shall be valid throughout the Acceptance Period.

3.14 F.O.B. POINT

Bid prices must include F.O.B. destination freight charges and be prepaid by Contractor, unless otherwise stated in this IFB. If the IFB requests F.O.B. destination freight charges to be itemized, the freight charge will be taken into consideration in making the award. If the MBTA specifies that the Authority will bear the cost of freight, the supplier shall prepay the freight and invoice the MBTA for said expense.

3.15 SUBSTITUTIONS

If a substitute is offered by the Bidder, it must be offered on an "or equal" basis and be clearly identified in the submission. The Bidder must provide a complete set of specifications and other descriptive matter for all substitutions proposed. Any proposed substitution will be evaluated by the MBTA to determine whether the item is, in the opinion of the MBTA, an "approved" equal.

3.16 INSPECTION AND TESTING

All materials, supplies, and equipment purchased that requires testing, samples, or other data to determine if they comply with the specifications contained herein, shall be tested under the direction of the Procurement and Logistics Department, unless otherwise specified. Rejected material that is returned to the Bidder shall be returned at no cost to the MBTA. This includes the return shipping cost as well as the original cost to ship the rejected product to the MBTA.

3.17 SIGNATURE

Each submission shall include a cover letter showing the Bidder's name, post office address, telephone number, fax number, and name, title, and signature of the person submitting the bid. The signature must be in ink or indelible pencil. A sealed or notarized letter/vote attesting to the signer's authorization to sign the bid on behalf of the Bidder must accompany the cover letter.

3.18 SINGLE BIDS

If a single conforming bid is received, the MBTA may perform a price and/or cost analysis of the

bid. A price analysis is the process of examining and evaluating a prospective price without evaluation of the separate cost elements. It should be recognized that a price analysis through comparison to other similar contracts would be based on an established or competitive price of the elements used in the comparison. The comparison will be made to the purchase of similar quantities and specifications.

Bidders should be aware that in the event of a single bid, submission of complete documentation would facilitate the procurement of this order. At a minimum, documentation should include:

- 3.18.1** Published price lists
- 3.18.2** Latest quoted price for identical or similar items and name of customers
- 3.18.3** Statement certifying that prices are equal to or less than those charged Bidder's best user or most favored customer.

3.19 CONFLICT OF INTEREST

Massachusetts Conflict of Interest Law, G.L. c. 268A, governs the conduct of all public officials and employees, including all dealings with potential contractors. Therefore, it is the responsibility of Contractor to ensure compliance with the Commonwealth's Conflict of Interest Laws and avoid any conduct which might result in or give the appearance of creating for Board members, officers or employees of the Authority in their relationship with the Contractor any conflicts of interest or favoritism and/or the appearance thereof or any conduct which might result in a Board member, officer or employee failing to comply with G.L., c. 268A. Non-compliance with these Conflict of Interest terms shall constitute a material breach of this Contract.

For purposes of this solicitation, it is understood and agreed that no gift, loan or other thing has been or will be given to any employee, agent or officer of the MBTA by the Bidder, Bidder's employees, subcontractors, or agents in connection with the award or performance of this Contract. It is further understood and agreed that no Board member, officer, or employee of the MBTA; no officer or employee of any independent authority or political subdivision of the Commonwealth of Massachusetts, no officer, employee, or elected official of the Commonwealth of Massachusetts, executive or legislative of any city, county, or town within the 175 cities and towns serviced by the MBTA; and no member or delegate to the Congress of the United States, during his/her tenure shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

If, during the performance of this Contract and any extension thereof, the Contractor becomes aware of any relationship, financial interest, or other activity in which it or an affiliated person or company is involved which is not in compliance with these provisions, the Contractor shall promptly notify the Authority's Contracting Officer in writing and fully disclose all circumstances thereof. The Authority reserves the right to grant an exception to the requirements of this Section, if so allowed by law, and notify the Contractor thereof. If the Authority does not grant an exception, the Contractor shall, within ten (10) days of written notice from the Authority, take all action necessary to comply with the terms stated herein.

The Bidder shall certify compliance with these terms and the Massachusetts Conflict of Interest Laws (see Section 7.6).

4. DISADVANTAGED BUSINESS ENTERPRISES

4.1 OVERVIEW

It is the policy of the MBTA and the United States Department of Transportation (“DOT”) that Disadvantaged Business Enterprises (“DBEs”), as defined herein and in the federal regulations published at 49 CFR Part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of the MBTA to:

- 4.1.1 Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- 4.1.2 Create a level playing field on which DBE’s can compete fairly for DOT-assisted contracts;
- 4.1.3 Ensure that the DBE program is narrowly tailored in accordance with applicable law;
- 4.1.4 Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBE’s;
- 4.1.5 Help remove barriers to the participation of DBE’s in DOT assisted contracts; and
- 4.1.6 Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This Contract is subject to 49 CFR Part 26. Therefore, the Contractor must meet the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The Authority shall make all determinations with regard to whether or not a Bidder’s is in compliance with the requirements stated herein. In assessing compliance, the Authority may consider during its review of the Bidder’s submission package, the Bidder’s documented history of non-compliance with DBE requirements on previous contracts with the Authority.

4.2 CONTRACT ASSURANCE

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

4.3 DBE PARTICIPATION

For the purpose of this Contract, the MBTA will accept **only DBE’s** that are:

- 4.3.1 Certified, at the time of bid opening, by the Commonwealth of Massachusetts’ Supplier Diversity Office (SDO) as DBE’s.
- 4.3.2 Certified, at the time of bid opening, by SDO in the North American Industry Classification System (NAICS) Codes for each scope of work they are certified to perform.

4.4 PARTICIPATION GOAL

The DBE participation goal for this Contract is set at 0 %. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less than 0%** of the total Contract price. Failure to meet the stated goal at the time of proposal submission **may** render the Bidder non-responsive. |

4.5 PROPOSED SUBMISSION

Each Bidder, as part of its submission, shall supply the following information:

- 4.5.1 A completed **DBE Utilization Form** (see Section 7.7) that indicates the percentage and dollar value of the total bid amount to be supplied by Disadvantaged Business Enterprises under this Contract.
- 4.5.2 A list of those qualified DBE's with whom the Bidder intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, the NCAIS code for each scope of work to be performed, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the **DBE Participation Schedule** (see Section 7.8). No work shall be included in the Schedule that the Bidder has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE.
- 4.5.3 An original **DBE Letter of Intent** (see Section 7.9) from each DBE listed in the **DBE Participation Schedule**. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by the Authority.
- 4.5.4 An original **DBE Affidavit** (see Section 7.10) from each DBE stating that there has not been any change in its status since the date of its last certification.

4.6 GOOD FAITH EFFORTS

If the Bidder is unable to meet the goal set forth in Section 4.3.2 (DBE Participation Goal), the Authority will consider the Bidder's documented good faith efforts to meet the goal in determining responsiveness. Good Faith Efforts must meet the criteria set forth in 49 CFR Part 26.53 of the DBE Regulations. The types of actions that the Authority will consider as part of the Bidder's good faith efforts include, but are not limited to, the following:

- 4.6.1 Documented communication with the Authority's DBE Coordinator (questions of IFB requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
- 4.6.2 Pre-bid meeting attendance. At the pre-bid meeting, the Authority generally informs potential Bidder's of DBE subcontracting opportunities;
- 4.6.3 The Bidder's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
- 4.6.4 Written notification to DBE's encouraging participation in the proposed Contract; and

- 4.6.5** Efforts made to identify specific portions of the work that might be performed by DBE's.

THE BIDDER SHALL PROVIDE THE FOLLOWING DETAILS, AT A MINIMUM, OF THE SPECIFIC EFFORTS IT MADE TO NEGOTIATE IN GOOD FAITH WITH DBE'S FOR ELEMENTS OF THIS CONTRACT:

- 4.6.6** The names, addresses, and telephone numbers of DBE's that were contacted;
- 4.6.7** A description of the information provided to targeted DBE's regarding the specifications and bid proposals for portions of the work; and
- 4.6.8** Efforts made to assist DBE's contacted in obtaining bonding or insurance required by the Bidder or the Authority.

In determining whether a Bidder has made good faith efforts, the Authority may take into account the performance of other Bidders in meeting the Contract goals. For example, if the apparent successful Bidder failed to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, the Authority may view this as evidence of the Bidder having made good faith efforts.

4.7 ADMINISTRATIVE RECONSIDERATION

Within five (5) business days of being informed by the MBTA that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder may request administrative reconsideration. The Bidder should make this request in writing to the Authority's Chief Procurement Officer. The Chief Procurement Officer will forward the Bidder's request to a reconsideration official who will not have played any role in the original determination that the Bidder did not document sufficient good faith efforts.

As part of this reconsideration, the Bidder will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Authority will send the Bidder a written decision on its reconsideration, explaining the basis for finding that the Bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

4.8 TERMINATION OF DBE SUBCONTRACTOR

The Contractor shall not terminate for convenience the DBE subcontractor(s) listed in the **DBE Participation Schedule** (see Section 7.8) and then perform the work of the terminated DBE subcontractor with its own forces or an affiliate without the MBTA's prior written consent. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify the Authority in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with Section 4.10 (Sanctions for Violations).

4.9 CONTINUED COMPLIANCE

The Authority shall monitor the Contractor's DBE compliance during the life of the Contract.**It**

will be the responsibility of the Contractor to submit written reports to the Authority that summarize the total DBE value for this Contract. (See Form 7.10A) These reports shall provide the following details:

- 4.9.1** DBE utilization established for the Contract;
- 4.9.2** Total value of expenditures with DBE firms for the period; and
- 4.9.3** Total value of expenditures with DBE firms from inception of the Contract.

Reports and other correspondence must be submitted to the assigned DBE Compliance Officer in Officer of Diversity and Civil Rights, 15 days after payment has been made to the DBE subcontractor with copies provided to the Project Manager and Chief Procurement Officer. Reports shall continue to be submitted until final payment is issued or until DBE participation is completed.

The successful Bidder shall permit:

- 4.9.4** The Authority to have access to necessary records to examine information as the Authority deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder and other DBE parties entered into during the life of the Contract.
- 4.9.5** The authorized representative(s) of the MBTA, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise participation provisions of this Contract.
- 4.9.6** All data/record(s) pertaining to DBE's shall be maintained as stated in Section 5.33 (Examination and Audit).

4.10 SANCTIONS FOR VIOLATIONS

If at any time the Authority has reason to believe that the Contractor is in violation of its obligations under Section 4 (Disadvantaged Business Enterprise) or has otherwise failed to comply with terms of this Section, the Authority may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- 4.10.1** Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved;
- 4.10.2** Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

5. GENERAL TERMS AND CONDITIONS

5.1 APPROPRIATION CONTINGENCY

If the Authority fails to appropriate operating funds, or if funds are not otherwise made available for the continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this shall not affect the Authority's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder shall be to discharge both the Contractor and the Authority from future performance of the Contract, but not from their rights and obligations existing at the time of such termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the base price of the Contract. The Authority shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first. The Authority's fiscal year begins July 1.

5.2 CONFIDENTIAL INFORMATION

In performing under this Contract, each Party (the "**Disclosing Party**") may from time to time during the Term disclose to the other Party (the "**Receiving Party**") certain Confidential Information, as defined below. This Section 5.2 shall govern the use of such Confidential Information.

The term "**Confidential Information**" shall mean all: (a) non-public information (in any medium), including but not limited to business, personnel, marketing, financial, employee, planning, technical, operations, data, source code, specifications, drawings, plans, diagrams, sketches, renderings, maps, surveys, photographs and other confidential or proprietary information of the Disclosing Party; and (b) any other information or material marked confidential, restricted or proprietary by either Party or any other person to whom such Party has an obligation of confidence; provided, however, that the failure of either Party to so mark any material shall not relieve the Receiving Party of the obligation to maintain the confidentiality of any unlegended material which the Receiving Party knows or should reasonably know contains Confidential Information.

For purposes of this Agreement, information submitted with Bidder's proposal shall be handled as Confidential Information and utilized on a "need to know" basis in accordance with Massachusetts Public Records Laws (M.G.L. c. 66, §10).

5.2.1 Protection of Confidential Information. The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this the Contract, and will disclose the Confidential Information of the Disclosing Party only to those parties, including employees, contractors, subcontractors, suppliers and agents of the Receiving Party who have a need to know such Confidential Information for purposes of this Contract and who are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

5.2.1.1 Exceptions. The Receiving Party's obligations hereunder with respect to any Confidential Information of the Disclosing Party will terminate if and when the Receiving Party can document that such information: (a) was already known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) was disclosed

to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is or through no fault of the Receiving Party has become, generally available to the public; or (d) is independently developed by the Receiving Party without access to, or use of, the Disclosing Party's Confidential Information. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is: (i) approved in writing by the Disclosing Party; (ii) necessary for the Receiving Party to enforce its rights under this Contract in connection with a legal proceeding; or (iii) required by law or by the order of a court or similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such disclosure.

- 5.2.2 Delivering Confidential Information.** At any time during the term of this Contract, the Contractor shall forthwith deliver to the Authority any and all Confidential Information on any medium as the Authority shall request.
- 5.2.3 Securing Confidential Information.** The Contractor hereby represents and warrants that at the conclusion of the work to be performed under this Contract or upon its termination, any Confidential Information that is to be retained by the Contractor for archival/audit/legal purposes shall be certified as such and shall be maintained in a secure facility, and that the Contractor shall maintain care, custody, and control over any and all medium containing Confidential Information while in such secure facility and until any and all medium containing the Confidential Information are either returned to the Authority or destroyed as provided in Section 5.2.4 (Destroying Confidential Information).
- 5.2.4 Destroying Confidential Information.** Except as provided in Section 5.2.3 (Securing Confidential Information), at the conclusion of the Contract or upon its termination, unless otherwise instructed in writing by the Authority, the Contractor shall destroy its copies of all Confidential Information in all medium such that recognition or reconstruction of the Confidential Information is precluded. Unless otherwise permitted by the Authority, cross-cut shredding of hardcopy items, physical destruction of diskettes, floppies, CDs, DVDs, videos, and any other recordable media, deleting of electronic items by permanent deletion or non-retrievable/ irreversible placement in delete-overwrite status are the Authority's required methods of such destruction with respect to documents or materials containing Confidential Information, which the Authority has instructed are to be destroyed.
- 5.2.5 Unauthorized Release of Confidential Information.** In the event the Contractor learns or believes that Confidential Information has been released or believes that Confidential Information is about to be released, the Contractor shall immediately notify the Authority.

5.3 PERFORMANCE GUARANTEE

A Performance Guarantee in the amount of XX% of the Contract value is required by the Authority to ensure faithful performance of the Contract. The Performance Guarantee may be either a

Performance Bond or an Irrevocable Stand-By Letter of Credit and shall remain in full force for the term of this Agreement. The successful Bidder shall certify (see Section 7.11) that it shall provide the requisite Performance Guarantee to the Authority within ten (10) business days from Contract execution in accordance with the following minimum requirements:

5.3.1 Performance Bond. The Bidder shall furnish with its bid proposal, certification that a Performance Bond in the amount of **XX%** will be furnished should the Bidder become the successful Contractor (see Section 7.11.1). The Bidder shall also provide with its proposal a similar statement from its surety. The Authority requires all Performance Bonds to be secured through an insurance company (or companies) which is/are licensed in the Commonwealth of Massachusetts or which is/are approved by the Authority. The insurance company must have a rating of B+ or better. The name of the agency or agent writing the bond shall be identified with or on the bond.

5.3.2 Irrevocable Stand-By Letter of Credit. If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid proposal, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor (see Section 7.11.2). The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder.

The Irrevocable Stand-By Letter of Credit will only be accepted by the Authority if:

5.3.2.1 A bank in good standing issues it. The Authority will not accept a Letter of Credit from an entity other than a bank.

5.3.2.2 It is in writing and signed by the issuing bank.

5.3.2.3 It conspicuously states that it is an irrevocable, non-transferable, “standby” Letter of Credit.

5.3.2.4 The Massachusetts Bay Transportation Authority (“MBTA”) is identified as the Beneficiary.

5.3.2.5 It is in an amount equal to **XX%** of the Contract value. This amount must be in U.S. dollars.

5.3.2.6 The effective date of the Letter of Credit is the same as the effective date of the Contract

5.3.2.7 The expiration date of the Letter of Credit coincides with the term of this Agreement.

5.3.2.8 It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the MBTA and the Contractor the work stipulated herein.

The issuing bank’s obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft (similar to the attached forms contained in Sections 7.11.2 and 7.11.3) to the issuing bank’s representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

5.4 PAYMENT TERMS

The following terms constitute the method of payment for this Agreement.

- 5.4.1 The Authority shall make all payments to the Contractor in United States Dollars.
- 5.4.2 Payments will be made by check or wire transfer within thirty (30) days after receipt of properly prepared Contractor's invoice and upon completion of the work or goods received corresponding to the payment due.
- 5.4.3 In no event shall the amount of invoices submitted to the Authority exceed 100% of the cost incurred by the Contractor to that date. If an audit should disclose any invoices that exceed 100% of the costs, this excess shall be returned to the Authority and shall be remitted to the Contractor at such time as those costs are incurred.
- 5.4.4 **Prompt Payment Mechanism.** The Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of work completed no later than ten (10) business days from the receipt of each payment the Contractor receives from the MBTA. The Contractor agrees further to return any retainage withheld within thirty (30) days after the subcontractor's work is fully and satisfactorily completed. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of the MBTA. Failure by the Contractor to comply with these requirements is a material breach of this Contract, which may result in the termination of this Contract or other such remedy as the MBTA deems appropriate.

5.5 SECURITY REQUIREMENTS

The Bidder shall certify that, if awarded the Contract, it will comply with the MBTA's Security Requirements as stated herein (see Section 7.12). The Contractor shall:

- 5.5.1 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:
 - 5.5.1.1 Name and Employee Number/Identifier
 - 5.5.1.2 Address
 - 5.5.1.3 Job Title
 - 5.5.1.4 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.

- 5.5.2 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.

- 5.5.3** 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.
- 5.5.4** Insure that Contractor's employees, subcontractors, and agents:
- 5.5.4.1** Are not allowed on MBTA property except as required for stated work;
 - 5.5.4.2** Are not allowed on MBTA property before and after service hours unless explicitly, contractually required to be there; and
 - 5.5.4.3** Are forbidden from carrying firearms on MBTA property.
- 5.5.5** Provide to the MBTA, upon its request, any documents that pertain to:
- 5.5.5.1** Contractor employee, subcontractor or agent conduct on MBTA property;
 - 5.5.5.2** Security training; and
 - 5.5.5.3** Monitoring/auditing of Contractor employees or agents while on MBTA property.
- 5.5.6** 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.

5.6 RIGHT-OF-WAY SAFETY TRAINING REQUIREMENTS

The Bidder shall certify that, if awarded the Contract, it will comply with the MBTA Safety Training Requirements as stated herein (see Section 7.13). All Contract employees working on MBTA property that is within twenty-five (25) feet of on the Right-of-Way shall attend the MBTA's eight (8) hour Right-of-Way Safety Training held at an MBTA facility in Boston. Successful completion of this training program will be valid for a period of two (2) years. Personnel receiving proper safety training by the MBTA will be issued a security badge with the proper safety training designation. The Contractor shall ensure that its employees, subcontractors, and agents intended to work on MBTA property near or on the Right-of-Way under this Agreement will not enter upon MBTA property until they have received the requisite safety training.

5.7 INDEPENDENT CONTRACTOR STATUS

It is understood and agreed that the Contractor, including its employees, subcontractors and agents will be providing services under the Contract as an independent Contractor for the MBTA and that none of the subcontractors, agents or employees of the Contractor will be an employee or agent of the MBTA. All liability to persons actually providing services for payment of charges related to wages or other compensation shall be the sole responsibility of Contractor.

5.8 SUBCONTRACTING OF WORK

The Contractor shall give its personal attention to the fulfillment of the Contract and shall keep the work under its control as well as directing, monitoring, and coordinating all necessary liaisons between its subcontractors and suppliers to ensure the successful completion of the Contract.

- 5.8.1** The Contractor shall not subcontract for any of the services it is obligated to perform under the Contract without the written consent of the MBTA. Any subcontracting of the work approved in writing by the Authority shall not release the Contractor of its liability under the Contract.
- 5.8.2** The subcontractor/supplier shall look only to the Contractor for the payment of claims of any nature whatsoever arising out of any subcontract. The Contractor shall include in all agreements with the subcontractor(s) / supplier(s), as pertaining to this contract, that its subcontractor(s) /supplier(s) shall make no claim whatsoever against the Authority, its members or agents, for any work performed or thing done by reason of the subcontract, or for any other cause whatsoever that may arise by reason of the relationship created between the Contractor and the subcontractor(s)/supplier(s) by the subcontract.

5.9 TRANSFER OR ASSIGNMENT OF CONTRACT

Neither the Contract nor any interest herein shall be assigned, pledged or otherwise transferred by the Contractor without the written consent of the MBTA, except in the case of a transfer of all or substantially all of the Contractor's assets provided that all obligations of this Contract are assumed by the controlling entity. If the Contractor makes any such assignment, pledge or other transfer without the written consent of the MBTA, the Contract shall be voidable at the election of the MBTA. The MBTA's consent to any such assignment, pledge or other transfer may impose such additional conditions thereon as may be deemed necessary to ensure the performance of the terms of the Contract by the assignee. Moreover, unless otherwise agreed to in writing by the MBTA, any transfer by the Contractor shall not release the Contractor of its liability under the Contract.

5.10 CONTRACTOR'S LOCAL AREA OFFICE

The Authority strongly recommends that the Contractor establish a local office within the MBTA

service network for the duration of the Contract to facilitate clear and timely communications between the Contractor and the Authority.

5.11 SEVERABILITY

In the event any article, section, sub article, paragraph, sentence, clause, or phrase contained in the Contract shall be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, such determination, declaration, or adjudication shall in no manner affect the other articles, sections, sub articles, paragraphs, sentences, clauses, or phrases of the Contract, which shall remain in full force and effect as if the article, section, sub article, paragraph, sentence, clause, or phrase declared, determined, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, was not originally contained in the Contract.

5.12 ENTIRE AGREEMENT

This Agreement and any attachments or documents incorporated herein by inclusion or by reference, constitutes the complete and entire Agreement between the Contractor and the MBTA (hereinafter the "Parties") and supersedes any prior representations, understandings, communications, commitments, agreements or proposals, oral or written, and is not intended to confer upon any person other than the Parties any rights or remedies hereunder.

5.13 HEADINGS NOT BINDING

The headings appearing at the beginning of the articles, sections, parts, paragraphs or subparagraphs in this Contract have been inserted for identification and reference purposes only.

5.14 BINDING EFFECT

This Agreement shall be binding upon and shall inure to the benefit of the respective successors and permitted assigns of the Contractor and the MBTA.

5.15 MODIFICATIONS

This Agreement can only be modified by a written agreement duly signed by persons authorized to sign agreements on behalf of the Contractor and of the MBTA. Any variance from the terms and conditions of this Agreement or any order or other written notification given by either Party to the other that is not duly authorized shall have no force or effect.

5.16 PRECEDENCE OF DOCUMENTS

In the event of an inconsistency or conflict in any of the terms and conditions, requirements or provisions contained in the documents that comprise this Agreement, the inconsistency shall be resolved by giving precedence, in descending order, to the following:

- 5.16.1** Change Orders and Contract Modifications
- 5.16.2** Clarifications of Specifications Addenda
- 5.16.3** General Terms and Conditions (Volume 1)
- 5.16.4** Technical Requirements (Volume 2)
- 5.16.5** Contract Drawings (Volume 3)
- 5.16.6** Bonds/Certificates, Affidavits, and Other Pertinent Forms
- 5.16.7** Contractor's Proposal

Either party to the Agreement shall not take advantage of any apparent error or omission in the

Contract documents. In the event that either party shall discover such an error or omission, the party shall notify the other party immediately. The Authority shall then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the Contract.

5.17 NO WAIVER

None of the provisions of this Agreement, unless otherwise specified, shall be considered waived by either party hereto unless such waiver is in writing and signed by both parties. No such waiver shall be construed as a modification of any of the provisions of this Agreement or as a waiver of any past or future default or breach hereof, except as expressly stated in such waiver.

5.18 WORKPLACE ENVIRONMENT

The Contractor and its employees shall comply with the MBTA Dignity in the Workplace and Drug and Alcohol Free Workplace requirements. The Contractor's employees who violate either of these policies are to be removed from this Contract and are not to be employed on another MBTA contract. The Contractor also agrees to include the following requirements in each subcontract entered into as part of this Agreement.

5.18.1 MBTA Dignity in the Workplace Policy. In accordance with governing statutes, regulations, and collective bargaining agreements, and consistent with its existing policies, the MBTA demands of itself and its employees that all work and work-related activities be conducted with complete respect for the dignity of all employees. In practice, this means that no action, inaction or language which would offend a reasonable employee or which any reasonable employee deems unwelcome will be tolerated. All personnel decisions will be based solely on objective consideration of relevant articulated factors. No personnel decision will directly or indirectly be based on consideration of an employee's age, race, sex, religion, creed, color, sexual orientation, national origin, disability/handicap, ancestry or Vietnam era veteran's status.

These prohibitions on harassment and impermissible discrimination are absolute.

5.18.2 Drug and Alcohol Free Workplace Requirement. The Contractor, Contractor's employees, vendors, visitors, and volunteers are to be free of the effect of drugs, alcohol, controlled substances or other prohibitive substances when they are on MBTA property or performing MBTA business. In addition, all referenced parties are prohibited from using, possessing, selling or distributing any drugs, alcohol, controlled substances or other prohibited substances when they are on MBTA property or performing MBTA business. It is the responsibility of the Contractor to advise its employees of this requirement and to ensure that its employees meet this "fitness for duty" standard. Violators of this policy will not be allowed to remain on MBTA property or to continue conducting business for or with the MBTA. The Contractor will submit to the Authority within thirty (30) days of a Drug and Alcohol violation, a written report documenting the actions taken with regard to any of its employees who violate this policy. The Contractor will accept all liability arising from violation of this policy by his/her employees.

5.18.3 Labor Harmony: Prevailing Wage Rates Apply. The Contractor shall furnish labor that can work in harmony with all other elements of labor employed or to be employed at the MBTA. The Contractor agrees that all persons in its employment for the purpose of managing or working on the

MBTA's premises shall conduct themselves at all times in an orderly and proper manner so as not to annoy or offend persons or MBTA employees using the premises. Moreover, the Contractor, at the request of the Authority will, for cause shown, remove from work on the Contract any employee who shall cause any annoyance or offense as aforesaid. The Contractor further covenants and agrees that, in the exercise of the rights and privileges granted, its employees or representatives will not deface or damage the property of the MBTA, deposit or scatter any rubbish, debris, waste, litter, or other matter in or about said premises. The Contractor agrees to assume liability for actions on the part of its employees.

5.19 DEPENDENT CARE ASSISTANCE PROGRAM

Pursuant to Section 7 of Chapter 521 of the Acts of 1990, as amended by Chapter 329 of the Acts of 1991, and the regulations issued pursuant thereto, 102 CMR 12.00, a Contractor having fifty (50) or more full time employees shall have established a dependent care assistance program, or offer its employees child care tuition assistance or on-site or near site subsidized child care placements. The Bidder shall certify compliance with the aforesaid regulation (see Section 7.14).

5.20 LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

5.20.1 Contractor Compliance. The Contractor shall keep fully informed and shall comply with the provisions of applicable federal, state, and municipal laws, rules, and regulations that in any manner regulate the Contractor's performance of this Contract and those engaged or employed with the services herein described, other than any such laws, rules and regulations that relate to MBTA's own operations. The Contractor shall indemnify, protect, defend, and save harmless MBTA and its officers, agents and employees harmless from all fines, penalties, and liabilities imposed upon MBTA under any such laws, rules, and regulations by any public agency, authority or court having jurisdiction over the parties hereto when the imposition of same is attributable to the failure of the Contractor to keep fully informed and to comply with its obligations in this regard, provided that if any public agency, authority or court seeks to impose such fine, penalty or liability on the MBTA, the MBTA shall promptly notify the Contractor and allow the Contractor, in consultation with the MBTA, to object to and defend such imposition.

5.20.2 Subcontractor Compliance. The Contractor shall be responsible for the compliance of its subcontractors/suppliers to the requirements of federal, state, and municipal laws, ordinances, rules, and regulations as may be applicable to the performance of such subcontractors or suppliers pursuant to this Agreement.

5.20.3 Change in Existing Law. The Contractor is subject to any existing or future valid legislative act, municipal ordinance, decree, order or regulation of any public body, commission or authority having jurisdiction over the MBTA, and order of decree by a court of competent jurisdiction to which the MBTA or any predecessor or successor in title may be a party, and, if the Contractor is unable to enjoy any or all of the privileges granted in the Contract, the MBTA shall not be liable to the Contractor in damages for breach of the Contract. The MBTA and the Contractor shall assess the impact any change in existing law may have on the price and schedule of the work herein defined and modify the Contract as needed in accordance with the Change Order provision of the

Contract (see Section 5.30).

5.20.4 **Laws to be Observed.** The Contractor shall conform to all laws and regulations of the Commonwealth of Massachusetts and the Federal Government, as applicable to the Contract. It is further agreed between the parties hereto, that the Contractor, wherever incorporated and wherever allowed to do business, shall, in the event of any misunderstanding of the construction of the language contained in the Contract, violations of the terms of the Contract, and/or claims against the Authority, restrict its actions in seeking relief, recompense or damages to the processes in the venue of the Commonwealth of Massachusetts. No other action against the Authority, including the foregoing, shall be commenced in any other jurisdiction.

5.20.4.1 If any discrepancy or inconsistency is discovered in the Contract in relation to any law, ordinance, regulations, order or decree, Contractor shall forthwith report the same to the Authority in writing.

5.20.4.2 Contractor, if a foreign corporation (a corporation established, organized or chartered under laws other than those of the Commonwealth of Massachusetts) shall comply with the provisions of Chapter 181 of the General Laws as amended:

- (a) The above Act provides that the Secretary of State for the Commonwealth of Massachusetts shall be appointed for the service of legal process in the case of a foreign corporation doing business in this Commonwealth.
- (b) Section Four of the Act requires every corporation to file with the Secretary copies of its charter, certificate of incorporation, a true copy of its by-laws and other information.
- (c) In addition to the above, Contractor shall file with the Authority a certificate from the Secretary of State for the Commonwealth of Massachusetts stating that the corporation has complied with Chapter 181 and the date of compliance.

5.20.4.3 Contractor shall provide that changes in the Contract work, which are necessitated by laws or regulations that are enacted or promulgated after the Effective Date, shall constitute Contract changes in accordance with the Change Order provision of the Contract (see Section 5.30).

5.21 RIGHT-TO-KNOW LAW

The Bidder shall certify that, if awarded the Contract, it will comply with the Massachusetts Right-To-Know Law, Chapter 470 of the Acts of 1983 (see Section 7.15). Additionally, the Contractor agrees to submit a Material Safety Data Sheet (MSDS) for each toxic or hazardous substance, or mixture containing such substance, pursuant to M.G.L. c. 111F §§ 8, 9, and 10, and the regulations contained in 441 CMR § 21.06 when deliveries are made. The Contractor agrees to deliver all containers properly labeled pursuant to M.G.L. c. 111F § 7 and regulations contained in 441 CMR § 21.05. Failure to submit an MSDS and/or label on each container will place the Contractor in noncompliance with the purchase order.

Copies of all MSDS's are to be sent to:

MBTA Safety Department
Attn: MSDS Coordinator
45 High Street
Boston, MA 02110-2302

and Everett Stores - MSDS
80 Broadway
Everett, MA 02149

5.22 ANTI-BOYCOTT COVENANT FOR CONTRACTS IN EXCESS OF \$5,000.00

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, as defined in Section 999(b) (3) and (4) of the Internal Revenue Code of 1954, as amended, or engages in conduct declared to be unlawful by M.G.L. c. 151E § 2. If there shall be a breach in the warranty, representation, and agreement contained in this paragraph, then without limiting such other rights as it may have, the Authority 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.

5.23 DOING BUSINESS WITH OR IN NORTHERN IRELAND

The Bidder shall certify that it meets the requirements of M.G.L. c. 7, § 22C relating to doing business with or in Northern Ireland (see Section 7.16).

5.24 PERSONAL LIABILITY OF AUTHORITY OFFICIAL

In carrying out any of the provisions of the Contract, or in exercising any power or authority granted to them or within the scope of the Contract, there shall be no liability upon the Board of Directors, the Director of Procurement and Logistics, or authorized representatives thereof, either personally or as officials of the MBTA, it being understood that in all such matters they act solely as agents and representatives of the MBTA.

5.25 COLLUSION

The Bidder shall sign an affidavit stating that Bidder understands that any bid submitted to the MBTA 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 (see Section 7.17).

5.26 NOTICE PROVISIONS

Any notice or communication to the Contractor shall be deemed served if delivered to the Contractor at the address named in the bid, or if deposited in the U.S. Post Office, postage prepaid, addressed to the Contractor as aforesaid; and the date of service shall be the date of such delivery, or, if mailed, five (5) days after such mailing.

5.27 INDEMNIFICATION AND INSURANCE

5.27.1 Indemnification of the Authority. The Contractor agrees to indemnify, save harmless, and defend the MBTA and all of its officers, agents, and employees from and against any and all third party suits, claims, or proceedings (“Claims”), and any losses, damages, charges or expenses, whether direct or indirect, and liability of every name and nature related to such Claims (“Liabilities”) for or due to any loss or injury to persons or damages to real or

tangible property to the extent caused by the Contractor or its employees, subcontractors or agents.

5.27.1.1 The MBTA agrees that the Contractor shall not be responsible for any Claims or Liabilities that may be imposed upon or incurred by or asserted against the Contractor to the extent that those Claims or Liabilities are caused by any negligent act or negligent failure to act by MBTA or its agents, provided, however, that the Contractor has not itself acted negligently or negligently failed to act with respect to same.

5.27.1.2 The Contractor being bound by all applicable state and federal regulations hereby expressly agrees to hold the MBTA harmless against all audit exceptions or denials of the reimbursement arising from the Contractor's violation of the terms and conditions of state and federal laws. The Contractor shall make restitution to the MBTA of such amounts of money as are withheld from the Authority by state, federal, county or local agencies or organizations due to the Contractor's noncompliance with applicable state and federal law, provided that in the event of any claim for such restitution, the MBTA provides the Contractor with prompt notice of such claim and allows the Contractor to contest such claim. Restitution shall be made no later than sixty (60) days after receipt of notification from the MBTA that monies are due to the MBTA.

5.27.2 **Defense of Indemnification.** The Contractor shall be notified in writing by the MBTA within a reasonable period of time of the assertion of any Claim against it that the Contractor has agreed to indemnify above (the "Indemnified Claim"). If the MBTA decides to itself conduct the defense of an Indemnified Claim against it or to conduct any other response itself, the Contractor shall reimburse the MBTA for all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by the MBTA in connection with the MBTA's defense of the Indemnified Claim against it and/or the conduct of all response actions. If the MBTA decides to have the Contractor defend the Indemnified Claim or handle the response action, the MBTA shall notify the Contractor of that decision in writing. In such instances, the Contractor shall bear the entire cost thereof and shall have sole control of the defense of any Indemnified Claim and all negotiations for its settlement or compromise provided that the MBTA is fully indemnified by the Contractor and that the settlement or compromise shall not include the admission of guilt or comparable plea, wrongdoing or negligence, the permitting or imposition of civil or criminal penalties or indictments, the entering of consent decrees or orders of any kind by the Contractor on behalf of the MBTA, or any other action that would materially prejudice the rights of the MBTA without the MBTA's express written approval. The MBTA shall cooperate fully with the Contractor in the defense of any Indemnified Claim.

5.27.3 **Insurance to be Carried by the Contractor.** The Contractor will carry and maintain, throughout the term of the Contract, including any extension thereof, all insurance required under this section.

5.27.3.1 **Commercial General Liability Insurance.** The Contractor shall carry and maintain Commercial General Liability insuring the

Contractor and the MBTA, and the Contractor's subcontractors and agents for all activities allowed hereunder including the Contractor's indemnification obligations with minimum liability coverage for personal injury, bodily injury, and property damage with limits not less than One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) in aggregate. Such insurance shall include:

- (a) Coverage for the "X, C, U" hazards (explosion, collapse, underground); and
- (b) Completed operations hazard for a period of at least two (2) years following acceptance by the Authority or the completed Contract.

5.27.3.2 Automobile Liability Insurance. The Contractor shall carry and maintain Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000) combined single limit covering the use of all vehicles owned, non-owned, hired, rented or leased by the Contractor and its subcontractors and agents which are not covered under the Contractors' Commercial General Liability Insurance.

5.27.3.3 Workers' Compensation Insurance. The Contractor shall carry and maintain Worker's Compensation Insurance, including Employers Liability Insurance as provided by Massachusetts General Laws, Chapter 152, as amended, covering all work and services performed under the Contract. Such insurance shall contain a waiver of any and all subrogation rights against the MBTA.

5.27.3.4 Umbrella Liability Insurance. The Contractor shall carry and maintain Umbrella Liability Insurance with limits not less than Ten Million Dollars (\$10,000,000) per occurrence and annual aggregate covering all work and services performed under the Contract.

5.27.3.5 Railroad Protective Insurance. The Contractor shall furnish, with respect to the operations of the Contractor or any of the Contractor's subcontractors performing within the Railroad Right-Of-Way, broad form Railroad Protective Liability Insurance covering all work performed under this Contract in the amount of not less than Five Million Dollars (\$5,000,000) per occurrence, Ten Million Dollars (\$10,000,000) aggregate combined bodily injury and property damage. The Contractor shall furnish to the MBTA and railroad companies a signed original of the policy for Railroad Protective Liability prior to entry upon the railroad right-of-way. The required Railroad Protective Insurance may be provided in forms commonly referred to as AAR/AASHTO or IS/RIMA but not Oregon.

5.27.4 Insurer; Additional Insurance Requirements. The required insurance coverage hereinbefore specified shall be placed with insurance companies licensed by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of B+ or better,

shall be taken out before the Contract is commenced and be kept in full force and effect throughout the term of the Contract, shall be primary to and non-contributory to any coverage maintained by the MBTA, and shall require that the MBTA and other applicable insured's be given at least thirty (30) days advance written notice in the event of any cancellation or materially adverse change in coverage. All such required insurance shall be written on an occurrence basis form as opposed to a claim made basis form. The MBTA shall be named as an additional insured under the Commercial General Liability, Automobile Liability, and Umbrella Liability Insurance Policies. The MBTA and the applicable railroads shall be the named insured on the Railroad Protective Insurance. The Workers' Compensation Insurance Policies shall include a waiver of subrogation in favor of the MBTA. All such insurance as is required of the Contractor shall be provided by or in behalf of all subcontractors to cover their operations performed. The Contractor shall be responsible for any modifications, deviations or omissions in the compliance with these requirements by the subcontractors. At the inception date of the Contract and throughout the term of the Contract, the MBTA shall be provided with certificates of insurance evidencing that such insurance policies are in place and provide coverage as required. |

5.27.5 Cancellation of Contractor Insurance. In the event of the cancellation of any policy during the term of this Contract, or the failure to keep in effect the insurance required by this section, the MBTA may, on twenty-four (24) hours notice and at its option, procure or renew such insurance on the account of the Contractor. The Contractor agrees to repay the MBTA's expense with interest thereon at the rate of eighteen percent (18%) annually from the date of the expenditure by the MBTA.

5.28 LIMITATION OF LIABILITY

Notwithstanding anything herein to the contrary, the Contractor's maximum aggregate liability for any loss or damages (other than death or personal injury) incurred by the MBTA as a result of or in consequence of the acts or omissions of the Contractor, its employees, subcontractors or agents in the performance of services covered by this Agreement shall not exceed one hundred percent (100%) of the Contract value plus any adjusted value per executed change order; provided, however, that if the Contractor's applicable insurance coverage is greater than this amount, the limit of liability for the Contract shall be the total insurance coverage.

IT IS AGREED AND UNDERSTOOD THAT THE MBTA SHALL BE ENTITLED TO RECOVER DIRECT DAMAGES INCLUDING "BENEFIT-OF-THE-BARGAIN" EXPECTATION DAMAGES AND DAMAGES FOR BREACH OF WARRANTY SUBJECT TO THE LIMITATION OF LIABILITY, AND THAT IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF REVENUES OR LOSS OR FAILURE TO REALIZE ANTICIPATED SAVINGS OR EFFICIENCIES ARISING IN CONNECTION WITH THIS AGREEMENT.

5.29 TERMINATION OF CONTRACT AND SUSPENSION OF WORK

5.29.1 Default Termination. The Authority may, without prejudice to or waiver of any other right or remedy available to it, terminate or suspend this Agreement, in whole or in part, either immediately upon receipt of such notice by the Contractor or upon written notice to the Contractor seven (7) days prior to the

effective date of such termination or suspension for an “Event of Default” as defined hereunder.

5.29.1.1 Event of Default. An “Event of Default” means that: (i) any of the following events have occurred; (ii) MBTA has issued a notice of default to the Contractor, indicating its intention to terminate this Agreement; and (iii) the Contractor has failed to remedy the default within fifteen (15) business days after receipt of the notice.

- (a) Contractor has failed to proceed with any work under this Agreement for a period of fourteen (14) consecutive days; or
- (b) Contractor is adjudged bankrupt; or
- (c) Contractor has a receiver appointed for its property; or
- (d) Contractor assigns this Agreement or any claim there under in a manner other than that provided for in this Agreement; or
- (e) Contractor has failed to deliver satisfactory services in conformance with the terms of the Contract; or
- (f) Contractor has failed or refused to supply enough properly skilled workers or proper and/or required materials; or
- (g) Contractor has, without good cause, failed to make prompt payment to subcontractors and suppliers for labor and/or materials; or
- (h) Contractor materially disregards any laws, ordinances, rules, regulations or orders of any authority having jurisdiction over the Project; or
- (i) Contractor has breached any material term or condition of this Agreement.

5.29.1.2 Discontinuance of Work. Upon an Event of Default, the Contractor shall, unless the MBTA’s notice directs otherwise, promptly discontinue the work and make every reasonable effort to protect and preserve the work in place and, the MBTA shall have the right to have the surety or sureties, if applicable, complete the work or contract for the completion of the work. Notwithstanding the foregoing, in the event safety considerations so require, the MBTA reserves the right to terminate this Agreement immediately upon notice.

5.29.1.3 Contractor Remedies. If, in its sole discretion, the Authority terminates this Agreement in accordance with the terms set forth in this subsection, the Contractor shall have no claim for loss or damage or otherwise on account of such termination except as specifically provided herein.

5.29.1.4 Completion of Work. Upon such termination, the Authority may

without prejudice to or waiver of any other right or remedy available to it, take possession of the Project site and all materials, equipment, machinery, tools, and facilities located thereon and all materials intended for the work wherever stored, and the Authority shall have the right to finish or cause the work hereunder to be finished by whatever method the Authority may deem expedient and/or necessary. In such event, the Contractor shall not be entitled to any further payment hereunder until the work is fully completed and accepted by the Authority.

5.29.1.5 MBTA Remedies. The Contractor shall be liable to the Authority for all direct, indirect, and consequential damages and costs incurred by the Authority as a result of any Event of Default hereunder, and all reasonable expenses incurred by or on behalf of the Authority hereunder made necessary by the Contractor's default, subject always to the limitations of liability set forth in this Agreement. Any and all such damages and costs will be deducted and paid by the Authority out of any monies then due or to become due to the Contractor under this Agreement, or any part thereof. In the final accounting of the costs so incurred, the Authority shall not be held to obtain the lowest figures for completing the work called for herein or for ensuring its proper completion, and all sums actually paid will be charged to the Contractor. The MBTA shall, however, use reasonable efforts to mitigate its damage, including any liquidated damages and excess re-procurement costs arising from the Contractor's breach. In case the expenses so charged are less than the sum which would have been payable under this Agreement if the same had been completed by the Contractor, the Contractor will be entitled to receive the difference; and in case such expenses shall exceed the said sum, the Contractor shall pay the amount of the excess to the Authority upon completion of the work immediately upon demand made by the Authority.

5.29.1.6 Subsequent Determinations. If, after notice of termination of this Agreement, it is determined for any reason that the Contractor was not in default, or that default was excusable, or that the Authority's termination of this Agreement was wrongful, in any such event, any termination of this Agreement shall be converted to a Termination for Convenience under Section 5.29.3 (Termination for Convenience) hereunder, and the Contractor's sole and exclusive remedy for such wrongful termination shall be limited to the recovery permitted under said Section 5.29.3 (Termination for Convenience).

5.29.2 Termination for Default by MBTA. The Contractor may, without prejudice to or waiver of any other right or remedy available to it, terminate this Agreement in the event that the MBTA breaches any material provision of this Agreement and fails to remedy such breach within ninety (90) days after written notice from the Contractor. In the event of such termination by the Contractor, the MBTA shall promptly pay for all Accepted services performed and for all approved costs incurred in performance of the Contract up through and including the termination date.

5.29.3 Termination for Convenience. The Authority may, in its sole discretion, terminate all or any portion of this Agreement or the work required hereunder, at any time for its convenience and/or for any reason by giving written notice to the Contractor thirty (30) calendar days prior to the effective date of termination or such other period as is mutually agreed upon in advance by the parties. If the Contractor is not in default or in breach of any material term or condition of this Agreement, the Contractor shall be paid its reasonable, proper and verifiable costs in accordance with generally accepted government contracting principles as set forth in the Federal Acquisition Regulations, including demobilization and contract closeout costs, and profit on work performed and Accepted up to the time of termination to the extent previous payments made by the Authority to the Contractor have not already done so. Such payment shall be the Contractor's sole and exclusive remedy for any Termination for Convenience, and upon such payment by the Authority to the Contractor, the Authority shall have no further obligation to the Contractor. The Authority shall not be responsible for the Contractor's anticipatory profits or overhead costs attributable to unperformed work.

5.29.3.1 Discontinuance of Work. Upon receipt of notice under this subsection, the Contractor shall, unless the Authority's notice directs otherwise, promptly discontinue the work and it shall make every reasonable effort to protect and preserve the work in place, and the Contractor shall promptly submit to the Authority its request for payment under this subsection. The Contractor shall not be entitled to payment hereunder unless and until the Contractor delivers to the Authority all materials, equipment, and other items or things for which costs are sought by the Contractor hereunder. If the Contractor has any property in its possession belonging to the Authority, the Contractor shall account for same, and dispose of it in the manner the Authority directs.

5.29.3.2 Assignment of Rights. If so directed by the Authority, the Contractor shall assign to the Authority in the manner, time, and extent specified by the Authority in writing, all of the rights, title, and interest of the Contractor to any subcontracts or purchase orders, which relate to the performance of the work Terminated for Convenience, in which case, the Authority shall have the right to settle or authorize payments on any or all claims arising out of such termination.

5.29.4 Stop Work Order. Upon delivery of a written order to the Contractor, the Authority may, at any time, direct the Contractor to stop all or any part of the work called for by this Contract for periods not to exceed thirty (30) days and for any further periods to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this Section.

Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to mitigate the costs allocable to the work covered by the order during the period of work stoppage. Within a period of thirty (30) days after a Stop Work Order is delivered to the Contractor or within any extension of that period to which the parties shall have agreed the Authority shall:

5.29.4.1 Cancel the Stop Work Order; or

5.29.4.2 Terminate the work covered by such order and pay to the Contractor all reasonable termination charges.

If a Stop Work Order issued under this Section is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment will be made in the delivery schedule or Contract price, or both, and the Contract will be modified in writing accordingly, if:

5.29.4.3 The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to, their performance of any part of this Contract; and

5.29.4.4 The Contractor makes a written request for an equitable adjustment within (30) thirty days after the end of the period of work stoppage. If the Authority decides the facts justify such action, the Authority may receive and act upon such request at any time prior to final payment under the Contract.

If a Stop Work Order is not canceled and the work covered by such order is terminated hereunder, all reasonable costs resulting from the Stop Work Order will be allowed in arriving at a termination settlement.

5.29.5 Vendor Assistance Upon Termination. In the event of a termination, for whatever cause, including a breach by the MBTA, the Contractor shall provide the MBTA with transition assistance, as provided in this Agreement.

5.29.5.1 The Contractor shall provide the MBTA with reasonable training and other assistance to minimize disruption in the transition of the scope of services performed under this Agreement, including any software or systems developed, to the MBTA or a third-party designated by the MBTA. At the MBTA's option, such training shall be provided from the time of the MBTA's request to the date of termination or expiration and for up to six (6) additional months (the "**Transition Period**") following termination or expiration. In the event of a termination due to a breach by the MBTA, the Contractor shall have the right to require the MBTA pre-pay for such transition assistance services.

5.29.5.2 The Contractor acknowledges that the persons who may be most valuable to the MBTA upon any termination or expiration of this Agreement are members of the Contractor's Project Staff. The Contractor agrees that upon termination or expiration of this Agreement, the MBTA shall have the right reasonably to contact and engage members of the Project Staff for employment with respect to the System by the MBTA or its agents. This Section 5.29.5.2 shall not apply if the Agreement is terminated as a result of breach by the MBTA.

5.30 CHANGE ORDER

The MBTA may, at any time throughout the Term of the Agreement or any extensions thereof, issue a written Change Order requiring the Contractor to make changes within the general scope of the Agreement that may include additions, modifications, and improvements to the services. A Change Order shall not modify the overall purpose of this Agreement.

The Contractor may, at any time, propose in writing to the Authority for acceptance or denial,

modifications to the Contract documents, which will benefit the Authority. The Authority shall review the Contractor's proposal and may request such modifications. Denial of a proposed modification shall neither provide the Contractor with any basis for a claim for damages nor release the Contractor from contractual responsibilities.

If the Change Order issued by the MBTA under this Section 5.30 (Change Order) causes an increase or decrease in the Contractor's cost to provide the services and/or requires a change to the schedule that, in the MBTA's reasonable discretion, is determined to be necessary, an equitable adjustment will be made and incorporated into this Agreement.

5.30.1 Change Order Notice. Upon receipt of a Change Order issued by the MBTA, the Contractor shall within ten (10) business days of receipt of the Order give written notice (including preliminary cost and time estimates) to the Authority stating the Change Order to be either an alteration to, deviation from, addition to, or deletion from the Contract. Within thirty (30) days of receipt of the Order or other time period mutually agreed to by the Authority and the Contractor, the Contractor shall submit a detailed Change Order proposal, which includes the following information:

5.30.1.1 Description of change and details of work to be done.

5.30.1.2 Detailed cost and pricing data based on generally accepted cost principles such as the Federal Acquisition Regulation (FAR) Part 31 to include material, labor, overhead and profit. The cost detail should be comprehensive and readily traceable into the Contractor's accounting records and underlying supporting documentation. The Contractor's profit should also be disclosed separately so that a judgment can be made relative to the reasonableness given the technical level of work and the associated risk. Profit will be allowed up to a maximum 10% of the direct cost elements for labor, fringe benefits, and overhead, and up to a maximum of 5% for direct cost elements of material, equipment, and other.

5.30.1.3 Statement of additional time, if any, required for the completion of the Contract by reason of the Change Order. The Contractor's statement of additional time shall include a detailed schedule analysis identifying which schedule activities and key milestones are impacted.

5.30.2 Change Order Authorization

5.30.2.1 The Contractor shall not proceed with any Change Order work until the Authority gives written authorization.

5.30.2.2 The Authority shall not accept any responsibility whatsoever for Change Order work performed by the Contractor without proper authorization by the Authority.

5.30.2.3 All Change Orders shall be executed in accordance with the terms and conditions of the Contract.

5.30.2.4 All executed Change Orders shall constitute the entire agreement between the Authority and the Contractor with regard to any and all costs and time extensions related to Change Order work.

5.31 CLAIMS

The Contractor shall give written notice to the MBTA of a potential claim no later than thirty (30) calendar days from any act or event for which it intends to seek adjustment in payment, terms, or schedule, and for which said matter is not disposed of by agreement through a Change Order (see Section 5.30). The written notice shall set forth the basis of the claim in sufficient detail to allow the MBTA to thoroughly evaluate the situation and shall also provide an estimate of any costs involved. The Contractor shall also furnish any additional information relating to the claim as the MBTA may reasonably request. The MBTA shall respond to the claim within thirty (30) calendar days of receipt of said claim.

It is an essential part of this Contract that the Contractor performs fully, entirely, and in an acceptable manner, the work required under the Contract within the times stipulated. Therefore, the Contractor hereby agrees that it shall have no claim for damages of any kind on account of any delay in commencement of the work or any delay or suspension of any portion thereof, except as hereinafter provided.

- 5.31.1** In case the commencement of the work is delayed or any part thereof is delayed or suspended by the Authority (except for reasons caused the fault or neglect of the Contractor), the Contractor shall be granted an extension of time in which to complete the work, less a reasonable period of time within which the Contractor could have done necessary preliminary work.
- 5.31.2** If performance of all or any major portion of the work is suspended, delayed or interrupted for any unreasonable period of time by an act or failure to act by the Authority in the administration of the Contract as required by the Contract, and without the fault or negligence of the Contractor, an adjustment to the Contract shall be made by the Authority, in accordance with the Change Order provisions of Section 5.30 (Change Order). The Contractual adjustment may be for: (1) an extension of time; and/or (2) an increase or decrease in the actual cost of performance of the Contract.
- 5.31.3** No adjustments to the Contract shall be made if performance by the Contractor would have been prevented by other causes even if the work had not been suspended, delayed or interrupted by the Authority.
- 5.31.4** Any dispute concerning whether the delay or suspension is unreasonable or any other question of fact arising under this Section 5.31 (Claims) shall be determined by the Authority. Such determination shall be a condition precedent to the right of the Contractor to receive any cost adjustment hereunder.
- 5.31.5** The decision of the Authority shall be final and conclusive unless within thirty (30) days of receipt of the Authority's decision the Contractor mails or delivers to the Authority a written notice of rejection, in which event the decision of the Authority shall have no further effect and either party may have the dispute and the subject matter thereof settled in accordance with the provision of Section 5.32 (Disputes).

5.32 DISPUTES

The MBTA and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that

level, a procedure for review and action on such disputes by appropriate management level officials within the MBTA and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court *de novo* and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the Authority's direction or decisions made thereof.

5.33 EXAMINATION AND AUDIT

The Contractor shall maintain and require its subcontractors to maintain, in accordance with generally accepted accounting principles, books, records, and other compilations of data pertaining to the Contractor's services, delivery of materials, and other items in such detail as to substantiate claims for payment or for collections on behalf of the Authority under this Contract. Upon reasonable advance written notice, the General Manager of the MBTA or his designated representative (including private auditing firm) shall have the right to examine and audit all data and records of the Contractor relating to its performance under the Contract.

The Contractor, upon seven (7) days' advance written notice by the MBTA, shall make available at its local office to MBTA personnel, its representatives or other authorized agencies, all records and data maintained by the Contractor for the purposes of performing financial, compliance, and performance audits related to the reimbursable costs under this Agreement. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at 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 until the disposition of all such litigation, appeals, claims or exceptions related thereto. For the purposes of this section, "Governmental Authority" includes the MBTA, FTA, United States DOT, and United State Comptroller General and, additionally, includes not only the right of access to records but also the right to copy records.

5.34 FORCE MAJEURE

Neither party hereto shall be in default in the performance of its obligations to the extent that the performance of any such obligation is prevented or delayed by a Force Majeure Event. Should Contractor's services be delayed by a Force Majeure Event, the Agreement and Contractor's schedule for completion of tasks affected by such delay shall be extended. "Force Majeure" or a "Force Majeure Event" is an event beyond the control of a party and not due to the act or omission of such party, which materially and adversely affects the party's ability to meet its obligations under the Agreement and which event or the effects of the event would not have been anticipated and avoided by a prudent party acting commercially reasonably. Force Majeure Events may include, but are not limited to, Acts of God; acts or failures to act of government agencies and delays related to the MBTA in either their contractual, sovereign or regulatory capacities; fires, floods, earthquakes, epidemics quarantines, strikes, wars, riots, terrorism, interruptions of energy supply or civil disturbances. Within thirty (30) calendar days after the last day of delay, the Contractor shall furnish the MBTA with detailed information concerning the circumstances of the delay, the number of days actually delayed, the appropriate Agreement references, and the measures taken to prevent or minimize the delay. Upon review of the detailed information concerning the delay, the MBTA shall assess the impact the delay may have on price and schedule of the work and modify the Contract as needed in accordance with Section 5.30 (Change Order).

5.35 MUTUAL GENERAL REPRESENTATIONS AND WARRANTIES

- 5.35.1 Corporate Power.** Each party represents (a) that it is duly incorporated, validly existing and in good standing under the laws of the state of its incorporation and (b) that it has full corporate power to own, lease, and operate its properties and assets, to conduct its business as such business is currently being conducted, and to consummate the transactions contemplated by this Agreement.
- 5.35.2 Authority.** Each party represents that this Agreement has been duly authorized, executed and delivered and constitutes a valid and binding Agreement, enforceable against such party in accordance with this Agreement's terms, subject to the effect of bankruptcy, insolvency, moratorium and other laws now or hereafter in effect relating to and affecting the rights of creditors generally and to equitable principles of general application.
- 5.35.3 No Breaches.** Each party represents that neither the execution nor delivery of this Agreement, nor the consummation of any of the transactions contemplated herein, will result in the breach of any term or provision of, or constitute a default under, any charter provision or bylaw, or material agreement (subject to any applicable required consent), order, law, rule or regulation to which it is a party or which is otherwise applicable to it.

5.36 INTELLECTUAL PROPERTY RIGHTS

The Contractor shall grant the Authority intellectual property access and licenses deemed necessary for the work performed under this Agreement. The terms of an intellectual property agreement and software license rights are generally defined in the Technical Specifications and will be finalized prior to execution of this Agreement.

5.37 LIQUIDATED DAMAGES

It is agreed by the parties to this Contract that in the case that the Contractor defaults in the Contract and is unable to provide the required service, the Authority will sustain a loss or damage. Since it is and will be impracticable and extremely difficult to ascertain and determine the additional loss or damage over and above actual damages which the Authority will suffer in the event of and by reason of such disruption in service, the parties agree that the Contractor will pay to the Authority the sum of **\$XXXX** per day as liquidated damages for the additional cost incurred by the Authority. It is agreed that this Section shall be construed and treated by the parties to the Contract not as imposing a penalty upon the Contractor for failing fully to complete the work as agreed in the proposal nor as it may have been intended, but as liquidated damages to compensate the Authority for all costs, excluding actual damages, incurred by the Authority because of the failure of the Contractor to fully complete the certain provisions of the Contract as adjusted.

The Contractor will be granted an extension of time and will not be assessed with liquidated damages for any excusable delay (e.g., Force Majeure Event), including actions of the MBTA. |

6. FEDERAL REQUIREMENTS

6.1 GOVERNING LAW

6.1.1 Procurement under this Contract is supported with Federal assistance awarded by the FTA through a Grant Agreement with the Authority. Any violation of a Federal requirement applicable to this procurement may result in penalties to the violating party.

6.1.2 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 Agreement (Form FTA MA (10) dated October, 2012) 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.

6.1.3 Under the FTA Guidelines, a protest to FTA must be filed in accordance with FTA Circular 4220.1F.

6.1.3.1 Reviews of protests by the FTA will be limited to a grantee's (e.g., the Authority) failure to have or follow its protest procedures, or its failure to review a complaint or protest; or violations of Federal law or regulation.

6.1.3.2 An appeal to the FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester learned or should have learned of an adverse decision by the grantee or other basis of appeal to the FTA.

NOTE: The Authority reserves the right to proceed with the procurement, in spite of the pending protest as set forth in FTA Circular 4220.1F, if such action is deemed in the best interest of the Authority.

6.2 CIVIL RIGHTS AND EQUAL OPPORTUNITY

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.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

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

Equal Employment Opportunity – The following equal employment opportunity requirements

apply to the underlying contract:

- 6.2.2 Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- 6.2.3 Age.** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- 6.2.4 Disabilities.** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- 6.2.5** The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

6.3 DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

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

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

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

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

6.4 LOBBYING

The Contractor shall comply with "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352 (see Section 7.18).

6.5 NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

Contracts between the Authority and third parties, including all proposals thereof, shall be governed by applicable Federal requirements and standards as set forth in FTA Circular 4220.1F entitled "Third Party Contracting Requirements."

The Authority and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the MBTA, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

6.6 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

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

6.6.2 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.

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

6.7 ENERGY CONSERVATION

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

6.8 CLEAN AIR

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

6.9 CLEAN WATER

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

6.10 CARGO PREFERENCE

The Contractor agrees:

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

6.11 FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

6.12 BUY AMERICA

This solicitation and the resulting Contract are subject to the Buy America requirements of 49 U.S.C. §5323(j) and the Federal Transit Administration's implementing regulations found at 49 C.F.R. Part 661. These regulations require, as a matter of responsiveness, that the Bidder submit with its offer a completed certification in accordance with Part 661.6 or 661.12, as appropriate (see Section 7.19). Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

6.13 RECYCLED PRODUCTS

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 24.

6.14 INCORPORATION OF FTA TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by the US DOT, whether or not expressly set forth in the (preceding) procurement provisions. All contractual provisions required by the US DOT, as set forth in the FTA's Circular 4220.1F 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, unless such order of precedence should be deemed to create a violation of state law of local ordinance. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any MBTA requests which would cause the MBTA to be in violation of the FTA terms and conditions.

6.15 DAVIS BACON AND COPELAND ANTI-KICKBACK ACTS

(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 quarterly) 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 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 subcontractors 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 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 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 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 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.

(v)(A) The contracting officer shall require that any class of laborers or mechanics 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) 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.

(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, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 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 with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (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.

(2) **Withholding** - The 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 subcontractor

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, the 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 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 the 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 subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor 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 subcontractor 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 subcontractor 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 subcontractor 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 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 subcontractor'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 subcontractor 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 subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor 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 subcontractor 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 subcontractors) 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 firm who has an interest in the contractor's firm is a person or firm 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 firm 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.

7. SUBMISSION FORMS

Bidders responding to this IFB must fully complete, sign, and submit the forms contained herein. All forms must be current and, if requested, must be notarized. Bidders shall not: (1) leave any section of a form blank; (2) mark any section of a form not applicable (N/A); (3) make reference to other documents; or (4) make any response conditional.

- Debarment, Suspension, Ineligibility And Voluntary Exclusion Form (see Section 7.0)
- Primary Covered Transaction Form 49 CFR Part 29-Appendix A (see Section 7.1)
- Lower Tier Covered Transaction Form 49 CFR Part 29-Appendix B (see Section 7.2)
- Confidential Information Agreement (see Section 7.3)
- Pre-Award Evaluation Data Form (see Section 7.4)
- Addenda Acknowledgement Form (see Section 7.5)
- Conflict of Interest Certification (see Section 7.6)
- DBE Utilization Form (see Section 7.7)
- DBE Participation Schedule (see Section 7.8)
- DBE Letter of Intent (see Section 7.9)
- DBE Affidavit (see Section 7.10)
- DBE Reporting Form (see Section 7.10A)
- Performance Guarantee Certification (see Section 7.11)
- Security Requirements Certification (see Section 7.12)
- Right-of-Way Safety Training Requirements Certification (see Section 7.13)
- Certification of Compliance with Regulation 102 CMR 12.00: Dependent Care Assistance Program Including Child Care (see Section 7.14)
- Right-To-Know Law Certification (see Section 7.15)
- Certification Regarding Companies Doing Business With Or In Northern Ireland (see Section 7.16)
- Affidavit of Non-Collusion (see Section 7.17)
- Certification Regarding Lobbying (see Section 7.18)
- Buy America Certification (see Section 7.19)
- Prohibit use Of Undocumented Workers Certification (see Section 7.20)

The MBTA reserves the right to request additional information for clarification purposes, either written or oral, from Bidders prior to award.

**7.0 DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY
EXCLUSION FORM**

The Contractor shall meet the requirements of 49 C.F.R. Part 29, as updated on November 26, 2003. 49 C.F.R. Part 29 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). The provisions of Part 29 apply to all contracts and subcontracts at any level expected to equal or exceed \$25,000. This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. As such, the Contractor is required to verify that none of its principals (defined at 49 C.F.R. 29.995), affiliates (defined at 49 CFR 29.905) or subcontractors it proposes to contract with to perform the work that is the subject of this solicitation are excluded or disqualified as defined at 49 C.F.R. 29.940 and 29.945. Contractors can do this by (a) checking the Excluded Parties List System, (b) collecting a certification, or (c) adding a clause or condition to the relevant contract or subcontract.

By signing this form, the Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by the **MBTA**. If it is later determined that the Bidder knowingly rendered an erroneous certification, in addition to remedies available to the **MBTA**, the Federal Government may pursue available remedies, including, but not limited to, suspension and/or debarment. The contractor agrees to comply with the requirements of 49 C.F.R. 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder further agrees to include a provision requiring such compliance in its transactions.

THE CONTACTOR CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

_____ Contractor

_____ Signature and Title of Authorized Official

7.1 49 CFR Part 29 Appendix A

7.1 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

Instructions For Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ' Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- Lower Tier Covered Transaction,' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart

9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
 - (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification;
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
 - (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Signature/Authorized Certifying Official

Typed Name and Title

Applicant/Organization

Date Signed

7.2 49 CFR Part 29 Appendix B

7.2 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

Instructions For Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a

prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
 - (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 - (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Signature/Authorized Certifying Official

Typed Name and Title

Applicant/Organization

Date Signed

7.3 CONFIDENTIAL INFORMATION AGREEMENT

BY THIS AGREEMENT, effective _____, the Massachusetts Bay Transportation Authority (hereinafter "MBTA" or Authority") and _____ (hereinafter "_____") agree as follows:

MBTA will provide certain Confidential Information related to the _____ Project with potential bidders. MBTA will provide this information for use during the proposal preparation period in written or electronic form and said Confidential Information shall be identified as confidential when disclosed.

During the proposal preparation period, _____ will treat Confidential Information received from the MBTA as such and agrees not sell, transfer, disclose, display or otherwise make available to anyone any part of such Confidential Information without prior written consent of the Authority. _____ further agrees to limit access to MBTA Confidential Information to those of its employees, subcontractors, suppliers, and agents reasonably requiring access for the purposes of preparing a proposal in response to RFP No. _____, and who are obligated to treat the information in the way provided for herein with regard to confidentiality, use, and non-disclosure.

_____ agrees to return or destroy in an MBTA-approved manner all Confidential Information received from the MBTA at any time upon request by the MBTA.

This Agreement shall be effective for the proposal preparation period of _____ through _____, unless otherwise extended by the MBTA.

The foregoing is understood and agreed to.

**MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY**

BIDDER

By: _____

Name: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

7.4 PRE-AWARD EVALUATION DATA

PROJECT DESCRIPTION: _____

1. Name of Firm: _____

2. Address: _____

3. Contact Name: _____ Telephone Number: _____ Email: _____

4. Individual Partnership Corporation Joint Venture

5. Date Organized: _____ State Incorporated: _____

6. Names of Officers or Partners:

7. How long has your firm been in business under present name? _____

8. Attach as SCHEDULE ONE 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.

9. Attach as SCHEDULE TWO a list of similar past contracts, each with contract amount, name of contracting party, and type of work completed in the last two years.

10. Attach as SCHEDULE THREE a detailed explanation for each occurrence in the last two years where your organization was denied an award where it was the low Bidder.

11. Attach as SCHEDULE FOUR a detailed explanation for each occurrence in the last two years where your organization failed to complete contract where it was the low Bidder.

12. Attach as SCHEDULE FIVE a list of contracts, if any, on which failure to complete within the specified time resulted in the assessment of liquidated damages.

13. Attach as SCHEDULE SIX financial statements from the last three (3) years of operation, including Financial Position (Balance Sheet), Results of Operations (Income Statement), Changes in Financial Position (Net Changes in Resources), and Current and Retained Earnings.

14. Attach as SCHEDULE SEVEN a statement by the financial institutions with which the Bidder conducts business.
15. Attach as SCHEDULE EIGHT 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 RFP.
16. If the contractor or subcontractor is a joint venture, submit this Pre-Award Evaluation Data form for each member of the joint venture.

I hereby certify that the above information is true and accurate to the best of my knowledge:

BIDDER'S NAME: _____

AUTHORIZED SIGNATURE: _____

TITLE: _____

DATE: _____

7.5 ADDENDA ACKNOWLEDGEMENT FORM

Bidder acknowledges receipt of the following amendments to RFP No: _____.

Amendment No. _____ Dated: _____

Amendment No. _____ Dated: _____

Amendment No. _____ Dated: _____

Amendment No. _____ Dated: _____

Amendment No. _____ Dated: _____

Amendment No. _____ Dated: _____

Amendment No. _____ Dated: _____

BIDDER'S NAME: _____

AUTHORIZED SIGNATURE: _____

TITLE: _____

DATE: _____

7.6 CONFLICT OF INTEREST CERTIFICATION

The undersigned hereby certifies that the Bidder shall comply with Massachusetts Conflict of Interest Laws, G.L. c. 268A and with the Authority's Conflict of Interest terms stated in Section 3.19 of these Contract Documents.

BIDDER'S NAME: _____

AUTHORIZED SIGNATURE: _____

TITLE: _____

DATE: _____

7.7 DBE UTILIZATION FORM

The undersigned Bidder has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The Bidder is committed to a minimum of ____% DBE utilization on this contract.

_____ The Bidder (if unable to meet the DBE goal of _____%) is committed to a minimum of _____% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

BIDDER'S NAME: _____

AUTHORIZED SIGNATURE: _____

TITLE: _____

DATE: _____

7.8 DBE PARTICIPATION SCHEDULE

The Bidder shall complete the following information for all DBE's participating in the contract that comprises the DBE Utilization percent stated in Section 7.7 (DBE Utilization Form) above. The Bidder shall also furnish the name and telephone number of the appropriate contact person should the Authority have any questions in relation to the information furnished herein.

DBE IDENTIFICATION AND INFORMATION FORM

Name and Address	Contact Name and Telephone Number	Participation Percent (Of Total Contract Value)	Description Of Work To Be Performed	NAICS Code(s)

(Use additional sheet of paper, if necessary.)

PRIME COMPANY NAME: _____

NAME OF CONTACT PERSON: _____

TELEPHONE NUMBER: _____

7.9 DBE LETTER OF INTENT

Name of Bidder Firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE Firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Specify in detail particular work items or parts thereof to be performed and specify for each work item the applicable NCAIS code for which the undersigned is certified:

The Bidder is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$_____.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: _____
(Signature and Title of Authorized Official)

Date: _____

If the Bidder does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmations shall be null and void.

(Bidder shall submit this page for each DBE subcontractor.)

7.10 DBE AFFIDAVIT

STATE OF _____ Date: _____

COUNTY OF _____ S.S.

The undersigned being duly sworn, deposes and says that he/she is the

(sole owner, partner, president, treasurer or other duly authorized official of a corporation)

of _____
(Name of DBE)

and certifies that since the date of its certification by

(SDO)

the certification has not been revoked nor has it expired nor has there been any change in the minority status of

(Name of DBE)

(Signature and Title of Person Making Affidavit)

Sworn to before me this _____ day of _____ 20____

Notary Public: _____

My commission expires: _____

NOTE: The Bidder must attach the DBE's most recent certification letter or document to this affidavit.

7.10 (A) DBE REPORTING FORM

Submit to: Name:
Government Compliance Officer
MassDOT Office of Civil Rights

**MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY
DISADVANTAGED BUSINESS
ENTERPRISES (DBE)
ACTIVITY REPORT**

Date: _____

DBE Goal _____%

CONTRACT

No.: _____ **DBE COMMITMENT VALUE** \$ _____
TOTAL AMOUNT FOR DBE PARTICIPATION \$ _____

CONTRACTOR: _____ **TOTAL AMOUNT FOR DBE PARTICIPATION**
PAID TO DATE \$ _____

Contractor or Subcontractor	DBE Supplier	Type of Service and/or Material	Supplier Award Amount	Supplier Award Amount Paid		Total
				Date	Amount	
TOTAL			\$0.00	\$0.00	\$0.00	\$0.00

**10 Park Plaza, Room 3800
Boston, MA 02116**

7.11 PERFORMANCE GUARANTEE CERTIFICATION

The undersigned hereby certifies that the Bidder shall provide a Performance Guarantee in accordance with the Specifications.

Designate below which form of Performance Guarantee shall be provided:

_____ Performance Bond

_____ Irrevocable Stand-By-Letter of Credit

BIDDER'S NAME: _____

AUTHORIZED SIGNATURE: _____

TITLE: _____

DATE: _____

7.11.1 Performance Bond

KNOW ALL MEN BY THESE PRESENTS: that _____

_____ (Insert
full name and address and legal title of Contractor) as Principal, hereinafter called Contractor, and

_____ (Insert full name and address or legal title of
Surety) as Surety, hereinafter called Surety, are held and firmly bound unto Massachusetts Bay
Transportation Authority as Oblige, hereinafter called Authority, in the amount of _____
Dollars (\$_____) for the payment whereof Contractor and Surety bind themselves, their
heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated _____, 20____, entered into a
contract with the Authority for MBTA Contract No. _____, which contract is by reference made a
part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor
shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it
shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Authority.

Whenever Contractor shall be, and is declared by the Authority to be in default under the Contract,
the Authority having performed Authority's obligations there under, the Surety may promptly remedy the
default, or shall promptly

1. Complete the Contract in accordance with its terms and conditions, or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and
conditions, and upon determination by Surety of the lowest responsible bidder, or, if the
Authority elects, upon determination by the Authority and the Surety jointly of the lowest
responsible bidder, arrange for a contract between such bidder and the Authority, and
make available as Work progresses (even though there should be a default or a succession
of defaults under the contract or contracts of completion arranged under this paragraph)
sufficient funds to pay the cost of completion less the balance of the contract price; but not
exceeding, the amount set forth in the first paragraph hereof. The term "balance of the
contract price," as used in this paragraph, shall mean the total amount payable by the
Authority to Contractor under the Contract and any amendments thereto, less the amount
properly paid by the Authority to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on
which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Authority or the heirs, executors, administrators or successors of the Authority.

Signed and sealed this _____ day of _____ 20____.

WITNESS

PRINCIPAL

_____ (SEAL)

_____ (Title)

WITNESS

SURETY

_____ (SEAL)

_____ (Title)

Attach hereto proof of authority of officers or agents to sign bond.

7.11.2 Irrevocable Stand-By Letter Of Credit Certificate

The undersigned states that he/she is _____ of the
(Title)

(Name of Beneficiary) (The "Beneficiary") and hereby

Certifies on behalf of the Beneficiary to _____ (the "Bank), with
(Name of Issuing Bank)

Reference to Irrevocable Standby Letter of Credit No. _____ issued by the

Bank (the "Letter of Credit"), that:

1. The undersigned is duly authorized to execute and deliver this certificate on behalf of the Beneficiary.
2. The Beneficiary is making a drawing under the Letter of Credit.
3. An Event of Default has occurred under Contract No. _____.
4. The amount of the draft presented with this certificate does not exceed the total maximum amount drawable today under the Letter of Credit as provided therein.

IN WITNESS WHEREOF, this certificate is executed this _____ day of _____, 20____.

(NAME OF BENEFICIARY)

By: _____

Its: _____

7.11.3 Bank Draft

FOR VALUE RECEIVED

Pay on presentment to _____ the sum of _____.
(Name of Beneficiary) Dollars (\$)

Charge the Account of _____ Irrevocably Standby Letter of
(Name of Issuing Bank)

Credit No. _____ Dated: _____, 20_____.

To _____
(Name of Issuing Bank)

NAME OF BENEFICIARY

By _____

Its _____

7.12 SECURITY REQUIREMENTS CERTIFICATION

The undersigned hereby certifies that the Bidder, if awarded this Contract, shall comply with the MBTA's Security Requirements as stated in Section 5.5 of these Contract Documents.

BIDDER'S NAME: _____

AUTHORIZED SIGNATURE: _____

TITLE: _____

DATE: _____

7.13 RIGHT-OF-WAY SAFETY TRAINING REQUIREMENTS CERTIFICATION

The undersigned hereby certifies that the Bidder, if awarded this Contract, shall be in full compliance with the MBTA Right-of-Way Safety Awareness Training Requirements as stated in Section 5.6 of these Contract Documents.

BIDDER'S NAME: _____

AUTHORIZED SIGNATURE: _____

TITLE: _____

DATE: _____

**7.14 CERTIFICATION OF COMPLIANCE WITH REGULATION 102 CMR 12.00
DEPENDENT CARE ASSISTANCE PROGRAM INCLUDING CHILD CARE**

The undersigned hereby certifies that the Bidder is in compliance with Section 7 of Chapter 521 of the Acts of 1990, as amended by Chapter 329 of the Acts of 1991, and the regulations issued pursuant thereto, 102 CMR 12.00, and that the Bidder is either a qualified employer having fifty (50) or more full time employees and has established a dependent care assistance program, or offers its employees child care tuition assistance or on-site or near site subsidized child care placements, or is an exempt employer.

BIDDER'S NAME: _____

AUTHORIZED SIGNATURE: _____

TITLE: _____

DATE: _____

7.15 RIGHT-TO-KNOW LAW CERTIFICATION

The undersigned hereby certifies that the Bidder, if awarded this Contract, will fully comply with the Massachusetts Right-to-Know Law, Chapter 470 of the Acts of 1983 (the “Act”), including:

1. Obtaining a Materials Safety Data Sheet, (MSDS) for all substances or mixtures of substances that appear on the Massachusetts Substance List that the Contractor or any of its subcontractors brings to or uses on the work site and will keep a copy of that MSDS on the work site of this Contract.
2. Labeling each container of a substance or mixture of substances on the Massachusetts Substance List as required in Section 7 of the Act.
3. Providing the same training and non-technical instruction that the Contractor is required to provide under Section 15 of the Act to all MBTA employees who are exposed to the substance or to the mixture of substances. Training shall include instruction of the nature and effects of any substance or mixture of substances listed on the Massachusetts Substance List, which the Offeror or any of his/her subcontractors brings to or uses on the worksite.
4. Providing to MBTA employees on the work site the same protective equipment that the Contractor and its subcontractors provide to its employees.

BIDDER'S NAME: _____

AUTHORIZED SIGNATURE: _____

TITLE: _____

DATE: _____

7.16 CERTIFICATION REGARDING COMPANIES DOING BUSINESS WITH OR IN NORTHERN IRELAND

Pursuant to M.G.L. c.7, §§22C-F, the undersigned, being an authorized representative of the Bidder, hereby certifies under the pains and penalties of perjury that (check applicable item):

1. _____ The Bidder does not employ ten or more employees in an office or other facility located in Northern Ireland.
2. _____ The Bidder does employ ten or more employees in an office or other facility located in Northern Ireland and certifies that:
 - (a) _____ The Bidder does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and
 - (b) _____ The Bidder promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and
 - (c) _____ The Bidder 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 Northern Ireland.
3. _____ The Bidder does not certify to either 1 or 2. (a-c) above.

Signed under the pains and penalties of perjury this _____ day of _____, _____

BIDDER'S NAME: _____

AUTHORIZED SIGNATURE: _____

TITLE: _____

DATE: _____

7.17 AFFIDAVIT OF NON-COLLUSION

It shall be understood that any bid submitted to the MBTA 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.

STATE OF _____ Date: _____

COUNTY OF _____ S.S.

The undersigned being duly sworn, deposes and says that he/she is the

(Sole Owner; Partner, President, Treasurer, or
Other Duty Authorized Official of a Corporation)

of _____
(Name of Firm as Appearing in Submitted Proposal)

and works in _____
(City/Town)

and certifies under penalties of perjury that this proposal 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.

(Signature and Title of Person Making Affidavit)

Sworn to before me this _____ day of _____, 20 ____

Notary Public: _____

My commission expires: _____

7.18 CERTIFICATION REGARDING LOBBYING

Under the 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 parts 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 office or employee of any 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 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 the recipient.

I, _____, hereby certify on behalf of _____
(Name and Title) (Bidder)

that to the best of my knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

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

BIDDER'S NAME: _____

AUTHORIZED SIGNATURE: _____

TITLE: _____

DATE: _____

7.19 BUY AMERICA CERTIFICATION

The Bidder agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be assembled in the United States and 60 percent (60%) domestic content.

A bidder must submit to the FTA recipient the appropriate Buy America Certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The Bidder hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The Bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The Bidder hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The Bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

7.20 PROHIBIT USE OF UNDOCUMENTED WORKERS CERTIFICATION

The Bidder agrees to comply with Massachusetts Executive Order 481, which applies to 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. As it is the policy of the Executive Branch to prohibit the use of undocumented workers in connection with the performance of state contracts, all contracts entered into after February 23, 2007 require that contractors, as a condition of receiving Commonwealth funds under any Executive Branch contract, make the following certification:

CERTIFICATION:

As evidenced by the signature of the Bidder’s Authorized Signatory below, the Bidder certifies under the pains and penalties of perjury that the Bidder shall not knowingly use undocumented workers in connection with the performance of all Executive Branch contracts; that pursuant to federal requirements, the Bidder shall verify the immigration status of all workers assigned to such contracts without engaging in unlawful discrimination; and that the Bidder shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker(s). The Bidder understands and agrees that breach of any of these terms during the period of each contract may be regarded as a material breach, subjecting the Bidder to sanctions, including but not limited to monetary penalties, withholding of payments, contract suspension or termination.

_____ Date: _____
Company Name

_____ Bidder Authorizing Signature

_____ Print Name

Title: _____ Telephone: _____

Fax: _____ Email: _____

The Bidder is required to sign this Certification only once and may provide a copy of the signed Certification for any contract executed with an Executive Branch Department. A copy of this signed Certification must be attached to the “record copy” of all contracts with this Bidder that are filed with the contracting Department.

**7.21 VENDOR ADDRESS AND AUTOMATED CLEARING HOUSE (ACH)
INFORMATION FORM**

*****IF YOU OR YOUR DBE SUBCONTRACTOR ARE NOT CURRENTLY REGISTERED AS MBTA
VENDORS THIS FORM MUST BE COMPLETED*****

Vendor Name: _____

REMIT TO ADDRESS:

Address 1 _____

Address 2 _____

City _____

State _____

Zip Code _____

ORDER TO ADDRESS:

Address 1 _____

Address 2 _____

City _____

State _____

Zip Code _____

CONTACT PERSON:

Name _____

Phone # _____

Email _____

Fax # _____

Federal Tax ID# _____

TO BE COMPLETED BY ODCR:

SDO Ethnicity Code: _____

ODCR Signature: _____

ACH Information:

Bank Name _____

Bank Routing # _____

Bank Account # _____

Email address to which ACH advice should be sent: _____

Materials Buyer: _____

**Please e-mail this completed form along with the W-9 to accountspayable@mbta.com
or fax to (617) 222-3389.**