



**MASSACHUSETTS
BAY
TRANSPORTATION
AUTHORITY**

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

PROCUREMENT AND LOGISTICS

REQUEST FOR PROPOSALS

RFP NO. 143-16

OVERHAUL OF TEN (10) F40PH-2C/F40PHM-2C LOCOMOTIVES

PROJECT COORDINATOR: NICHOLAS PALMER

DATE ISSUED: NOVEMBER 9, 2016

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ATTACHMENTS:

ATTACHMENT #1 – GENERAL TERMS AND CONDITIONS

ATTACHMENT #2 – ABBREVIATIONS AND DEFINITIONS

ATTACHMENT #3 – TECHNICAL PROPOSAL FORMS

REQUEST FOR PROPOSALS NOTICE

Massachusetts Bay Transportation Authority
Materials Department, Room 2810
Ten Park Plaza, Boston, MA 02116
Chief Procurement Officer
Gerard J. Polcari

Overhaul of Ten (10) F40PH-2C/F40PHM-2C Locomotives
RFP No.: 143-16
Date: November 9, 2016

Project Coordinator: Nicholas Palmer
Tel. No.: 617-222-3401
Fax No.: 617-222-5368
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1. REQUEST FOR PROPOSAL INFORMATION

1.1 INTRODUCTION

The MBTA seeks a qualified Contractor to overhaul ten (10) F40PH-2C/F40PHM-2C locomotives. The Contract allows for the option of up to twenty six (26) additional locomotives to be overhauled. The designated locomotives shall be overhauled/remanufactured in accordance with the requirements detailed in Technical Specification No. LO17-0013 (also referred to in this document as “the Technical Specifications”). To assist the MBTA in this effort, the Authority is issuing this Request for Proposals (“RFP”) to solicit responses from qualified firms or individuals who can meet the project requirements stated herein.

This is a Competitively Negotiated Best Value - Two Phase Procurement.

1.2 DUE DATE

Sealed Proposals are due at the MBTA Procurement and Logistics Department, Ten Park Plaza, Room 2810, Boston, MA 02116, no later than December 14, 2016, by 12:00 p.m. EST/EDST for the work described herein. **PROPOSERS ARE REQUIRED TO SUBMIT A PROPOSAL IN ACCORDANCE WITH THE REQUIREMENTS OF THIS RFP, INCLUDING ALL ATTACHMENTS AND SPECIAL INSTRUCTIONS.**

THE TECHNICAL PROPOSAL AND COST PROPOSAL MUST BE COMPLETELY SEPARATE COPIES. FINANCIAL DATA SHALL BE INCLUDED IN THE COST PROPOSAL ONLY.

1.3 PRE-PROPOSAL CONFERENCE

A **Pre-Proposal Conference** will be held at the MBTA Procurement and Logistics Department, Ten Park Plaza, Room 2810, Boston, MA 02116 on: **November 29, 2016** at 10:00 A.M. Firms are advised that they need proper identification to attend the pre-proposal. Attendees should be prepared to perform a walkthrough of proposed locomotives, Attendees should contact Nicholas Palmer, Project Coordinator by email to indicate attendance.

The Authority requires a minimum Acceptance Period of one hundred and eighty (180) calendar days. “**Acceptance Period**,” for purposes of this solicitation means the number of calendar days available to the MBTA for awarding a contract after the Due Date specified in this solicitation for receipt of proposals.

1.4 CANCELLATION OF SOLICITATION

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

2. INSTRUCTIONS TO PROPOSERS

2.1 PROCUREMENT PROCESS

This is a Competitive Negotiated Best Value – Two Phase Procurement. Only those Proposers who submit Technical Proposals, which are in accordance with the specifications and submission requirements stated herein, will have the Cost Proposal opened for consideration.

2.2 SCOPE OF PROPOSAL

Pursuant to this RFP, Proposers are required to comply with the terms and conditions stated herein in order to be deemed responsive and responsible. Proposers must address all terms, conditions, and concerns listed in this RFP and describe how it plans to complete the work effort such that the Authority's requirements are fully met. Firms submitting proposals that do not meet all of the requirements listed in the RFP will not have Cost Proposal opened and/or reviewed. Failure by the Proposer to examine all information pertaining to this solicitation or participate in an on-site visit, if scheduled by the Authority, will be at the Proposers risk.

2.3 CLARIFICATIONS OF SPECIFICATIONS

Any request for clarification to, or relief from, the specifications, must be submitted in writing to the attention of the assigned Project Coordinator at the Materials Management Department's office no later than fifteen (15) business days after the pre-proposal conference.

Should the MBTA make changes to any specification, stipulation, requirement, or procedure, notification will be made to all Proposers in the form of written Addenda. No officer, agent, or employee of the MBTA is authorized to amend any provision contained in this RFP, including the specifications, unless such amendment is issued as an Addendum and sent to all Proposers in accordance with this Section 2.3 (Clarification of Specifications).

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

2.4 EXTENSION OF PROPOSAL DUE DATE

Requests for an extension of the Proposal Due Date must be submitted in writing to the attention of the Project Coordinator no later than ten (10) business days prior to the Due Date. The MBTA reserves the right to determine whether an extension is justified. All Proposers will be notified in writing of any extension granted.

2.5 ACKNOWLEDGEMENT OF ADDENDA

Proposers shall acknowledge written Addenda by signing and returning the Addenda Acknowledgment form (see Attachment #3) with the Proposer's proposal. The Proposer is responsible for verifying the number of Addenda issued, which is available at: www.mbta.com, under "Doing Business with the T."

2.6 SUBMITTAL

Proposers responding to this RFP must fully complete, sign, and submit all the forms and documents required by this RFP, its attachments and special instructions.

Also refer to:

Special Instructions – Part I – Proposal Overview and Format

Special Instructions – Part II – Proposal Content and Evaluation Criteria

Proposer's Technical and Cost Proposals submission must clearly indicate the Proposer's name and address and the RFP Name and No. on the face of the package.

2.7 GUARANTY

Proposers shall supply a proposal 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 **20%** of the total price.

Proposal guarantees submitted by Proposers will be retained until execution of the Contract or, one hundred twenty (120) calendar days from the Due Date, whichever is sooner.

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

2.8 NO PUBLIC OPENING

There is **no** public opening of Technical Proposals or Cost Proposals. Technical Proposals are opened by the Contracting Officer in the presence of MBTA witnesses and then distributed to a designated technical review committee in accordance with Section 3.2 Evaluation Committee: Roles and Responsibilities.

2.9 LATE SUBMISSIONS, MODIFICATIONS AND WITHDRAWALS OF OFFERS

Any offer received at the Materials Management 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:

2.9.1 Package was sent by registered or certified U.S. mail not later than the fifth (5th) calendar day before the Due Date; or

2.9.2 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

2.9.3 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 2.9.1, 2.9.2, and 2.9.3.

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 withdrawn by written notice to the Authority, or in person by the Proposer or an authorized representative of the Proposer at any time before award.

2.10 REJECTION OF PROPOSAL

The MBTA reserves the right to reject any and all proposals, in whole or in part, if such action is determined to be in the best interests of the Authority. Unless all proposals are rejected, award shall be made to that Proposer whose proposal, conforming to the solicitation, in the judgment of the MBTA, will be most advantageous to the MBTA, price/cost and other factors considered.

2.11 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 Proposal documents, which can be waived or corrected without prejudice to the Contractor. The Chief Procurement Officer is the only authorized agent who can waive rules.

2.12 APPEAL/PROTEST PROCEDURES

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 Project Coordinator 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 after exhausting MBTA's appeals and protest procedure. These parties must exhaust all appeals and protest procedures with the MBTA first. Such protests to the FTA must be filed in accordance with FTA Circular 4220.1E, Section 71, Written Protest Procedures.

2.13 PRE-CONTRACTUAL EXPENSES

The MBTA shall not be liable for any pre-contractual expenses incurred by the Proposer in the preparation of its proposal. The Proposer shall not include any such expenses as part of its proposal. Pre-contractual expenses are defined as expenses incurred by the Proposer in:

- 2.13.1 Preparing its proposal in response to this RFP;
- 2.13.2 Submitting its proposal to the MBTA;
- 2.13.3 Negotiating with the MBTA any matter related to this proposal; or
- 2.13.4 Any other expenses incurred by Proposer prior to date of award, if any, of the Agreement.

2.14 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 Proposal 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.

2.15 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 Proposer, Proposer'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 Proposer shall certify compliance with these terms and the Massachusetts Conflict of Interest Laws (see Section 8.6).

3. THE SELECTION PROCESS

3.1 BASIS OF AWARD

This is a Competitively Negotiated Best Value - Two Phase Procurement, which consists of a first phase where proposers submit unpriced Technical Proposals to be evaluated, and a second phase where those proposers whose technical offers are determined to be acceptable in the first phase have their Cost Proposals considered. Award is then made to the Contractor with the overall best value proposal as determined by the Authority.

Proposers are advised that they should submit proposals that are acceptable without additional explanation or information. The Authority may make a final determination regarding acceptability of the proposals based solely on the basis of the proposals as submitted.

3.2 EVALUATION COMMITTEE: ROLES AND RESPONSIBILITIES

The Chief Procurement Officer is the “Contracting Officer/CO” responsible for leading this procurement. The Contracting Officer or designee of the User Group(s) seeking to obtain the products and services that are the subject of this RFP determine the composition of the Evaluation Committee. The organization of this Evaluation Committee typically comprises the Contracting Officer, a Contract Team (“CT”), a Technical Evaluation Team (“TET”) and designated advisors as necessary.

3.2.1 Contracting Officer responsibilities include:

A. Ensure proper and efficient conduct of entire selection process.

3.2.1.2 Approve plan for this RFP.

3.2.1.3 Review and approve all solicitation materials, including amendments, time extensions, supplemental information, etc.

3.2.1.4 Recommend and select members of Evaluation Committee as required to the General Manager for approval.

3.2.1.5 Review and approve evaluation criteria.

3.2.1.6 Invite Proposers with acceptable proposals to submit Phase II Pricing Proposal.

3.2.1.7 Facilitate internal MBTA review approval process, including any protests and appeals.

3.2.1.8 Award contract to successful Proposer and notify unsuccessful Proposers.

3.2.1.9 Review and approve all members and advisors of the TET.

3.2.2 Contract Team. The Contract Team consists of a Project Coordinator, and Advisors from Legal, Organizational Diversity and Civil Rights, Audit Services, and other key departments as determined necessary.

Project Coordinator’s responsibilities include:

3.2.2.1 Develop the plan for securing a contractor for this RFP.

3.2.2.2 Prepare and distribute the RFP and all amendments.

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- 3.2.2.3 Conduct pre-proposal conferences and arrange for site visits.
 - 3.2.2.4 Review conflict of interest requirements with Contract Team.
 - 3.2.2.5 Receive proposals from Proposers.
 - 3.2.2.6 Check proposals for completeness.
 - 3.2.2.7 Respond to requests for clarification.
 - 3.2.2.8 Distribute Technical Proposals to TET.
 - 3.2.2.9 Facilitate discussions with TET.
 - 3.2.2.10 Facilitate discussions with Proposers, as necessary.
 - 3.2.2.11 Prepare contract.
 - 3.2.2.12 Conduct Proposer debriefings, as necessary.

Legal Advisor. In-house Deputy General Counsel is appointed by the General Counsel to provide the Contract Team with the following assistance:

- 3.2.2.13 Witness opening and distribution of proposals to various groups.
- 3.2.2.14 Assure compliance with all applicable laws, regulations, and procedures.
- 3.2.2.15 Serve as advisor.

3.2.3 Technical Evaluation Team (TET). The TET consists of a Chairperson and Technical Members, which may include consultants working for the Authority in the preparation of the Technical Specifications for this RFP.

Chairperson. This person, designated by the Director(s) of the User Group(s) and approved by the CO, will have the following responsibilities:

- 3.2.3.1 Assist in the preparation of the solicitation.
- 3.2.3.2 Develop evaluation criteria.
- 3.2.3.3 Nominate members and advisors for the TET for approval by the Contracting Officer.
- 3.2.3.4 Ensure members of the TET are instructed in their duties and responsibilities.
- 3.2.3.5 Implement procedures to safeguard the integrity of the solicitation process.
- 3.2.3.6 Convene and preside over TET to evaluate proposals in accordance with the criteria and standards established. Resolve any differences between TET member evaluations.
- 3.2.3.7 Prepare responses to Proposer requests for clarification.
- 3.2.3.8 Prepare Technical Evaluation Report, which describes the results of the proposal evaluation.
- 3.2.3.9 Refer any inquiries concerning the selection process from outside the evaluation team to the CA.
- 3.2.3.10 Assist the CA in debriefing unsuccessful proposers.

Members. Each Technical Team will consist typically of five (5) to seven (7) members with the following responsibilities:

- 3.2.3.11 Evaluate technical proposals in accordance with the plan, criteria, and standards established.
- 3.2.3.12 Assist the chairperson in preparing an evaluation report, which describes the results of the technical proposal evaluation.
- 3.2.3.13 Refer any inquiries concerning the selection process from outside the selection team to the CA.

3.3 INTERFACE WITH PROPOSERS

Personnel involved in the selection shall avoid any situation or contact with a competing Proposer that is not essential or would raise questions of impropriety. The objectivity of the selection process may be impaired by contacts between Authority personnel and prime contractors/subcontractors involved in the competition during the period between the release of the RFP and announcement of the selection decision. After the RFP has been released, all attempted communications by Proposer's and/or their representatives shall be referred to the Contract Administrator. In addition, any contact with Proposers by the Authority for additional information after the RFP has been released will be made through the Contract Administrator.

3.4 PHASE I EVALUATION OF TECHNICAL PROPOSALS

The TET, while maintaining strict confidentiality, reviews Phase I Proposals to determine if the submission is compliant with the technical and contractual requirements set forth in this RFP and delineated in the Evaluation Criteria.

As described in Special Instructions Part II, discussions or requests for additional clarifying or supplemental information may be conducted with any Proposer who submitted an acceptable or potentially acceptable technical offer prior to initiation of Phase II RFP. When initiating a request for additional information, the Contracting Officer shall fix an appropriate time for Proposers to conclude discussions, if any, submit all additional information, and incorporate the additional information as part of their proposals. Further, the Authority may revise the technical specifications and request a revised proposal. An evaluation will be conducted upon receipt of the Proposer's revised final technical proposal.

3.5 PHASE II EVALUATION OF COST PROPOSALS

Each Proposer who submitted a technical proposal that was determined to be acceptable in Phase I will have their priced offer opened and evaluated.

3.6 NEGOTIATION PROCEDURES AND BEST AND FINAL OFFER (BAFO)

At the sole discretion of the MBTA, a Best and Final Offer (BAFO) request may be issued after negotiations are concluded. All "Best and Final Offers" must be submitted by the closing date and time indicated in the formal BAFO request.

Subsequent to the specified closing date and time, the evaluation process will be repeated by returning to proposal opening, technical evaluation, cost evaluation and determination of best value. Steps will be executed as applicable. No further negotiations will be undertaken. A decision must be made by the MBTA to award or to cancel the RFP.

3.7 CONTRACT AWARD

When the Contracting Officer determines that an award can be made that is judged by the MBTA to be in its best interest, a recommendation is then made to the Chief Procurement Officer to proceed with recommendation to award. The Chief Procurement Officer, or designee, prepares a request for approval by the General Manager and the Financial Management Control Board (“FMCB”) that contains the Evaluation Committee’s documentation supporting the final recommendation. Following receipt of the General Manager’s and FMCB’s approval, all Proposers will be advised, in writing, of the MBTA’s final decision. The Contract will then be executed between the MBTA and the selected Proposer.

3.8 PERFORMANCE GUARANTEE

A Performance Guarantee in the amount of 20% of the contract shall be required by the Authority prior to execution of the Contract, unless otherwise agreed to by the Authority, to ensure the faithful performance of the contract. The Performance Guarantee may be either a Performance Bond in accordance with Section C3.03A or an Irrevocable Stand-By Letter of Credit in accordance with Section C3.03B. The minimum requirements to be met by either performance guarantee are:

- The Performance Guarantee, either Performance Bond or an Irrevocable Stand-By Letter of Credit, remains valid and in force until the last vehicle is accepted for revenue service.
- The Bidder must certify in writing with its proposal submittal that a 20% Performance Bond or an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contract.
- A Payment Bond in the amount of 5% of the contract price shall be required by the Authority prior to issuance of the first milestone payment, to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract.
- The Payment bond remains valid and in force until the last milestone payment has been made.

3.8.1 Performance Bond

The Performance Bond is to be secured through an insurance company (or companies which is/are licensed in the Commonwealth of Massachusetts or which is/are approve the Authority. The insurance company must have a rating of B+ or better. The name agency or agent writing the bond shall be identified with or on the bond. The Bidder certify in writing with its submittal, that a 20% Performance Bond will be furnished the Bidder become the successful Contractor. Additionally, the bidder must provide similar statement from its surety.

3.8.2 B. Irrevocable Stand-By Letter of Credit

The Irrevocable Stand-By Letter of Credit shall be executed in a form provided by the Authority.

If the Contractor chooses to provide a Letter of Credit as its performance guarantee, the Letter of Credit will only be accepted by the Authority if the following terms are met:

The Letter of Credit must be issued by a bank in good standing. The Authority will not accept a Letter of Credit from an entity other than a bank.

The Letter of Credit must be in writing and must be signed by the issuing bank.

The Letter of Credit must conspicuously state that it is an irrevocable, non-transferable, “standby” Letter of Credit.

The Massachusetts Bay Transportation Authority (“MBTA”) must be identified as the Beneficiary of the Letter of Credit.

The Letter of Credit must be in an amount equal to 20% of the Contract value. This amount must be in U.S. dollars.

The effective date of the Letter of Credit must be the same as the effective date of the Contract

The expiration date of the Letter of Credit must cover the time period cited in Section C3.03B (up to and including the acceptance of the last vehicle).

The Letter of Credit must indicate 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 for the purchase of vehicles.

The issuing bank’s obligation to pay will arise upon the presentation of the original Letter of Credit, and a certificate and draft in form similar to the attached forms (see Section E, pages E-2 and E-3). This documentation will indicate that the Contractor is in default under the Contract. The above documents will be presented to the issuing bank’s representative at a location and time to be determined by the parties.

Statement from banking institution certifying Letter of Credit for the action, if awarded to be provided with submission.

Note: Should the Offeror choose to select a Letter of Credit for Performance guarantee, in accordance with Section C3.03B, the issuing Bank will dictate the Form of the Letter of Credit. The Authority will approve the format following notification of Award but prior to contract execution.

3.8.3 Payment Bond

The Payment Bond is to be secured through an insurance company which is licensed in the Commonwealth of Massachusetts or which is 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. The Bidder must certify with its submittal, that a 5% Payment Bond will be furnished should the bidder become the successful Contractor. Additionally, the Bidder must provide similar statements from its surety.

All Change Order for other than additional Option Vehicles may be executed without obtaining the consent of the surety (or sureties) or the banking institute (or institutes) on the Performance Guarantee unless otherwise directed by the Authority. See Section C3.05 for Insurance Requirements.

All Change Orders for additional Option Vehicles shall require a Performance Guarantee in the amount of 20% of the Change Order prior to execution of the Change Order. All other terms/conditions as stated in Section C3.03A and C3.03B apply herein.

4. DISADVANTAGED BUSINESS ENTERPRISES

4.1 OVERVIEW

Pursuant to Title 49 Code of Federal Regulations, the Proposer – a Transit Vehicle Manufacturer (TVM), as a condition of being authorized to respond to this solicitation, must certify that it has filed with the FTA an annual Disadvantaged Business Enterprise (DBE) participation goal. The Proposer shall attach its current FTA filing and approval status valid at the time of formal bid/proposal submission. The Authority will accept excerpts from said documents at time of bid submittal. Full documentation must be provided prior to award if said Proposer is determined to be the responsive and responsible Proposer for this procurement.

NOTE: Both TVMs and any Proposer that is not registered as a TVM with the FTA shall comply with below:

It is the policy of the MBTA and the United States Department of Transportation (“DOT”) that Disadvantaged Business Enterprises (“DBE”), 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 DBEs 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 DBEs;
- 4.1.5** Help remove barriers to the participation of DBEs in DOT assisted contracts and;
- 4.1.6** Assist in the development of firms that can compete successfully in the marketplace outside DBE program.

This Contract is subject to 49 CFR Part 26. Therefore, the Contractor is encouraged to 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 Proposer’s is in compliance with the requirements stated herein. In assessing compliance, the Authority may consider during its review of the Proposer’s submission package, the Proposer’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 DBEs** who are:

- 4.3.1 Certified, at the time of Proposal opening, by the Massachusetts State Office of Minority and Women Business Assistance (SOMWBA) as DBEs.

4.4 DBE PARTICIPATION GOAL

The DBE participation goal for this Contract is set at 9%. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling not less than 9% of the total Contract price. Failure to meet the stated goal at the time of proposal submission may render the Proposer non-responsive.

4.5 DBE PROPOSAL SUBMISSION

As delineated in Special Instructions – Part I, each Proposer, as part of its submission, shall supply the following information:

- 4.5.1 A completed **DBE Utilization Form** that indicates the percentage and dollar value of the total Proposal amount to be supplied by Disadvantaged Business Enterprises under this Contract.
- 4.5.2 A list of those qualified DBE's with whom the Proposer 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, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the **DBE Participation Schedule**. No work shall be included in the Schedule that the Proposer 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** 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** 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 Proposer is unable to meet the DBE participation goal set for this project, the Authority will consider the Proposer's documented good faith efforts to meet the goal in determining responsiveness. The types of actions that the Authority will consider as part of the Proposer'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 RFP requirements, subcontracting opportunities and appropriate certification will be addressed in a timely fashion);
- 4.6.2 Pre-Proposal meeting attendance. At the pre-Proposal meeting, the Authority generally informs potential Proposer's of DBE subcontracting opportunities;
- 4.6.3 The Proposer'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 DBEs 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 Proposer 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 the 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 Proposal 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 Proposer or the Authority.

In determining whether a Proposer has made good faith efforts, the Authority may take into account the performance of other Proposers in meeting the Contract goals. For example, if the apparent successful Proposer failed to meet the goal, but meets or exceeds the average DBE participation obtained by other Proposers, the Authority may view this as evidence of the Proposer 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 Proposer may request administrative reconsideration. The Proposer should make this request in writing to the Authority's Chief Procurement Officer. The Chief Procurement Officer will forward the Proposer's request to a reconsideration official who will not have played any role in the original determination that the Proposer did not document sufficient good faith efforts.

As part of this reconsideration, the Proposer 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 Proposer 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 Proposer a written decision on its reconsideration, explaining the basis for finding that the Proposer 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** 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 shall make the Contractor subject to sanctions, as defined in this RFP.

4.9 CONTINUED COMPLIANCE

- 4.9.1** The Authority shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, **it will be the responsibility of the Contractor to submit quarterly written reports to the Authority** that summarize the total DBE value for this Contract. These reports shall provide the following details:
- A. DBE utilization established for the Contract;
 - B. Total value of expenditures with DBE firms for the quarter; and
 - C. Total value of expenditures with DBE firms from inception of the Contract.
- 4.9.2** Reports and other correspondence must be submitted to the DBE Coordinator with copies provided to the Project Manager and Director of Materials. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.
- 4.9.3** The successful Proposer shall:
- A. Permit 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 Proposer and other DBE parties entered into during the life of the Contract.
 - B. Permit 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.
 - C. Maintain all data/record(s) pertaining to DBE as stated in Section 6.36 (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 with regard to Disadvantaged Business Enterprises, 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. EVALUATION CRITERIA

5.1 PROPOSAL ORGANIZATION

This Section outlines the criteria the Authority will consider in evaluating each Proposer's Technical Proposal submitted in response to this solicitation. Therefore, Proposers are strongly advised to organize its Technical Proposal into separate sections that thoroughly address each of the criteria listed.

5.2 GENERAL CONSIDERATIONS

General considerations are intended to confirm the Proposer's capabilities and response to the business arrangements contained in this solicitation. Therefore, the Authority will consider the following matters in making the selection decision:

- 5.2.1** Whether the Proposer acknowledges and agrees to comply with the terms and conditions set forth in the solicitation.
- 5.2.2** Whether the Proposer eligible for the award is financially sound and has the technical capability to perform the work in accordance with the requirements of the Technical Specifications and within the time specified. A Pre-Award survey may be conducted as part of the selection and involves an assessment, and therefore, the Proposer shall complete and sign the Pre-Award Evaluation Data form.
- 5.2.3** The Extent to which the Proposer identifies and commits to Disadvantaged Business Enterprises (DBE's) in performance of the contract work, whether as a joint venture, teaming arrangements, or use of subcontractors.

5.3 EVALUATION PROPOSAL CRITERIA

Specific criteria relate to key characteristics of the solicitation and are divided into technical and management areas. Each specific criterion may further be divided into evaluation factors that are tailored to the requirements of the RFP. For purposes of this solicitation, the factors and standards that each Proposer's Technical Proposal will be evaluated against are specified in the RFP Special Instructions Part I and Part II.

5.3.1 Technical Proposal Evaluation

The MBTA Evaluation Committee will score RFP responses on the rating scale listed in Section 5.3.2. Each Respondent should provide a detailed description of its approach to these Criteria, adding information regarding further benefits of the proposed approach. The Committee will score each Respondent's proposal using these Criteria.

The Authority, in its discretion, may require a Respondent to make an oral presentation prior to completing its evaluation of the Respondent's Technical Proposals. Each criterion will be evaluated considering the information included in the Technical Proposal related to the criterion, including the Respondent's responses to the requirements and questions provided in Special Instructions Part II, as well as other information that may be gathered from references, oral presentations, or other sources.

- 5.3.2** The Technical Proposal evaluation factors and the overall Technical Proposal will be rated using a numerical rating approach developed and agreed to by the Evaluation

Committee. The numeric rating will be based on the following general categories:

- **Excellent** – The Respondent has presented and supported an approach that is considered to significantly exceed the stated criteria in a way that is beneficial to the MBTA. This rating indicates a consistently outstanding level of quality, with very little or no risk that this Respondent would fail to meet the requirements of the solicitation. There are no weaknesses.
- **Satisfactory** – The Respondent has presented and supported an approach that is considered to meet the stated criteria. This rating indicates a generally acceptable quality, with little risk that this Respondent would fail to meet the requirements of the solicitation. Weaknesses, if any, are very minor and not material to the proposal. Correction of the weaknesses would not be necessary before the Proposal would be considered further.
- **Unsatisfactory** - The Respondent has presented and supported an approach that fails to meet the stated criteria but that could potentially be remedied through requests for Clarification or Communications. This rating indicates a level of risk to the MBTA. Weaknesses exist that would need to be corrected before the Proposal would be considered further.
- **Poor** – The Respondent has presented and supported an approach that fails to meet stated criteria and would pose a clear risk to the MBTA. The issues may be susceptible to correction through major and lengthy discussions. Such a response is considered marginal in terms of the basic content or amount of information provided for evaluation.
- **Deficient** - The Respondent has presented and supported an approach indicates significant weaknesses or unacceptable quality, or fails to include evidence that it is capable of providing the services requested. The Proposal fails to meet the stated criteria or lacks essential information. There is no reasonable likelihood of success; weaknesses are so major or extensive that a major revision to the Proposal would be necessary.

The Evaluation Committee will perform its Technical Evaluation before considering Respondent's price proposals.

6. GENERAL TERMS AND CONDITIONS (SEE ATTACHMENT #1)

7. GENERAL REQUIREMENTS FOR EQUIPMENT PROCUREMENT

7.1 ABBREVIATIONS – SEE ATTACHMENT #2

7.2 DEFINITIONS – SEE ATTACHMENT #2

7.3 SCOPE OF WORK/INTENT OF CONTRACT

7.3.1 The intent of the Contract is to provide for the rehabilitation of end product(s) in accordance with the Contract Documents, including the Technical Specifications.

7.3.2 Only materials and workmanship free from defects shall be used.

7.3.3 Unless otherwise specified, the Contractor shall furnish all labor, materials, tools, equipment, and incidentals, which are necessary to complete the rehabilitation.

7.3.4 The Authority reserves the right to waive any contractual and/or technical requirement(s) of these Contract Documents as determined by the Authority to be in its best interest. For any cost or credit involved in the exercise of the above refer to Section 6.29.

7.4 SCHEDULE

7.4.1 Contractor's Master Schedule

A. Within 30 days after issuance of the Notice-to-Proceed and/or Contract execution, whichever is first, the Contractor shall submit to the Project Manager/Administration and to the Engineer, "milestone" type bar charts showing master and detailed schedule and projected dates for engineering, remanufacturing, delivery and testing of the vehicles as well as submittals for the Contract Deliverables.

B. Contractor's master schedule shall be updated and submitted monthly to the respective Project Managers.

C. Schedule shall include the submission dates for the following items:

1. Design Process

a. Initial design review

b. Final design review – design freeze for Pilot Locomotive

2. Drawing List

3. Schedule for submission of drawings

a. Design and engineering drawings

b. Drawings for final record

4. Schedule for the construction, delivery, testing, and approval of pilot vehicles; construction, delivery and testing of production vehicles.

5. Detailed plan and schedule for Acceptance Testing of Vehicles.

6. Analyses List

7. Schedule for submission of analyses

8. Schedule for delivery of test equipment.
 9. Quality Assurance Program
 10. Procedures list for in-plant inspection tests, including First Article Inspections contained herein and the attached Technical Specifications.
 11. Schedule for submission of Procedures
 12. Format for monthly/quarterly submittals of Contract deliverables, such as, but not limited to, change order logs, Contract Deliverable Log, Subcontractor's updates, DBE Reports, Buy America reports, etc.
 13. All other Contract Deliverables and/or items requiring Authority review and acceptance.
- D. The Contractor shall give due consideration to the time required for review and acceptance by the Authority in scheduling the submittal of each item.
- E. Sufficient time shall be provided in the submissions schedule, to permit Authority review and acceptance, a minimum of four (4) weeks prior to manufacture, construction, insulation, or other need for each item.

7.4.2 Inspection and Transportation and Delivery Schedule

- A. Inspection of locomotives and transport thereof to and from the Contractor's facility for overhaul and delivery to the Authority post-overhaul shall be per the requirements of the Technical Specifications.

7.5 TECHNICAL SUPPORT

7.5.1 Technical and Warranty Support Plan – Ninety (90) days prior to delivery of Pilot locomotive, Contractor shall furnish to the Authority for review and approval its technical and warranty support plan. The plan shall indicate how the Contractor intends to meet the following requirements, at a minimum, to supply the Authority with adequate technical support for the overhauled vehicles.

7.5.2 Field Service Engineer – The Contractor at a minimum shall furnish the services of one or more, as mutually agreed upon, qualified, factory trained, English-speaking, Field Service Engineer(s) for assistance during inspection, operation, testing and adjustment of the Contractor furnished equipment, to insure satisfactory performance, and to advise a reasonable number of the Authority's employees in the proper use and care of the equipment. Actual work schedule will be established on a monthly basis but will be flexible enough to allow for training and technical support 24 hours a day, 7 day a week operation.

- A. The cost of the Field Service Engineer(s) shall be included in the Contract Price.
- B. The Contractor's Field Service Engineer shall be available within twenty four (24) hours of receipt of request for service, during a time period from delivery of the first vehicle to Final Acceptance of the final vehicle, and within forty eight (48) hours of receipt of request for service during the warranty period.
- C. The Field Service Engineer(s) shall be capable of responding to any issue on all MBTA property

7.5.3 Design Engineer(s) – The Contractor shall supply, upon request by the Authority, the design engineer(s) of equipment failing to comply with the Contract and Technical Provisions. Said engineer(s) shall be available by cell phone and shall attend and participate in meetings, recommend solutions and, if requested by the Authority, shall assist in implementing these solutions.

7.5.4 Warranty Coordinator – The Contractor shall provide a Warranty Coordinator to coordinate with the Authority on all warranty issues for the duration of the warranty period. The Warranty Coordinator must be available for the complete warranty period for each locomotive delivered to and

accepted by the Authority, including any extensions to said period due to required removal from revenue service for warranty/repair/retrofit work. The Authority reserves the right to give approval of the proposed Warranty Coordinator.

- A. A full-time Contractor's staff representative is not required to be an on-site resident at the Authority's facilities during the warranty period. The Authority does require on-site availability of the Contractor's Warranty Coordinator to address technical issues as they arise and for processing warranty claims, both actions to be conducted in a timely, expeditious manner
- B. The Warranty Coordinator may request the assistance of the Field Service Engineer to prepare warranty reimbursement documentation, shipping manifest for warrantable components and the collection of other appropriate documentation available from Authority records for up to one hour per day in accordance with the Technical Specifications.
 - 1. If at any time these assignments require more than five hours per week from the Field Service Engineer, the Contractor shall provide additional staff to the Authority for these purposes.

7.5.5 Compliance with the technical support requirements does not relieve the Contractor of responsibilities under the Technical Specifications and the requirements of this RFP for Guarantee of End Products (Warranty).

7.6 CONTRACTOR-FURNISHED FACILITIES

7.6.1 The Contractor shall furnish and maintain at Contractor's expense the following facilities for the use of the Authority's Engineer and Inspectors for the duration of the Contract at the Contractor's production facility and final assembly/final staging area if applicable in accordance with the Technical Specifications.

The following is provided as an example:

- A. A private office with tumbler lock and a minimum size 14 ft. x 21 ft.
 - 1. Full lighting, heating, and air conditioning.
 - 2. Private telephone with Internet access.
 - 3. One (1) standard office desk with swivel chair.
 - 4. Two (2) five (5) drawer filing cabinets (letter or legal size).
 - 5. One (1) drafting table with stool and light.
 - 6. One (1) reference table with four (4) chairs.
 - 7. One (1) drawing vertical plan file.
- B. Access to facility's paging system, if available.
- C. Access to office rest room facilities.
- D. Direct 24 hour, 7-day access to office by automobile.

7.6.2 Access to a copier machine and facsimile transmission (Telecopier) service, is to be included under this provision.

7.6.3 Additional space shall be furnished by the Contractor as required for additional Authority representatives during site visits, First Article Inspections, etc.

7.7 PROJECT MEETINGS

- 7.7.1** Meetings shall generally be held as scheduled by the Authority, via conference call or at a mutually agreed upon location, at which time the Contractor shall be present to discuss any and all details as required relative to the execution of the work. The Authority reserves the right to increase or decrease the number of meetings.
- A. Additional meetings shall be held when mutually agreed upon by the Authority and the Contractor in order to discuss particular aspects of the work.”
 - B. Manufacturers, Subcontractors, Suppliers and/or other representatives, as determined necessary by the Authority, shall be present at any such meetings.
 - C. The first Project Meeting shall be scheduled no later than within 30 days from Notice-to-Proceed or execution of Contract Award, whichever comes first. Agendas will include, but not limited to, the following key specification references:
 - 1. Contract Deliverable Requirements
 - 2. First Article Inspections
 - 3. New and Improved Items
 - 4. Hidden Damage – Approval & Documentation
 - 5. Transportation of Vehicles
 - 6. Production Plan
 - 7. Quality Assurance Organization, Plan and Testing
 - 8. Delivery Schedule
- 7.7.2** The Authority will keep detailed minutes of all meetings, including but not limited to the following information:
- A. Date, time and location;
 - B. Attendees, including titles and affiliations;
 - C. Subjects discussed, and agreements reached;
 - D. Drawings and sketches submitted for review and action taken.
- 7.7.3** A copy of the minutes of each meeting shall be prepared and delivered within the time stipulated at the close of the meeting and/or as directed by the Authority's designee present at same.
- 7.7.4** The draft minutes shall be reviewed by the Contractor for any corrections, if necessary. Any requested changes to the minutes shall be submitted to the Authority, after which the Authority shall reissue the revised minutes as final.

7.8 QUALITY ASSURANCE PROGRAM

- 7.8.1** The Contractor shall establish and maintain an effective Quality Assurance Program and staff to ensure the vehicles meet all Specification requirements and are in full compliance with the requirements of the Technical Specifications.
- 7.8.2** The Contractor shall also require each Subcontractor and Supplier to maintain an effective Quality Assurance Program for the items it furnishes to the Contractor.
- 7.8.3** The Contractor's Quality Assurance staff shall be responsible for, and have the authority to monitor and enforce all requirements of the Quality Assurance Plan of the Contractor and of its

Subcontractors and Suppliers as applicable.

7.8.4 The Authority shall have the right to audit and verify compliance with the Quality Assurance Plan throughout the Contract at Contractor, Subcontractor, and Supplier facilities. The Contractor shall coordinate with Subcontractors and Suppliers for Authority audits on an individual basis. If not allowed by its Subcontractors or Suppliers, then the Quality Assurance of the material provided will be the sole responsibility of the Contractor.

7.8.5 The costs of the Authority's inspections and compensation to Authority inspection personnel and authorized representatives shall be the responsibility of the Authority, and no provision for these costs shall be included in the proposal prices.

7.8.6 The Proposer is to provide details of its proposed Quality Assurance Program with its Proposal.

7.9 CONTROL OF MATERIALS

7.9.1 QUALITY OF SUPPLY

A. The Contractor shall furnish all materials required for the remanufacturing and delivery of vehicles in accordance with the Contract Documents, and the materials shall meet the requirements of the Specifications for the kind of applications involving its use.

B. Unless otherwise provided, only quality materials which are generally accepted in the industry and conform to the requirements of these Specifications shall be used in the work.

7.9.2 STORAGE OF MATERIAL

A. All materials intended for use on these Vehicles shall be marked and stored in the Contractor's plant so as to be readily identified, and shall be adequately protected during handling and storage.

7.9.3 TRADE NAMES AND ALTERNATIVES

A. For convenience in designation on the Plans or in the Specifications certain articles or materials to be incorporated in the work may be designated under trade names or the names of manufacturers and its catalog information.

B. Except in these instances where used in a particular project, either completed or in the course of completion, the use of an alternative article or material which the Contractor represents to be of at least equal quality and of the required characteristics for the purpose intended shall be permitted subject to all of the following requirements.

1. It is not the intent of these Specifications to have the Contractor seek acceptance from the Authority for the various interchangeable items of different manufacture that are normally stocked and used by the Contractor. It is the intent of these Specifications that alternative materials for major items of equipment, herein specified, be acceptable to the Authority.

2. The burden of proof as to the quality and suitability of alternatives shall be upon the Contractor and the Contractor shall furnish all information necessary as required by the Authority at no additional cost to the Authority.

3. There shall be no substitution for any accepted materials, component, design, or fabrication unless and until the proposed substitute has received written acceptance of the Authority. The Authority may require the removal of any substitute or unaccepted item which is installed by the Contractor without the written acceptance of the Authority. All financial benefits accruing from the substitute materials, components, design, or fabrication shall be the sole right of the Authority.

4. Where use of an alternative material involves redesign of or changes to other parts of the work, the cost and the time required to effect such redesign or changes shall be considered in

evaluating the suitability of the alternative material. No additional cost will be paid by the Authority as a result of the Contractor's selection in using alternatives.

5. No test or action relating to the acceptance of substitute materials shall be made until the request for substitutions is made in writing by the Contractor, accompanied by the complete data as to the equality of the materials proposed. Such request shall be in ample time to permit approval without delaying the work.
 6. Whenever classifications, rating, or other certification by a body, such as UL, NEMA, or AREA, is part of the Specification for any material, Proposals for use of alternative materials shall be accompanied by reports from the listed or equivalent independent testing laboratory indicating compliance with Specification requirements.
 7. The Contractor shall reasonably demonstrate that an adequate supply of materials, repair parts, and specialties of its own design and manufacture, as well as materials, repair parts, and the specialty parts of the Subcontractors, will be available promptly as the need by the Authority may arise.
- C. It shall be understood that specifying a brand name, components, and/or equipment in this Specification shall not relieve the Contractor from its responsibility to produce the product in accordance with the Contractual requirements.
- D. The Contractor is responsible for notifying the Authority of any inappropriate brand name, component and/or equipment that may be called for in the Specification, and to propose a suitable substitute for consideration.

7.9.4 PATENTED DEVICES, MATERIALS, PROCESSES

- A. In the performance of this Contract the Authority has required the Contractor to furnish certain equipment, components, materials and supplies which may be:
1. Items designated by brand name;
 2. Other items.
- B. As to items in Part 7.5.4A2 the Contractor warrants that the products furnished shall be delivered free of any rightful claim of a third party for infringement of any United States or foreign patent.
1. If the Contractor notifies the Authority in writing and if the Authority provides authorization, information, and assistance, the Contractor shall defend, or may settle, at its expense, any suit or proceeding against the Authority so far as based on a claimed infringement which would result in a breach of this warranty.
 2. The Contractor shall pay all damages and costs awarded against the Authority due to breach.
- C. In case any product, or part thereof, is in such suit held to constitute an infringement and the use for the purpose intended of such product or part is enjoined, the Contractor shall, at its expense and option, either procure for the Authority the right to continue using said product or part, or replace with some non-infringing product or part or modify same so it becomes non-infringing, or remove the product and refund the purchase price, less reasonable depreciation for any period of use and any transportation costs separately paid by the Authority. In the event of removal this should not render the vehicle inoperable.
- D. After termination of the guarantee applying to the last Vehicles delivered, the Authority will assume the right to manufacture, or cause to be manufactured, any assembly or component for its sole use in maintaining Vehicles without incurring any obligation to pay any royalties or fees in relation to a letter of patent or copyrights. Except for patented devices, the Contractor shall not have exclusive proprietary rights pertaining to the design of the Vehicles.

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- E. The Contractor shall grant to the MBTA, its authorized successors and assignees, a perpetual fully paid, royalty free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize other to use, the End Product for MBTA's purposes of operating, maintaining and repairing Vehicles.

7.9.5 WARRANTIES, GUARANTEES, INSTRUCTION SHEETS AND PARTS LIST

- A. Manufacturer's warranties, guarantees, instruction sheets, and parts list, which the Engineer requires to be furnished, shall be delivered to the Engineer before conditional acceptance of the Pilot Vehicle(s).
- B. This requirement shall in no way relieve the Contractor of its obligations under Part 7.3.2.
- C. Should a part not be available through the Contractor for which there is no competitive equivalent available in the marketplace, the Contractor agrees to assist the Authority with drawings and specifications to facilitate the component procurement by the Authority.
- D. The Contractor shall notify an individual designated by the Authority, prior to shipment of any item (i.e. test equipment, etc.).

7.10 INSPECTION OF SITE(S)

- A. The Authority and/or its representatives shall have access to the site of the construction/manufacture/assembly and shall have the right to inspect all project work.

7.11 FIRST ARTICLE INSPECTIONS PROCEDURES AND TEST SPECIFICATIONS

- A. Contractor and Authority inspections shall be as described in the Technical Specification.
- B. If, during the locomotive overhaul, the Authority finds any item which is not in accordance with the Contract Documents, no further or similar non-conforming work shall be done by the Contractor or the Subcontractor.
- C. The control and disposition of non-conforming work shall be in accordance with the approved Quality Assurance Manual and Plan and as required by the Technical Specifications.
- D. The Authority reserves the right to inspect and approve each component and any completed part of the work before similar work is undertaken to comply with the manufacturing schedule. Any discrepancies or variations from the Specifications and/or drawings, except those previously approved, which inspection may reveal, shall be corrected prior to proceeding with the additional systems, subsystems or components, or the installation of new systems on the locomotives.

7.12 CONTROL OF PROCUREMENT – DRAWINGS & DOCUMENTATION

7.12.1 AUTHORITY-PROVIDED DRAWINGS

- A. Existing contract plans and sketches showing the general arrangement shall be provided upon request, if possible. The Contract Plans may be supplemented by the Engineer as may be required to amplify or control the work. The Contractor shall perform the work required by such supplements without additional compensation except as provided by the Contract.
- B. **The Authority makes no representation or warranty, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose, or any other obligations or liability on the part of the Authority as to the Authority's existing vehicles, sketches, drawings, mock-ups, books, manuals, or prints. The Authority neither assumes nor authorizes any other person to assume for it any other liability in connection with the aforementioned materials. These materials should be used for reference purposes only.**

7.12.2 CONTRACTOR'S DRAWINGS

- A. Contractor drawings will only be required for areas undergoing changes or modifications that have occurred during the rehabilitation process to the vehicles original OEM Design, or where deemed necessary by the Authority.
- B. Drawing submittals shall be in accordance with the requirements outlined in the Technical Specifications.
- C. The Contractor shall maintain, and update as required, a drawing log listing all drawings by number and title and showing dates of preparation, submission, preliminary and final acceptance, and shall submit revised copies of same to the Engineer and Consultant at periodic intervals as established by the Engineer.
- D. The Contractor shall submit all design layouts, assembly, and subassembly drawings of safety related features for review by the Contractor's Safety Engineer prior to its release for production to assure the safety of crew and maintenance personnel. These drawings will include, but are not limited to:
 - 1. Electric and Pneumatic Schematics
 - 2. Piping, Cable, and Conduit Diagrams
 - 3. Seating Arrangement Drawings
 - 4. Styling and Painting Drawings
 - 5. Console Arrangement Drawings
 - 6. Such other general drawings required for the understanding, operation, and maintenance of the Vehicles.
- E. Individual drawings for each part designed and or manufactured by or for the Contractor shall be prepared. The Authority will respect proprietary data within legal constraints and consistent with Section 7.4.3 of this Contract. Assembly, sub-assembly and arrangement drawings shall include a complete Bill of Material and Parts List on the field of the drawing describing all items, including the Subcontractor's parts, and all equipment and specialty details which form part of the assembly.
- F. All the drawings supplied by the Contractor in accordance with this Specification shall be so delineated that the wiring, piping, or mechanical interface between components shall be readily and clearly identifiable.
- G. The Contractor shall submit all design layouts, assembly, and subassembly drawings of safety related features for review by the Contractor's Safety Engineer prior to its release for production to assure the safety of crew and maintenance personnel.

Note: Contractor's Safety Engineer to be identified at the first Project Meeting.

7.12.3 SHOP DRAWING REVIEW

- A. Review by the Engineer of the Contractor's drawings does not relieve the Contractor or any Subcontractor of the responsibility for full compliance with the Contract requirements; for correctness of dimensions, clearances, and material quantities; for proper design of details; for proper fabrication and construction techniques; for proper coordination with Subcontractors; and for providing all devices required for safe and satisfactory construction and operation of a vehicle with a Minimum Service Life as defined in the Technical Specifications.
- B. The Contractor shall submit drawings for review with such promptness as to cause no delay in the work.

C. Drawing Format:

1. Drawings will be prepared in compliance with the Technical Specifications.
 2. Contractor's standard drawings (drawings not prepared specifically for this Contract) shall be furnished with the Authority's title and application blocks applied adjacent to the Contractor's title blocks.
- D. The Authority may exercise its right of First Article Acceptance as a further review to confirm the validity of the Contractor's design and shop drawings.
- E. The Contractor shall submit drawings and other technical information for review by the Engineer as required by the Technical Specifications:
- F. Review procedures shall be as delineated in the Technical Specifications.
- G. Sufficient time shall be provided to allow the Authority to review drawings and provide approval prior to manufacture, construction, insulation, or other need for each item.
- H. Construction on the various areas of the Vehicle shall not commence until drawing(s) delineating the work to be performed on the particular area of the Vehicle have been submitted to the Engineer and been designated "Conforms" or "Conforms as Noted" or "Review Not Required".
- I. **Acceptance of the Contractor's drawings and data by the Authority shall be for general detail and arrangement only, and shall not relieve the Contractor of any responsibility including, but not limited to, responsibility for accuracy of dimensions and details. The Contractor shall remain responsible for agreement and conformity of its drawings and data to the Contract Documents and Specifications.**

7.12.4 AS-BUILT DRAWINGS AND SPECIFICATIONS FOR FINAL RECORD

- A. Contractor drawings will only be required for areas undergoing changes or modifications that have occurred during the rehabilitation process to the vehicles original OEM Design, or where deemed necessary by the Authority.
- B. The Contractor shall submit the As-built drawings and specifications in accordance with the requirements of the Technical Specifications.
- C. As-built drawings and Contractor's specifications shall have all engineering, manufacturing, and installation changes incorporated.
- D. The Contractor shall furnish to the Authority's designated technical representative(s) and to the Authority, at any time requested to do so prior to the delivery of the reproducible drawings, prints of each working drawing for the purpose of maintaining and servicing the vehicles.

NOTE: The Authority makes no representation or warranty as to the accuracy, completeness, legibility or suitability of the Authority's existing drawings as specified under the Contract Documents.

7.12.5 CONTRACTOR FURNISHED MANUALS

The Contractor's attention is directed to the Technical Specifications for details regarding the requirements for Maintenance Instruction Books, Parts Manuals, Technical Procedures Manuals, Vehicle History Books, and all other manuals and instructions required by the Technical Specifications.

7.12.6 OWNERSHIP OF DOCUMENTS

It is further agreed between the parties hereto that any and all drawings, shop drawings, plans, specifications, and any and all graphics depictions produced by the contractor or on its behalf or by any of its subcontractors or material or equipment suppliers shall upon presentation to the Authority, become the property of the Authority, and can be used to secure the manufacture or replacement of any assembly or component for its sole use in maintaining the vehicles without any liability to the Authority or payment of royalties by the Authority. Confidential information of the Contractor's will be protected to the extent allowable by law.

7.12.7 CONFORMITY WITH PLANS AND SPECIFICATIONS

- A. No willful deviation from the Contract Document Plans and Specifications shall be made unless authorized in writing by the Authority. All open items shall be tracked for compliance/progress and submitted monthly.
- B. Any change which can affect the cost of, and/or time or schedule for completion of, the Contract shall be addressed by Change Order to the Contract in accordance with Section 6.29.

7.12.8 ACCESS TO WORK AND RECORDS

- A. The Authority's authorized representatives shall have access, at any time during the Contractor's normal working hours, to the premises used by the Contractor, to any plant or place where materials, work, or any part thereof, are being made, performed, or stored.
- B. The Authority shall arrange for inspections so as to avoid or minimize delay to the work.
- C. Access, at any time during working hours upon proper notification to the Contractor by the Authority, shall also be granted for inspection of all accounting and project management records and documents of the Contractor and its suppliers, relating to any labor, materials, plant, equipment, overhead and other costs used in the performance of work done or contracted for the Authority, including work described in any Change Order.
- D. Access shall be given or obtained both before and after completion of this Contract for the duration of the guarantee period.
- E. The Contractor shall retain, for change orders and claims, all accounting records and supporting documentation evidence required to demonstrate compliance with generally accepted accounting principles and the Federal Acquisition Regulation cost standards. Project management records shall also be retained.
- F. The Contractor shall insert a clause containing all of the provisions of this Section, including this paragraph, in all subcontracts of at least \$50,000 under this contract, altering the clause only as necessary to identify properly the contracting parties.

7.12.9 CORRESPONDENCE

- A. All correspondence, drawings, data, or other written communications pertaining to this Contract shall be in the English language. All monies expressed shall be in United States dollars. All conversations between Proposers, the Contractor, and the Authority shall be in English. All correspondence shall be on single sided 8-1/2" x 11" (216 x 279 mm) white sheets. An updated correspondence control/log shall be submitted monthly by the Contractor
- B. Communications in connection with this Contract shall be in writing. One copy shall be delivered personally; or by regular, registered or certified mail addressed to the officer(s) or employee(s) of the Authority and of the Contractor designated to receive such communications. Correspondence and submittals shall also be provided electronically as required by the Technical Specification. Telephone calls and facsimiles may be used to expedite communications, but shall not be official communication unless confirmed in writing. Also, all project meetings, discussions and reviews may be used to expedite communications, but shall not be considered official communications until information is confirmed in writing by the Authority.

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- C. In order to preclude misunderstandings and delays in the procurement process arising from language difficulties, the Authority requires that representatives of the Contractor who serve as official liaisons to the Authority or its representatives shall be sufficiently fluent and versed in its speech, writing, and understanding of the English language so as to enable a facile and comprehensive language intercourse between the Contractor and the Authority and its representatives. To the extent that it concerns their ability to communicate, the Authority reserves the right of rejection of any representative of the Contractor who is found by the Authority to be so deficient in ability to communicate in English as to be prejudicial to the Authority's best interest.

In the event the Contractor discovers an error or omission, he shall immediately notify the Authority. The Authority shall then make such corrections and interpretation as may be deemed necessary for fulfilling the intent of the Contract.

7.13 SHIPMENT AND DELIVERY

7.13.1 Certificate of In-Plant Inspection and Release for Shipment

- A. Unless specifically excepted by the Contract Documents, and additionally at the sole discretion of the Authority, each Vehicle shipped from the Contractor's plant to the Authority shall be complete, ready-to-run.
- B. Prior to the shipment of each Vehicle, the Contractor shall obtain a "Certificate of In-Plant Inspection and Release for Shipment" signed by the Authority's Inspector, or other authorized representative at the Contractor's plant. The "Certificate" shall certify that, in the judgment of the Inspector, the Vehicle is complete and complies with the approved Contractor's drawings and samples, and other agreed upon conditions for shipment. The "Certificate of In-Plant Inspection and Release of Shipment" shall not, however, be construed nor inferred to constitute to any degree Vehicle acceptance by the Authority. The Contractor shall allow a minimum of one (1) working day for the Authority's Inspector to complete inspection of each vehicle prior to shipment. If the Authority's Inspector determines that vehicles are not complete and/or require additional work/rework prior to release for shipment, additional time shall be required.
- C. In the event that Vehicles are complete and ready for shipment prior to the delivery dates specified in the Contract, the Contractor shall so notify the Authority. At the Authority's options, the Vehicles may be shipped.

7.13.2 Preparation for Delivery

- A. All parts that must be removed to permit shipment and those items not permanently secured to the Vehicle, shall be securely boxed to prevent damage, and shipped in the locked Vehicle to which they belong.
- B. If shipped by sea, all Vehicles or components thereof, shall be enclosed to protect against damage from handling or from exposure to the Marine environment.

7.13.3 Delivery

- A. The Contractor shall complete and deliver all equipment and materials defined in the Contract Documents, to the Massachusetts Bay Transportation Authority, location to be designated and confirmed by the Technical Project Manager prior to shipping release. Delivery shall be made per the schedule shown in the Contractor's Proposal and in conformance with Section 7.9.
- B. Each vehicle/material received will then be examined jointly by representatives of the Authority and the Contractor (if desired by the Contractor). The Authority will then issue a "Receiving Inspection Report" to the Contractor which will acknowledge receipt of the Vehicle and furnish appropriate notation as to its apparent "As-Received" condition. The "Receiving Inspection Report" will be signed by the Authority's representative and the Contractor's representative to attest to the stated condition of the Vehicle.

- C. It shall be further understood that from the time the Vehicles arrive on the Authority's property until such time as the Vehicles are accepted by the Authority for revenue service, the Contractor will be charged at the prevailing rates of the Authority, in effect at that time, if any work is performed on behalf of the Contractor.
- D. To be considered "delivered", each Vehicle, subsequent to receipt at MBTA designated facility, must be in a sound, whole, **ready-to-run/ready-to-test** condition, compliant with the Authority's Technical Specifications. Should the Authority agree to allow Vehicles to be shipped onto its property with retrofit work to be done, the Vehicles shall not, unless otherwise agreed upon by the Authority, be considered to be "delivered" until the Contractor has satisfactorily completed all such work. The Contractor shall be responsible for all Vehicle related costs incurred during the "shipment", "receipt" and delivery of the Vehicles.
- E. **Hours of delivery shall be between 7:30 a.m. and 3:00 p.m. – Monday through Friday ONLY.**
- F. The point of delivery shall be Boston Engine Terminal, 70 Rear Third Avenue, Somerville MA 02143, or other location(s) on the Authority's property as determined by the Technical Project Manager.

7.14 ACCEPTANCE OF VEHICLES

7.14.1 Acceptance of the locomotives shall be as delineated in the Technical Specifications.

NOTE: The Authority reserves the right to accept a vehicle for service pending correction of infancy failures, parts replacements and/or but not limited to, fleet defects.

- A. If, during Conditional Acceptance inspection, the Authority determines that a Vehicle(s) is (are) suitable for operation in revenue service, but that it is not totally responsive to the Specification requirements such that substantial delay might be incurred in implementing required corrective action(s), the Authority may, at its discretion, issue a "Certificate of Conditional Acceptance" for the Vehicle(s) for mutual execution by the Authority and the Contractor. Such accepted Vehicles shall then be available to the Authority for use in revenue service until such time as the Contractor is able to initiate and execute the necessary correction action(s).
 1. Such "Acceptance of a Vehicle(s)" shall not negate the Contractor's eligibility for achieving a milestone payment in accordance with the Schedule of Partial Payments (Section 7.7).
 2. Warranty commences to run upon Acceptance into revenue service in accordance with the Contract Documents, except for those parts requiring corrective action.
 3. In addition to the foregoing costs, it shall be understood that retrofit or modification work performed by the Authority shall be back-charged to the Contractor as defined in "Work Performed by the Authority on Behalf of the Contractor".
 4. It shall be further understood that from the time the Vehicles arrive on the Authority's property and until such time as they are accepted by the Authority, the Contractor shall be back-charged as defined in "Work Performed by the Authority on Behalf of the Contractor" for all work the Authority performs on behalf of the Contractor.
- B. Should the Authority experience delays in its Vehicle acceptance program attributable to the Contractor because of defective materials, workmanship or design, the Contractor shall not be permitted to stockpile unaccepted Vehicles on the Authority's property pending resolution of the problems unless so agreed to by the Authority. No more than four unaccepted Vehicles will be permitted to be stored by the Contractor on the Authority's property.

7.15 REPAIRS AFTER NON-ACCEPTANCE

7.15.1 REPAIRS BY CONTRACTOR

- A. If the Authority requires the Contractor to perform repairs after non-acceptance of the locomotive, the Contractor's representative must begin work within five (5) working days after receiving notification from the Authority of failure of acceptance tests. The Authority shall make the locomotive available to complete repairs timely with the Contractor's repair schedule.
- B. The Contractor shall provide, at its own expense, all spare parts, tools, and space required to complete the repairs. At the Authority's option, the Contractor may be required to remove the locomotive from the Authority's property while repairs are being effected. If the locomotive is removed from the Authority's property, repair procedures must be diligently pursued by the Contractor's representatives, and the Contractor shall assume risk of loss and insure the vehicle for 100% of its Contract value while the locomotive is under its control.

7.15.2 REPAIRS BY AUTHORITY

- A. Parts Used: If the Authority decides to perform the repairs after non-acceptance of the locomotive, it shall correct or repair the defect and any related defects using Contractor specified parts available from its own stock or those supplied by the Contractor specifically for this repair. Monthly, or at a period to be mutually agreed upon, reports of all repairs covered by this procedure shall be submitted by the Authority to the Contractor for reimbursement of replacement of parts. The Contractor shall provide forms for these reports.
 - 1. The Authority shall be reimbursed for Authority-supplied parts as defined in "Work Performed by the Authority on Behalf of the Contractor".
- B. Contractor Supplied Parts: If the Contractor supplies parts for repairs being performed by the Authority after non-acceptance of the locomotive, these parts shall be shipped prepaid to the Authority from any source selected by the Contractor within ten (10) working days after receipt of the request for said parts.
- C. Return of Defective components: The Contractor may request that parts covered by this provision be returned to the manufacturing plant. The total cost for this action shall be paid by the Contractor.
- D. Reimbursement for Labor: The Authority shall be reimbursed by the Contractor for labor as defined in "Work Performed by the Authority on Behalf of the Contractor".
- E. Reimbursement for Parts: The Authority shall be reimbursed by the Contractor for defective parts that must be replaced to correct the defect. The reimbursement shall include taxes where applicable, and fifteen percent (15%) handling costs.

7.16 WORK PERFORMED BY THE AUTHORITY ON BEHALF OF THE CONTRACTOR

7.16.1 All work performed by Authority personnel on behalf of the Contractor in connection with the execution of this contract shall be billable to the Contractor at the established flat labor rate of \$100.00 per hour.

7.16.2 The Authority will be reimbursed by the Contractor for defective parts or for parts that must be replaced to correct a defect. The reimbursement will be at the current price at the time of repair and include taxes where applicable plus 15% handling costs.

7.17 BASIS FOR PAYMENT

Basis for payment shall be as follows:

7.17.1 SCHEDULE OF PARTIAL PAYMENTS

The Contractor is required to submit a Proposal Price based on the following Payment Schedule for Locomotives:

Payment No.	Incremental Payment %	Accumulative Payment %	Payment Milestone
(A)	5%	5%	Approval of Master Production Schedule, including engineering, and production schedules, project management, and quality assurance program.
(B)	5%	10%	Upon completion of the stripping of each vehicle. Milestone B shall be on an individual vehicle basis. The sum payments claimed under this Milestone Shall at no time exceed 5% of the contract total.
(C)	5%	15%	Approval of the electrical and pneumatic schematics and procedures for In-Plant Inspections and Tests. Acceptance of engineering and design drawings, Plans for Conditional Acceptance testing of the Pilot Vehicles, Preliminary Maintenance Instruction Books, Renewal Parts Books and User Education Program Plan
(D)	5%	20%	Completion of FAI's on all major components and Systems (Includes New and UTEX parts)
(E)	65%	85%	65 % of the contract total cost distributed equally and paid on a per vehicle basis upon the Conditional acceptance of All Vehicles plus thirty (30) days or 5000 miles successful revenue service testing, without a component failure. Plus receipt of updated draft maintenance and parts manuals. The sum of the payments claim under this milestone shall at no time exceed 65% of the total vehicle contract price.
(F)	5%	90%	Completion of all Manuals History Books and Training.
(G)	10%	100%	Successful completion of contract including Final Acceptance of all vehicles and receipt of As-Built Drawings and Contractors Specification. Plus completion of all administrative and technical matters including approval and receipt of all required documentation and completion of all outstanding retrofits, with the exception of the warranty program.

NOTES:

1) The above "Incremental Payment %" shall be based upon the Base Proposal Price to overhaul ten (10) locomotives, plus any Optional Work Scope that is exercised by the Authority (Section 7.8), as extended for 10 Locomotives.

2) Upon delivery of each locomotive, the Contractor shall submit a separate detailed payment invoice listing (with appropriate documentation attached) of all approved additional costs incurred on each locomotive for "Hidden Damage". Hidden Damage invoices shall be processed separately from Milestone invoices.

3) The Authority reserves the right to withhold individual milestone payments or some portion thereof in the event that extra costs not associated with liquidated damages are incurred by the Authority and such costs are directly attributable to the Contractor's performance or lack thereof. Total extra costs for related labor, materials, equipment, and/or consultants will be withheld.

7.17.2 SCHEDULE OF PARTIAL PAYMENTS FOR OPTION LOCOMOTIVES

Payment No.	Incremental Payment %	Accumulative Payment %	Payment Milestone
(AA)	10%	10%	10% of the total option fleet cost distributed equally and paid on a per vehicle basis upon completion of stripping of each vehicle
(BB)	80%	90%	80 % of the total option fleet cost distributed equally and paid on a per vehicle basis upon the Conditional acceptance of each vehicle plus thirty (30) days or 5000 miles successful revenue service testing, without a component failure.
(CC)	10%	100%	Successful completion of the option including outstanding retrofits, spare parts, and administrative and technical matters, with the exception of the warranty program.

7.1 LIQUIDATED DAMAGES

7.1.1 Liquidated damages may be assessed for failure to meet the contract requirements under any of the following:

A. Delivery Date

Meeting the schedule is important to the Authority as much as the quality of the work and the price. 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 incurred by the Authority because of the failure of the Contractor to fully complete the certain provisions of the Contract as adjusted.

Liquidated Damages for delivery shall be assessed for failure to complete delivery of each locomotive by the time specified in the Technical Specifications.

The amount of agreed liquidated damages to be deducted per week day from the Contract price for failure to complete delivery of the each vehicle as specified herein shall be five hundred dollars (\$500) per day per vehicle. These liquidated damages shall be applied to each vehicle for each and every weekday it is delayed beyond the delivery time schedule as specified in Section 7.9 of the Contract Documents.

When delay occurs due to reasonable causes beyond the control of the Contractor, including but not limited to, acts of God, acts of government or any governmental agency, war or war conditions, riot or civic conditions, sabotage, strikes, lockouts, accidents, fire, flood, typhoons, hurricanes, explosions, damage to plant, equipment, or facilities, the time for performance and completion of the work shall be adjusted and extended as required to accommodate the delay and its effect.

Permitting the Contractor to continue to deliver vehicles after the time fixed for its completion, or after the date to which time for delivery may have been extended, shall in no way operate as a waiver on the part of the Authority of any of its rights under the Contract.

B. Technical Assistance:

Liquidated damages shall also be claimed during the guarantee period in the event the Contractor fails to make available to the Authority qualified personnel to provide technical assistance to correct defects in either its equipment or the equipment furnished by the Subcontractors. Whenever the Authority discovers a defect that is of such a nature as to require that a Vehicle be

withheld from revenue service, the Technical Project Manager or designee will verbally advise the Contractor of the problem, and the Contractor will be granted no more than forty eight (48) hours to make available to the Authority such quantity of competent personnel as may be reasonably needed to initiate effective corrective action. If the Contractor fails to provide the technical assistance within seventy-two (72) hours, the Authority shall assess against the Contractor an amount of five hundred dollars (\$500) per day per vehicle for each and every day the vehicle is out of revenue service until such time as the Contractor initiates work on such vehicle during the applicable guarantee period.

C. Material Availability:

Liquidated damages shall also be claimed during the guarantee period in the event the Contractor fails to make available to the Authority an adequate quantity of materials/replacement parts and/or components necessary to correct defects in either its equipment or the equipment furnished by the subcontractors. Whenever the Authority discovers a defect that is of such a nature as to require that a vehicle be withheld from revenue service, the Technical Project Manager or designee will verbally advise the Contractor of the problem, and the Contractor will be granted no more than ten (10) days to make available to the Authority such quantity as may be reasonably needed to initiate effective corrective action. If the Contractor fails to provide the material, parts or componentry within ten days, the Authority shall assess against the Contractor an amount of three hundred dollars (\$300) per day per vehicle for each and every day the vehicle is out of revenue service until such time as the Contractor initiates work on such vehicle during the applicable guarantee period.

NOTE: In the event a Vehicle is being withheld from revenue service for both of the previously listed reasons (lack of technical assistance or lack of materials/parts/components), liquidated damages shall be assessed under either cause, but not both simultaneously.

7.1.2 Accrued Liquidated Damages:

There shall be deducted from any money due or to become due to the Contractor at the time of final payment, a sum representing the accrued liquidated damages. Such deductions shall not be considered a penalty, but as the agreed monetary damages sustained by the Authority because the Contractor was unable to provide Vehicles which fully met the service standards required. Should the money due to the Contractor be insufficient to cover such agreed liquidated damages, then the Contractor forthwith shall pay the remainder to the Authority.

7.1.3 Total Liquidated Damages:

The maximum percent for all liquidated damages for all Vehicles shall not be in excess of 5% of the Total Contract Value as adjusted through Change Orders.

7.2 GUARANTEE OF END PRODUCTS (WARRANTY)

7.2.1 The Contractor shall guarantee the locomotives as described in these Contract Documents, including all supplied materials, components and work under this contract (Specification No. LO 17-0013), and other Authority-approved work on the vehicles for the following periods:

- A. **Locomotives** – one (1) year from date of Conditional Acceptance for each locomotive.
- B. **Specific subsystems and components** – for the time period and/or the mileage stated in the Technical Specifications, if applicable.
- C. **Retrofits** – for the remainder of the vehicle’s guarantee period or for one (1) year from the date of retrofit completion per vehicle, whichever period is greater.
- D. **Removal from Revenue Service** - If a vehicle is removed from revenue service for more than 5 days for warranty/repair/retrofit work, the duration of the time the vehicles is removed from service will extend the warranty period accordingly.

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- E. Carryover of Standard Warranties** - Any warranty from a subcontractor, manufacturer or supplier to the Contractor exceeding the warranty period required by the Contract shall be extended to the MBTA for the same period of time as given to the Contractor.
- 7.2.2** All of the above shall be in compliance with the Technical Specifications.
- 7.2.3** Warranties shall not be prorated.
- 7.2.4** The Contractor shall guarantee that the vehicles shall be in accordance with the Contract Documents when the vehicles are accepted and, shall guarantee against defect due to faulty design, poor workmanship, or poor material during the periods of guarantee. If a locomotive or any part thereof, prove defective either in design, materials, or workmanship during the respective periods of guarantee, the Authority shall promptly notify the Contractor, and the Contractor shall repair or replace, as mutually agreed by both parties, such part or parts without expense to the Authority.
- 7.2.5** During the respective period of guarantee, the Contractor shall be responsible for all costs of labor and material for defect identification and location, and for the removal, repair, or replacement of defective parts, and for alterations, repairs, tests, and adjustments in connection therewith, made to obtain specified vehicle performance.
- A. All vehicle parts or material caused to be damaged as the result of a defect in design, material, or workmanship in other vehicle parts or material, shall be repaired or replaced at the expense of the Contractor.
- B. Failure reports must accompany all repaired parts.
- C. At no time will the Authority be required to provide information or justification for warranty reimbursement other than maintenance records.
- D. Any warranty work performed by the Authority or its contracted operator on behalf of the Contractor shall be reimbursed in accordance with the requirements of the Contract Documents.
- 7.2.6** In no case shall any correction of defects in design, material, or workmanship take the form of an increase in maintenance requirement beyond that specified in the Contract Documents, described in the original edition of the maintenance instructions, approved in the baseline design, or submitted by the Contractor at the time of bid for the Contract.
- 7.2.7** Where 20% of the quantity of a warranted item fails or where 20% of the fleet's vehicles are affected during the warranty period, as noted in the Technical Specifications, the Authority may classify the total of such items as a failure, including those items for which the warranty period expired before the Authority recognized the failure. The Contractor shall be responsible for all costs of labor and material, for defect identification and location, and for removal, repair or replacement of defective parts, and for alterations, repairs, tests, and adjustments in connection therewith made to obtain vehicle performance identified in the Technical Specifications. All such replaced or repaired items shall be guaranteed for the remainder of the warranty period or for one (1) year, whichever period is greater.
- 7.2.8** The provisions contained in the Technical Specifications are made a part of herein.
- 7.2.9** The Contractor shall provide an on-site Field Service Engineer and Warranty Coordinator, as described in the section of this document regarding Technical Support.
- 7.2.10** Any repair or retrofit work required to fulfill these guarantees shall be accomplished with minimum disruption to the Authority's operation and its maintenance facility; however, as a condition precedent to the Contractor's liability under the Guarantee of End Product (Warranty), the Contractor shall have been given notice of the defect(s), reasonable access to the defective part(s), and the defective part(s) shall not have been changed or altered without the Contractor's knowledge, whether by additions, subtractions or otherwise, in any manner whatsoever.
- 7.2.11** Due to the regular maintenance demands on Authority facilities and on the Authority's operation
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personnel, it may be possible to undertake only minimal adjustment, repair, or replacement work on equipment prior to Final Acceptance. The Contractor shall, in such an event, be responsible for securing facilities and personnel to facilitate all additional work required for the duration of the Contract.

8. FEDERAL REQUIREMENTS

8.1 BUY AMERICA

The Proposer is to be governed by the latest provisions of the "Buy America" clause of the Surface Transportation Act of 1982, the Federal Mass Transportation Act of 1987 and Uniform Relocation Assistance Act of 1987 and execute the "Buy America" Certificate found in Section 8.19 of this Document. The separate requirements for rolling stock are set out in 5323(j)(2)(c) and 49 CFR part 661.11. The Proposer agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661.

SECTION 165

- A. Notwithstanding any other provisions of law, Secretary of Transportation shall not obligate any funds authorized to be appropriated by this Act or by any Act amended by the Act, or after the date of enactment of this Acts, Title 23, United States Code, the Urban Mass Transportation Act of 1964, or the Surface Transportation Act of 1978 and 1982, and Federal Mass Transportation Act of 1987 and administered by the Department of Transportation, unless steel manufactured products used in such projects are produced in the United States.
- B. The provisions of Subsection "a" of this Section shall not apply where the Secretary finds:
1. That their application would be inconsistent with the public interest.
 2. That such material and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.
 3. In the case of procurement of Locomotive and other rolling stock (including train control, communication, and traction power equipment) under the Urban Mass Transportation Act of 1964, and the Federal Mass Transportation Act of 1987, that:
 - a. The cost of components and subcomponents which are produced in the United States is more than 60 per centum of the cost of all components of the vehicle or equipment described in this paragraph.
 - b. Final assembly of the vehicle or equipment described in this paragraph has taken place in the United States.
 - c. For purposes of this Section, calculating components' cost, labor cost involved in final assembly shall not be included in this calculation.
 - d. The Secretary of Transportation shall not impose any limitation or condition on assistance provided under this Act, the Urban Mass Transportation Act of 1987 or Title 23, United States Code, which restricts any State from imposing more stringent requirements than this section, the use of articles, materials, and supplies mined, produced or manufactured in foreign countries in projects carried out with such assistance or restricts any recipient of such assistance from complying with such State imposed requirements.
 - e. Section 401 of the Surface Transportation Acts of 1978 is repealed.
 4. That the inclusion of domestic material will increase the cost of the overall project contract by more than 25 per centum in case of all projects including but not limited to the acquisition of rolling stock.

C. BUY AMERICA CERTIFICATE

The Proposer must review and be familiar with the attached "Buy America" Certificate (Section 8.19) and related contractual provisions herein. The Proposer must include a completed Certificate with its proposal. Submittals not accompanied by a completed Buy America certificate may be rejected as nonresponsive. Where a Certificate of non-compliance with Section 165(b)(3) is submitted and not

granted by the FTA, Proposals/Best and Final Offers (BAFO's) will be deemed non-compliant.

8.2 REQUEST FOR WAIVER

If the Proposer/Contractor is unable to satisfy the Buy America requirements, documentation shall be provided to the Authority indicating that the Proposer/Contractor has made good faith efforts to locate suppliers with domestic content and it was unable to satisfy specific technical requirements. This documentation shall be used by the Authority to prepare a request for waiver to the Buy America requirements from the Federal Transportation Administration/Department of Transportation

8.3 PRE-AWARD AND POST DELIVERY AUDITS OF ROLLING STOCK PURCHASES

49 CFR Part 663 effective October 24, 1991

Federal Register Volume 56, No. 185, September 24, 1991

Federal Register Volume 57, No. 62, March 31, 1992

In accordance with the above, the Federal Transportation Administration; as delegated by the Secretary of Transportation, has issued regulations requiring pre-award and post-delivery audits when federal financial assistance is utilized in the purchase of rolling stock when funds have been made available under the Urban Mass Transportation Act as amended.

A. General

1. Definitions as used in this herein:

- a. Pre-award means that period in the procurement process before the recipient enters into a formal contract with the supplier.
- b. Post-delivery means the time period in the procurement process from when the rolling stock is delivered to the recipient until title to the rolling stock is transferred to the recipient or the rolling stock is put into revenue service, whichever is first.
- c. Rolling stock means Locomotives, vans, cars, railcars, locomotives, trolley cars and buses, ferry boats, and vehicles used for guideways and incline planes.
- d. Audit means a review resulting in a report containing the necessary certifications of compliance with Buy America Standards, purchaser's requirements specifications, and, where appropriate, a manufacturer's certification of compliance with or inapplicability of the Federal Motor Vehicle Safety Standards, required by Section 319 of STURAA and this part.

2. Audit Limitations

- a. Applicable Buy America requirements (Section 165 of the Surface Transportation Assistance Act of 1982, as amended); and
- b. Solicitation specification requirements of the recipient.
- c. An audit under this part includes, where appropriate, a copy of a manufacturer's self-certification information that the vehicle complies with Federal Motor Vehicle Safety Standard or a certification that such standards are inapplicable.
- d. An audit conducted under this part is separate from the single annual audit requirement established by Office of Management and Budget Circular A-128, "Audits of State and Local Governments," dated May 16, 1985.

B. Pre-Award Audit

1. Pre-Award audit must be completed before a formal contract for the procurement of rolling stock may be issued.
2. The elements of this pre-award audit include the following certification to be maintained on file by the purchaser.

a. Buy America Certification

- (i) There is a letter from the FTA which grants a waiver to the rolling stock to be purchased from the Buy America requirements under Section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982 as amended; or
- (ii) The recipient is satisfied that the rolling stock to be purchased meets the requirements of Section 165(a) of (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or through an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists:
 - (a) Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and
 - (b) The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

b. Purchaser's Requirements Certification

- (i) The rolling stock the recipient is contracting for the same product described in the purchaser's solicitation specification; and
- (ii) The Proposer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's specification set forth in the recipient's solicitation.

c. Federal Motor Vehicle Safety Certification (as appropriate)

- (i) **Certification of Compliance with Federal Motor Vehicle Safety Standards.**
If a vehicle purchased under this part is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, the purchaser shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.
- (ii) **Certification that Federal Motor Vehicle Standards do not apply.**
 - (a) Except for rolling stock subject to paragraph (b) of this section, if a vehicle purchased under this part is not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this time, the recipient shall keep on file its certification that it received a statement to that effect from the manufacturer.

(b) This subpart shall not apply to rolling stock that is not a motor vehicle.

C. Post-Delivery Audits

- 1. A post-delivery audit of FTA funded rolling stock procurement must be complete before title is

transferred to the purchaser.

2. A post-delivery audit under this section includes:

a. Post-delivery Buy America Certificate which the purchaser keeps on file, the following:

- (i) There is a letter from UMTA (FTA) which grants a waiver to the rolling stock received from the Buy America requirements under Section 165(b)(1), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or
- (ii) The recipient is satisfied that the rolling stock received meets the requirements of Section 165(a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or by means of an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists:
 - (a) Components and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin and costs; and
 - (b) The actual location of the final assembly point for rolling stock including a description of the activities which took place at the final assembly point and the cost of the final assembly.

b. Post-Delivery Purchaser's Requirements Certification

For purpose of this part, a post-delivery purchaser's requirements certification is a certification that the recipient keeps on file that:

- (i) Except for procurement covered under paragraph (c) in this Section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture or the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Such a report, at a minimum, shall:
 - (a) Provide accurate records of all vehicle construction activities; and
 - (b) Address how the construction and operation of the vehicles fulfills the contract specifications.
- (ii) After reviewing the report required under paragraph (a) of this Section, and visually inspecting and road testing the delivered vehicles, the vehicles meet contract specifications.
- (iii) For overhaul of ten or fewer locomotives, after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.

3. If the purchaser cannot complete a post-delivery audit because it or its agent cannot certify Buy America compliance or that the rolling stock meets the purchaser's requirements specified in the contract, the rolling stock may be rejected and final acceptance by the recipient will not be required. The recipient may exercise any legal rights it has under the contract or at law.

Be advised that this provision does not preclude the recipient and manufacturer from agreeing to a conditional acceptance of rolling stock pending manufacturer's correction of deviations within a reasonable period of time.

NOTE: For Section 7.19 only, the following words have been used interchangeably to mean the same:

Recipient, Purchaser = Authority
Manufacturer, Proposer, Car builder = Contractor

8.4 FLY AMERICA

The Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless air transportation is provided by U.S. Flag air carriers to the extent service by these carriers is available, as required by the International Air Transportation Fair Competitive Practices Act of 1974, as amended 49 U.S.C. § 40118, in accordance with U.S. GAO regulations, "Uniform Standards and Procedures for Transportation Transactions, 4 C.F.R. Part 52, and U.S. GAO Guidelines for Implementation of the Fly America Act", B-138942, 1981 U.S. Comp. Gen. LEXIS 2166, March 31, 1981.

8.5 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - 40 U.S.C. §§ 327-333 (1995); 29 C.F.R. § 5 (1995); 29 C.F.R. § 1926 (1995)

Section 102 of the Act, which deals with overtime requirements, applies to:

- all construction contracts in excess of \$2,000 and;
- all turnkey, rolling stock and operational contracts (excluding contracts for transportation services) in excess of \$2,500

(The dollar threshold for this requirement is contained in the current regulation 29 C.F.R. g 5.15) For nonconstruction contracts (Ex. rolling stock), the following sections apply as noted.

- (1) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) **Withholding for unpaid wages and liquidated damages.** The MBTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated

damages as provided in the clause set forth in paragraph (2) of this section.

- (4) **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.
- (5) **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)(91)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonable 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.

8.6 CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS - 5 U.S.C. 552

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

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

8.7 FTA FUNDED PROCUREMENT REQUIREMENTS

8.7.1 U.S. DOMESTIC PROVISIONS

- A. This contract may be financed in part by means of a grant under the Urban Mass Transportation Act of 1964, as amended, and administered by the U.S. Department of Transportation, Federal Transit Administration (FTA), under a Capital Grant Contract between the Authority and the United States. The provisions of an FTA funded contract will apply.
- B. All questions concerning the contract between the Authority and the Contractors, including all proposals thereof, shall be governed by and decided according to the law application to government procurement under Capital Grant Contracts. Refer to FTA Circular 4220.1F entitled "Third Party Contracting Guidelines" for details.

C. Under the FTA Guidelines, the following protest procedures are applicable:

1. The FTA may entertain a protest that alleges that a grantee failed to have or follow its written appeal/protest procedures.
2. A protest must be filed with the FTA no later than 5 days after the protester knows or has reason to know that the grantee has failed to render a final decision.
3. A protest to FTA must be filed in accordance with FTA Circular 4220.1F, as amended.

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.

8.7.2 POLLUTION REQUIREMENTS

- A. The Contractor and all Subcontractors or Suppliers must submit evidence that all governing pollution criteria of any Federal, State, Municipal or other duly authorized authority shall be met.
- B. This evidence and related documents shall be retained for on-site examination as required.

8.7.3 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any MBTA requests which would cause MBTA to be in violation of the FTA terms and conditions.

8.8 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 USC 6962) including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement items designated in Subpart B or 40 CFR Part 247.

8.9 FEDERAL CHANGES

The Contractor shall, at all times, comply with all applicable FTA regulations, policies, procedures and directions, without limitation those listed directly or by reference in the Master Agreement (Form FTA MA (4) dated October, 1997) between the Purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. The Contractor's failure to so comply shall constitute a material breach of contract.

8.10 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.

8.10.1 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.

8.10.2 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.

8.10.3 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.

8.10.4 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.

8.11 DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

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 the Contractor (i.e., entity), its principals, as defined at 49 C.F.R. 29.995, or affiliates, as defined at 49 CFR 29.905, 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 and submitting its Proposal, the 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 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 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 Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

8.12 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 8.19).

8.13 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 4220.1E 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.

8.14 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

8.14.1 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.

8.14.2 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.

8.14.3 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.

8.15 ENERGY CONSERVATION REQUIREMENTS

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

8.16 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.

8.17 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.

8.18 CARGO PREFERENCE REQUIREMENTS

The Contractor agrees:

- 8.18.1** 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;
- 8.18.2** 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).
- 8.18.3** 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.

9. TECHNICAL PROPOSAL FORMS (SEE ATTACHMENT #3)

Proposers responding to this RFP must fully complete, sign, and submit with their Technical Proposal the forms contained in Attachment #3. Further guidance is provided in Attachment #3.

10. COST PROPOSAL FORMS

Proposers responding to this RFP must fully complete, sign, and submit with their Cost Proposal the forms contained in this section.

10.1 OFFERORS PROPOSAL AGREEMENT FORM

**MASSACHUSETTS BAY TRANSPORTATION AUTHORITY
10 PARK PLAZA – BOSTON, MASSACHUSETTS 02116-3974**

Proposal for the Overhaul, Furnishing and Delivery of ten (10) F40PH-2C/F40PHM-2C locomotives in accordance with Technical Specification No. LO17-0013 to the MBTA.

Proposal No.: _____

Name of Offeror: _____

Business Address: _____

Address where Notification _____

should be sent: _____

Telephone No.: _____ E-mail: _____

Facsimile No.: _____

The undersigned proposes to furnish equipment, materials, and services in accordance with the Contract Documents for RFP No. 143-16 to which this Proposal Form is attached, at the following prices, subject to the terms and conditions of the Contract Documents.

The price offered for each item is the full rehabilitation price, including delivery charges and all taxes, direct and indirect, and includes all premiums on bonds, labor, and material costs, patent royalties, and all other overhead charges of every kind and nature.

Offeror shall show all prices in English words and numerals expressed in United States of America dollars. In the case of a discrepancy between the price offered in words and the price offered in numerals, the price offered in words shall govern. These prices shall be the total price, delivered to the MBTA in Boston, Massachusetts.

The undersigned further declares that they have carefully examined the Contract Documents including the Contract Provisions and Technical Specification No. LO17-0013; Addenda; Performance Bond; Bid Form; Buy America/U.S. Content Compliance Certificate, as applicable, Non-Collusion Affidavit; DBE Participation Certificate; Power of Attorney; and all other Attachments hereto, and that they have familiarized themselves with all of the conditions affecting the Contract and understand that in making this bid they waive all right to plead any misunderstanding regarding the same.

The undersigned further understands and agrees that if this Proposal is accepted they are to furnish all of the materials specified, in the manner and at the time prescribed, and in accordance with the requirements set forth in the Contract.

Signature: _____

Title: _____

10.3 BASIS OF AWARD

Base Award:

The re-manufacturing, furnishing and delivery of ten (10) –F40PH-2C/F40PHM-2C locomotives as described herein and in accordance with the Technical Specification No. LO17-0013 (Item Nos. 1 through 3).

BASE PRICE: \$ _____

Total Proposal Price:

This is the basis for determining award comprised of the Base Award Price plus all Options (Item Nos. 1 through 3).

***TOTAL PROPOSAL PRICE:**

\$ _____

* Note: The amount stated above will be the Basis for Award.

Provide your firm delivered price for the following:

NOTE: CONTRACT TOTAL IS THE TOTAL PRICE FOR THE OVERHAUL AND DELIVERY OF 10 F40PH-2C/F40PHM-2C LOCOMOTIVES IN ACCORDANCE WITH THE CONTRACT DOCUMENTS PERTAINING HERETO INCLUDING THE AUTHORITY’S SPECIFICATIONS LO17-0013, AND ALL LABOR, MATERIALS, TRANSPORTATION, DELIVERY AS SPECIFIED TO THE MBTA.

Basis of Award is the Total of Items No. 1 through No. 3 in accordance with Section 3.1.

Item	Qty	Description of Equipment (Unit Price written in words)	Delivered Unit Price	Total Base Proposal Price
1.	10	Overhaul F40PH-2C/F40PHM-2C Locomotives in accordance with Contract Documents RFP 143-16 and Specification No. LO17-0013	\$ _____	\$ _____ Extended 10 Locomotives
2.		Hidden Damage Allowance		\$ _____ (Sum of Items 2a, (carried forward from 10.5)
3.		Optional Work Scope		\$ _____ (carried forward from Item 3, 10.5)
		Total (Basis of Award)		\$ _____ (Sum of Items 1, 2, and 3)

Proposal Clarification:

Line Item 1- Overhaul locomotives is the total cost of a delivered locomotive, inclusive of all costs associated with the requirements of the Contract Documents RFP 143-16 and Specification LO17-0013 This Price does not include the costs associated with Hidden Damage and any Optional Work Scope items. Line Item 2 – Hidden Damage Value is the Sum of items 2a-d carried forward from 10.5. Line Item 3 –Optional Work Scope is the Sum of items 3a, 3b, and 3c carried forward from 10.5. Milestone payments shall be made in accordance with Section 7.17.

10.4 HIDDEN DAMAGE ALLOWANCE

In the process of performing the locomotive overhaul, the Offeror shall prepare a written report listing all hidden body damage, previously unseen, which may require corrective work. Such conditions include corrosion, deterioration, or wear which may require repairs. This does not imply that the Authority will agree to this work, or spend any or all of the Hidden Damage Allowance. If the Authority agrees that the work should be performed, an agreement shall be reached as to the amount of labor/materials required, to correct such additional work. **This work must be approved by the Authority’s Technical Project Manager and confirmed/signed off by the Authority’s Resident Inspector.**

The Offeror shall provide the hourly rate of pay for major crafts and engineers. The hourly rate paid by the Authority for labor or engineering work will, in no event, exceed the hourly rates quoted here by the Offeror

2.	HIDDEN DAMAGE ALLOWANCE	
	<p>Labor (direct employee or subcontractor including all markups)</p> <p>Craft _____ \$ _____ (hourly rate)</p> <p>Craft _____ \$ _____ (hourly rate)</p> <p>Craft _____ \$ _____ (hourly rate)</p> <p>Craft _____ \$ _____ (hourly rate)</p> <p>Engineer (including all markups) \$ _____ (hourly rate)</p> <p>Hidden Damage Allowance</p>	\$500,000
	<p>SUBTOTAL FOR ITEM 2</p> <p>Estimated value to be used as required within the above stated parameters</p>	<p><u>\$500,000</u></p> <p>(Sum of Item 2a carried forward to 10.4, Item #2)</p>

10.5 "OPTIONAL WORK SCOPE"

Proposal price for "Optional Work Scope" will be included as part of the Basis of Award – **Section 10.3**. The Contractor shall price the following "Optional Work Scope" items separately from the base contract work. At the time of Contract Award, the Authority shall make a determination which, if any, of the Options will be executed. The MBTA reserves the right to execute the option to overhaul the Locomotives individually or in any quantity not to exceed 26.

Item	Qty	Description of Equipment (Unit Price written in words)	Installed Unit Price	Extended Value
3a.	1-26	Overhaul of F40PH-2C/F40PHM-2C Locomotives Technical Specification No LO17-0013 Page 47 AT: _____	\$ _____	\$ _____
3b.	1-36	HEP Genset Tier II Upgrade Technical Specification No LO17-0013 Page 47 AT: _____	\$ _____	\$ _____
Sum of Extended Value for Items 3a and 3b				\$ _____ Extended Value (carried forward to Item 3, 10.3)

10.6 CERTIFICATION OF DETAILED COST PROPOSAL

A detailed Cost Proposal has been prepared and it will be forwarded to the Authority within forty-eight (48) hours of request to do so by the Authority in accordance with these Section 2.6 of the Contract Documents.

OFFEROR:

NAME: _____

ADDRESS: _____

AUTHORIZED
SIGNATURE: _____

TITLE: _____

TEL. NO.: _____