



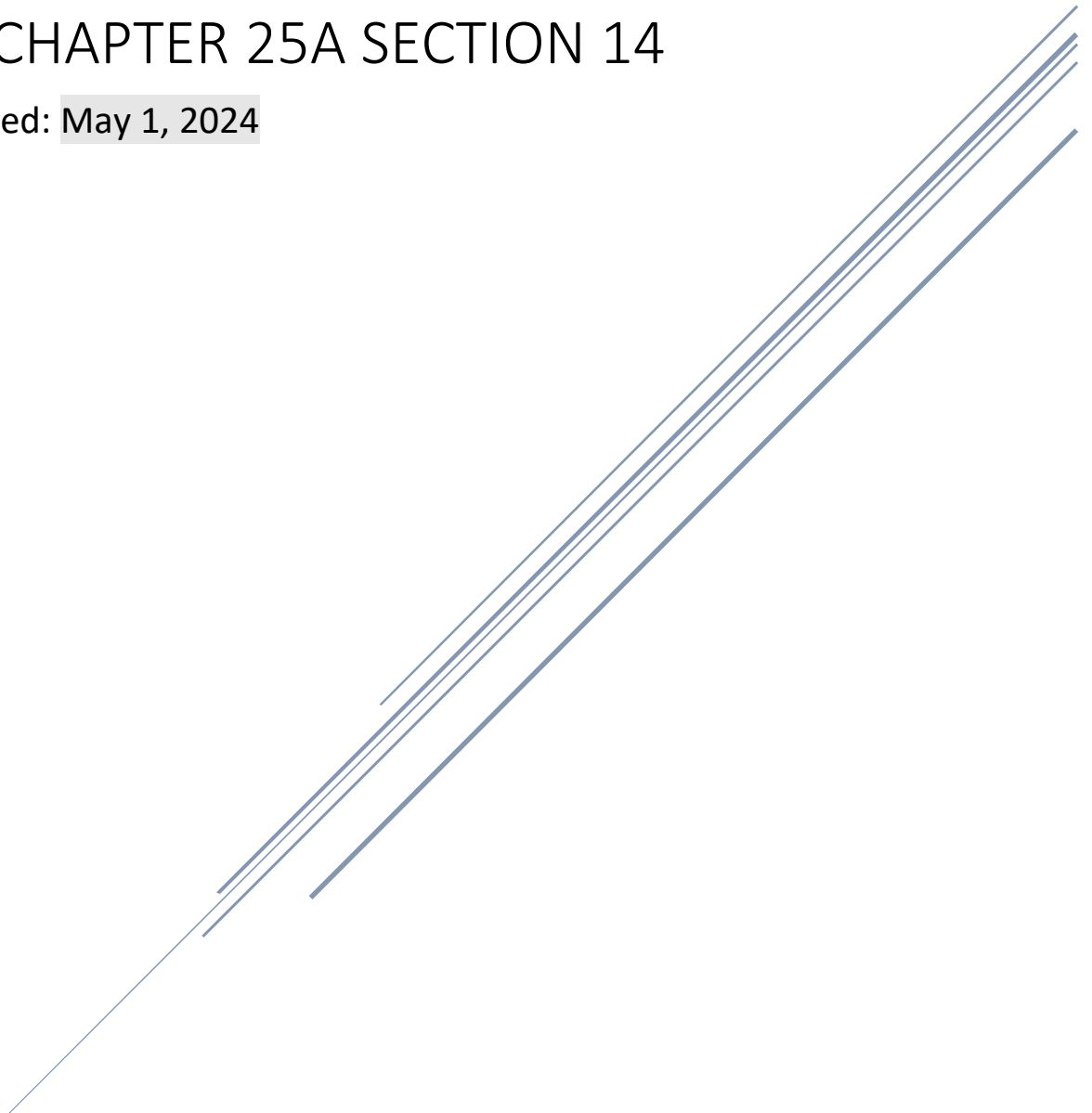
MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

REQUEST FOR QUALIFICATIONS (RFQ)

RFQ#: 20-24

ENERGY CONSERVATION PROGRAM –
MGL CHAPTER 25A SECTION 14

Date Issued: May 1, 2024





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Attn: Bidder/s

Request for Qualifications (RFQ): # 20-24

RFQ Description: Utility Vendor Program

Dear Prospective Bidder:

The Massachusetts Bay Transportation Authority (“MBTA” or “Authority”), a corporate and a political subdivision of the Commonwealth of Massachusetts, existing pursuant to Mass. Gen. Laws, MGL 25A §14 (as amended) invites vendors to participate in the RFQ process for the Energy Conservation Program – MGL Chapter 25A Section 14.

The specific scope of services to be provided will vary from project to project. This document provides a general outline of the procedure for participation in the MBTA Utility Vendor Program in Section 2, Scope of Work. The MBTA intends to award multiple contracts to qualified Bidders. All formal communication with the MBTA during the RFQ period shall be only through the MBTA’s designated point of contact.

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

John de Lalla
Massachusetts Bay Transportation Authority
10 Park Plaza, Room 2810
Boston, MA 02116
Email: jdelalla@mbta.com

Respectfully,

John de Lalla

John de Lalla
Massachusetts Bay Transportation Authority
RFQ # 20-24



1. INTRODUCTION

Massachusetts General Law Chapter 25A Section 14 allows a limited exemption from public procurement law for energy conservation projects costing less than \$300,000 in total project costs. Public entities may contract with investor-owned utility companies and their subcontractors to implement these energy conservation projects, directly and without further solicitation.

The MBTA Chapter 25A Energy Conservation Program shall establish and maintain a list of qualified vendors able to deliver full turn-key services for energy efficiency projects under M.G.L. Ch. 25A §14. At the MBTA's discretion, additional qualified vendors may be added on a periodic basis.

The MBTA expects to complete 12 – 15 projects per year. The contract term will be from contract execution until February 28, 2029, provided, however, that M.G.L. Ch. 25A §14 remains in effect during the contract term. Contractors are required to maintain eligibility under 25A §14 during the contract term.

Bids will be accepted on a rolling basis with the evaluations every 6 months.

2. SCOPE OF WORK

2.1 Categories

Through this RFQ, the MBTA will select a pool of vendors with capabilities in one or more of the following categories:

- 2.1.1** Installation and repair of lighting systems.
- 2.1.2** HVAC components and systems.
- 2.1.3** Insulation and weatherization.
- 2.1.4** Controls and building management systems.
- 2.1.5** Power systems (including batteries, transformers, renewable energy systems, etc.)
- 2.1.6** Specialized process equipment (including compressors, motors/VFDs, third rail and track switch heaters, etc.)
- 2.1.7** Electric vehicle supply equipment (EVSE).
- 2.1.8** Existing Building Commissioning.

These are intended to be the primary project categories solicited by the MBTA. However, the MBTA may solicit any ECM or decarbonization measure, as defined per MGL 25A Section 14.

2.2 Projects

The MBTA will identify specific project opportunities and present these to the contracted vendors for that category. Individual projects shall be limited to design and implementation of a single identifiable energy conservation measure ("ECM") or identification of multiple ECMs through existing building commissioning. As detailed below, services provided shall include required auditing, energy engineering, economics, incentive documentation, design and/or installation services, commissioning, and project closeout. Existing Building Commissioning projects are intended solely for identification of potential ECMs. Vendors will be paid to perform an ASHRAE Level II Audit at a location and identify all potential ECMs. Design and installation work are not included in Existing Building Commissioning projects. The MBTA intends to use the results of these Existing Building Commissioning reports to resolicit future projects under the Utility Vendor Program.

LIST OF SUPPLEMENTAL ATTACHEMENTS



Please note, none of these Supplemental Attachments need to be completed as part of this RFQ. They are examples of future forms and submittals to be used during this contract. A description of each is included below. The MBTA reserves the right to modify these forms at any time.

- 2.2.1 Project Notification Form** – A form that is issued by the MBTA to notify qualified vendors of each Energy project opportunity. This form will include high level details about the type of energy project, the location, the safety requirements, and the design services the MBTA is requiring for each project.
- 2.2.2 Project Interest Form** – A form submitted by a qualified Vendor to the MBTA in response to a Project Notification Form. This form will be the only official way to express interest in completing an energy project. Vendors who do not submit this form will not be considered for that specific energy project. This form includes high level details about schedules, safety certification already attained, and if a sub-contractor will be used.
- 2.2.3 MBTA Utility Vendor Final Scope Approval Form** – The final document that cements the details of the proposed energy project including scope of work, price, and schedule. This document will be signed off by both the MBTA and the Vendor before a Purchase Order is issued, and the project can begin.
- 2.2.4 Audit Template** – an excel template for auditing an MBTA location and proposing an energy conservation measure(s). MBTA will use this template to provide Utility cost and consumption data for the location but can provide the raw data if requested. Includes all required information for proposing an ECM to the MBTA, but vendors are free to use their own template as long as it includes all information noted in the MBTA Audit Template.
- 2.2.5 Project Narrative Template** – A word template for an energy project narrative that will be incorporated into the final scope of work. This word template lists all the required sections the MBTA needs in a project narrative, but vendors are free to use their own template.
- 2.2.6 Minimum Insurance Requirements**
- 2.2.7 Payment Bond 50%** - requirement per project, no attachment

2.3 Safety

Prior to performing work, including audits, on MBTA property, all necessary vendor personnel must obtain MBTA ROW, Keolis RWP, or Mass Coastal RWP training, as applicable to a given project, and verify their certifications. ROW training requirements apply to anyone who will be onsite, including all subcontractors and installation personnel. The MBTA will include the ROW requirements in the project notifications for each project. MBTA will give priority to vendors that already have the required ROW training for a project. Training is free, time in training is not billable.

Bidders selected through this RFQ process will be provided additional information regarding the required training. Attendance for ROW training is not reimbursable to the MBTA.

2.4 Project Process

Projects will follow the below phases:

Phase 0 – Project Notification

Phase I – Audit and Proposal

Phase II – Design



Phase III – Execution

Phase IV – Closeout

2.4.1 Common Tasks

Common Task Services shall be applicable to all project phases.

C-1: Utility Incentives and Rebates, Grants

The vendor shall be responsible for verifying that the project applies for and receives all relevant utility incentives. The vendor shall also explore all other available rebates, emissions offsets and credits, tax incentives/credits eligible for direct pay, or ISO-NE Forward Capacity Market programs. Should the Authority utilize a grant to implement the project, the vendor shall contribute documentation as required to satisfy the grant conditions.

The vendor is responsible for obtaining all required signatures to complete required incentive documentation, including pre- and post-install signatures. All utility incentives shall be paid out to MBTA Environmental unless another recipient is explicitly authorized in writing by the Authority.

C-2: Project Scheduling and Reporting

The Authority may request a design or construction schedule. The vendor shall comply with these requests to the extent reasonable. Schedules shall include dates of material order, delivery, installation, and commissioning, as applicable.

Vendors will not be penalized in performance reviews for delays and variations in schedule based on the availability of MBTA personnel or access to facilities.

C-3: Use of Subcontractors

Use of subcontractors by the vendor is permissible in any of the above phases, provided:

- A written statement of qualifications is provided to the Authority prior to subcontractor onboarding
- The Authority retains the right to reject any subcontractors

2.4.2 Phase 0: Project Notification

Task 0.1: Project Notification

Project identification is the sole responsibility of the Authority. Once a project need is identified, a notification of project opportunity will be sent to all contracted vendors in the applicable category.

Vendors will be given the opportunity to respond to the notice with interest, resources, capability, scheduling, and any other relevant information.

The MBTA will select one or more vendors based upon their response to the project solicitation, their proposed costs, and, where applicable, their prior performance.

2.4.3 Phase I: Audit and Proposal

Task 1.1: Information Review



Projects shall begin with vendor review of available information provided by MBTA personnel, including (where available):

- Facility size, layout, and plans
- Basic description of facility function, including operating hours and type of work performed.
- Up to 3 years of historical utility consumption data, including energy costs.
- Present-day energy KPIs such as EUI and TEDI

Provided information shall be used in all energy engineering calculations and recommendations.

Task 1.2: Field Audit

Once facility information has been adequately reviewed, an onsite field audit shall be scheduled to review existing conditions relevant to the ECM under investigation. This audit will include a survey of relevant mechanical, electrical, plumbing, and/or envelope systems. The level of detail will be equivalent to an ASHRAE Level II Audit for the specific ECM under investigation.

MBTA Environmental shall coordinate vendor access to Authority property and organize personnel to assist in the field as necessary or as requested— e.g., inclusion of facility stakeholders, flagging personnel, and MEP personnel for room access or system insight.

All necessary vendor auditing personnel shall be present for the initial field audit. To minimize disruption to facility operation, all information required for the proposal should be gathered during this first visit. Further specialized field audits may be authorized on a case-by-case basis for more complex projects.

In the case of existing building commissioning projects, the initial field audit shall be used to determine a plan for future measurement and testing requirements.

The vendor will solicit feedback from present facility personnel, including staff and maintenance, to be addressed in the subsequent proposal.

Task 1.3: Proposal

The vendor shall submit a proposal containing an itemized audit form and a proposal narrative document. The proposal shall include:

- Description and photographs of existing conditions, based on information gathered in the initial field audit and interviews with facility personnel
- Vendor to propose ECM(s) and estimates of savings and cost to implement.
- Overview of proposed new equipment, system modifications, project plan
- Specifications or cutsheets for all proposed equipment
- Pricing on equipment, installation services, project management, engineering, commissioning, and all other project components
- Estimated energy and cost savings, carbon reduction, and payback period
- Other project-specific requirements as requested by the Authority

MBTA Environmental will circulate the proposal for review by internal stakeholders. Adjustments and concerns will be provided to the vendor for revision. Once these have been adequately addressed, the Authority will accept the proposal.



Upon acceptance of the proposal, the Authority will decide whether to move forward with the execution of proposed design, material, and/or installation services. It is the intention of the Authority to implement as many identified measures as reasonably possible. Project approval will be in the form of an MBTA Purchase Order.

If the project is not selected for implementation, payment for the audit shall be made and the MBTA may choose to implement the project in the future with internal resources, the vendor who prepared the project, or any other vendor.

2.4.4 Phase II: Planning

All projects shall follow all applicable codes and standards, in addition to MBTA standards, guidelines, and design directives available at: <https://mbta.com/engineering>.

For energy projects, note in particular:

- Lighting Levels and Fixtures: [2022-09-20-lighting-level-and-fixtures-design-directive.pdf \(mbta.com\)](#)
- Electric Conduit: [Design Directive: Electric Conduits \(mbta.com\)](#)
- Wire Insulation: [Wire Insulation Design Directive \(mbta.com\)](#)
- Bathroom Fixtures and Finishes: [Design Directive - Bathroom Design Criteria \(mbta.com\)](#)
- Electrical Junction Box Penetrations: [Design Directive: Electrical Junction Box penetrations in Exterior and/or Wet Locations \(mbta.com\)](#)
- Emergency Backup Power: [Design Directive - Emergency backup power generation for stations and facilities \(mbta.com\)](#)
- General Design: [General Design Directive \(mbta.com\)](#)

Task 2.1: Design Service Requirements

Projects may have additional design-related requirements, including but not limited to:

- Cutsheets for all proposed equipment
- Equipment schedule summarizing details of proposed equipment
- Lighting photometrics and all other documentation necessary to show compliance with the MBTA lighting design directive
- PE-stamped drawings may need to be produced by the vendor. This will be listed in the Project Notification Form if required for a project, e.g., when the system to be installed will be the only source of heat for a facility
- Alignment with provided engineering reports and needs-assessments
- Installation instructions will be provided when coordinating with internal Authority forces
- As-built documents for all projects involving installation work

The MBTA will explicitly state what Design Service Requirements are required for each project in the project notification. Vendors must deliver all requested Design Service Requirements for each project and should price those elements into quotes.

2.4.5 Phase III: Execution

Scope of project execution may vary per project and will be made clear in the project notification. Design-and-material projects may utilize internal MBTA labor forces for installation services. For most projects, the intent is to provide a full turn-key service to



the Authority for the energy conservation measure.

The vendor shall be responsible to pay for all labor, material, equipment, tools, construction equipment and machinery, transportation, permitting, and work necessary to complete execution of project scope, excepting portions of labor completed by the Authority's own workforce.

All installation services shall be conducted in such a manner to ensure accordance with sound engineering and safety practices required by the MBTA. All installation personnel shall be Right-of-Way certified in accordance with the requirements listed in Phase 0.

Installation services, whether completed by vendor or a subcontractor, shall comply with prevailing wage requirements.

2.4.6 Phase IV: Closeout

Substantial completion shall occur upon verified completion of Task 4.1 and Task 4.2 below. Payment for all necessary training, audits, and 80% of the execution cost shall be made once these tasks have been completed to the Authority's satisfaction.

Final completion shall occur upon verified completion of Task 4.3 and Task 4.4. Retainage for up to 20% of the execution cost, contingent upon the completion of Punch-List Work, shall be made once these tasks have been completed.

Task 4.1: Warranties, Manuals, and Training

The vendor shall provide the Authority with a full set of owner's manuals and warranties for all newly installed equipment, in physical or digital format as requested by MBTA maintenance personnel.

The vendor shall provide training for the maintenance of installed equipment to up to 3 MBTA personnel, as requested.

Task 4.2: Commissioning Report

The vendor will assist the Authority in verifying the proper installation and function of all installed energy systems. The scope of commissioning services shall be determined by the Authority at acceptance of the vendor proposal.

Project-specific services may include but are not limited to:

- Measurement of HVAC and air-quality parameters, such as temperature, ventilation CFM, CO₂ concentration, humidity
- Other Testing and Balance (TAB) procedures
- Measurement of lighting levels
- Temporary metering
- Testing of proper control sequence operation

These services and outstanding tasks to ensure the proper functioning of installed systems shall be summarized in a commissioning report. Substantial completion shall occur upon Authority acceptance of this report.



Task 4.3: Punch-list Work

After substantial completion, the Authority will schedule a pre-final walkthrough of the facility to review and document any outstanding incomplete work within the project scope. These punch-list items shall be noted, assigned a monetary value as a portion of the remaining 20% total project cost, and addressed before final completion. Well-executed projects should not require punch-list items. If no punch-list items are determined, payment will be issued in full.

Final completion will occur upon a request made by the vendor at any point after this pre-final walkthrough. The vendor forfeits payment assigned to any punch-list items that remain incomplete at final completion.

Payment for the completed punch-list items shall be made at final project completion.

Task 4.4: Salvage and Waste

The Authority reserves the right to salvage existing equipment/systems, provided no utility incentive program prohibits salvage. If no notification of intent to salvage is provided within 5 days of installation commencement, the vendor obtains the right to the salvage value of demolished equipment.

Vendors shall provide for proper disposal of all waste produced during the installation of energy conservation projects, including provisions for recyclable or hazardous materials where appropriate.

2.5 Vendor Performance Evaluation

On a periodic basis, the MBTA will evaluate the work completed by contracted vendors. The MBTA reserves the right to award future project opportunities to vendors with the most satisfactory past performance or to cease awarding to vendors with unsatisfactory performance.

3. BIDDERS INSTRUCTIONS AND PROCUREMENT PROCESS

3.1 Bidders' Conference

Pre-Bid Teams virtual meeting 5/7/2024, 1:00 pm, to attend send request to idelalla@mbta.com. The MBTA reserves the right to hold one or more Bidders' conferences with all Bidders at any time prior to the Response Date. Bidders' conferences may be held either in person or by telephonic or electronic means. If held telephonically or electronically, the Bidders' conference will permit interactive communication between all Bidders and the MBTA. If a Bidders' conference is conducted by telephonic or electronic means, the notice will inform Bidders of the manner of the meeting.

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

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



3.2 Procurement Method

This RFQ is issued pursuant to the following laws and regulations: **M.G.L. Ch. 25A §14**

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

This RFQ will be launched and managed by John de Lalla, jdelalla@mbta.com.

Questions and clarification requests submitted by Bidder will, together with MBTA's responses, be made available to all Bidders from jdelalla@mbta.com.

3.2.1 MBTA DESIGNATED REPRESENTATIVE

Unless specifically stated otherwise in this RFQ, Bidder must submit changes to Bidder's designated representative and any other communications into the MBTA's Point of Contact. The MBTA's Point of Contact is John de Lalla, jdelalla@mbta.com.

3.2.2 IDENTIFICATION OF BIDDER DESIGNATED REPRESENTATIVE

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

3.3 RFQ Calendar and Delivery Instructions

Bidder is required to prepare and submit all required documents to MBTA electronically via email to jdelalla@mbta.com.

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

TABLE: RFQ CALENDAR		
Procurement Activity	Date	Time
RFQ issued	5/1/2024	
Pre-bid Teams virtual meeting. to attend send request to jdelalla@mbta.com .	5/7/2024	1:00 p.m.
Deadline for submission of Bidder questions to jdelalla@mbta.com . Submit Q & A template.	5/14/2024	2:00 p.m.
Official Answers for Bid sent back to contractor	5/21/2024	2:00 p.m.
Response Due Date	5/29/2024	2:00 p.m.
Contract Execution (estimated)	6/5/2024	

3.4 Dissemination of Confidential Information

Not Applicable

3.5 Examination of RFQ

Each Bidder shall be solely responsible for examining, with appropriate care and diligence, the RFQ and any addenda and material made available to Bidders by the MBTA, and for informing itself with respect to any and all conditions that may in any way affect the amount or nature of its Response, or the performance



of the Contractor's obligations under the Contract with the MBTA. Failure of the Bidder to so examine and inform itself shall be at its sole risk, and the MBTA will provide no relief for any error or omission.

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

3.6 Rules of Contact

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

The specific rules of contact are as follows:

- i. No Bidder, or any of its team members, may communicate with another Bidder or its team members with regard to this RFQ or either team's Response, except that subcontractors that are shared between two or more Bidder teams may communicate with their respective team members so long as those Bidders establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams. This prohibition does not apply to public discussions regarding the RFQ at any MBTA sponsored Bidders' conferences.
- ii. No Bidder or representative thereof shall have any ex parte communications regarding the RFQ, the Contract, or the procurement described herein with any member of the MBTA's Board of Directors, the Massachusetts Department of Transportation ("MassDOT") Board of Directors, or with any MassDOT or MBTA staff, advisors, contractors, or consultants involved with the procurement, except for communications expressly permitted by the RFQ or except as approved in advance at the MBTA's Point of Contact's sole discretion. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFQ, Contract, or procurement or from participation in public meetings of the MBTA or MassDOT Boards of Directors or any public or Bidder workshop related to this RFQ.
- iii. Any communications determined by the MBTA, in its sole discretion, to be improper may result in disqualification.
- iv. Any official information regarding this RFQ will be disseminated from the MBTA's Point of Contact to jdelalla@mbta.com.
- v. The MBTA will not be responsible for or bound by any oral exchange or any other information or exchange that occurs outside the official process specified herein.
- vi. The MBTA will not be bound by, and Bidders should not rely on, any oral communications regarding the RFQ. Use of any information gathered or received from other agencies or entities shall be at the Bidder's own risk.

3.7 Clarifications of Specifications, Questions and Answers

Bidders shall review the RFQ and any addenda issued by the MBTA prior to the Response Date, and request written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error, or omission contained therein, or of any provision which the Bidder fails to understand or to which the Bidder is suggesting a change. Failure of the Bidder to so examine and inform itself shall be at its sole risk, and no relief for error or omission will be provided by the MBTA. Bidders shall submit, and the MBTA will respond to, questions and requests for written clarification in accordance with this Section 3.7.

Questions and clarification requests shall be minimized or aggregated to the extent possible. All questions and clarification requests shall be made by Bidder send to jdelalla@mbta.com. Submit with Question & Answers template attachment. Such comments and questions may be submitted at any time prior to the



applicable date specified in Section 3.3 or such later date as may be specified in any addendum and shall: (i) identify the document; (ii) identify the relevant section number and page number) or, if it is a general question, indicate so; and (iii) not identify the Bidder in the body of the question or contain proprietary or confidential information. Questions submitted in any other format or method than that described above will not be considered.

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

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

3.8 RFQ – Energy Project Notification Addendum

The MBTA reserves the right to issue addenda to the RFQ or Energy Project Notification after initial publication.

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

3.9 MBTA Standard Contract and Terms & Conditions

The MBTA does not encourage attempts to negotiate the Section 8.0 Massachusetts Bay Transportation Authority Standard Contract Terms & Conditions. Many of these provisions are required by law; others are longstanding MBTA policy / practice. Accordingly, Bidders / proposers should only redline or object to provisions that they find absolutely unacceptable. Any rejection or modification of these provisions may disqualify a Bid / proposal as being non-responsive or non-compliant.

3.10 Confidentiality / Public Information Act Disclosure Requests

3.10.1 Disclosure Waiver

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

3.10.2 Public Disclosure of Response Documents

Subject to applicable law, after execution of the Contract, or in the event that the procurement is cancelled by the MBTA, the MBTA shall have the right to publicly disclose any and all portions of all Responses. The MBTA will not disclose material deemed confidential by the MBTA in accordance with Section 3.10.3, unless otherwise required by law.

3.10.3 Disclosure Process for Requests Under the Public Records Law



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

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

If the MBTA receives a request for public disclosure of all or any portion of a Response or its related information that is designated as "Trade Secret - Proprietary," the MBTA will endeavor to use reasonable efforts to notify the applicable Bidder of the request. The Bidder can assert, in writing and at its sole expense, a claimed exception under the Public Records Law or other applicable law, within the time period specified in the notice issued by the MBTA and allowed under the Public Records Law. The Bidder can choose to defend any action seeking release of the records it believes to be confidential information. The Bidder shall indemnify, defend, and hold harmless the MBTA and its agents and employees in connection with the Bidder's opposition to a public records request, and such indemnification shall include all damages, costs and expenses (including reasonable attorney's fees) the MBTA incurs because of or arising out of the Bidder's opposition to any public records request. This indemnification survives the MBTA's cancellation or termination of this procurement or award and subsequent execution of a Contract. In submitting a Response, the Bidder agrees that this indemnification survives as long as any information submitted by the Bidder is in the possession of the MBTA.

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

3.11 Business Conduct

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

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



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

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

3.12 Collusion

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

3.13 Acceptance Period

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

3.14 Eligible Entities

Any contract resulting from this Bid will be available for use by all MassDOT divisions and departments.

3.15 Pre-Contractual Expenses

The MBTA shall not be liable for any pre-contractual expenses incurred by the Bidder in connection with this RFQ. The Bidder shall not include any such expenses as part of its proposal. Pre-contractual expenses include all expenses the Bidder incurs prior to the date the MBTA enters into a Contract with any Bidder (or prior to the MBTA’s withdrawal or cancellation of the RFQ, as the case may be), such as, but not limited to, expenses the Bidder incurs in preparing its Bid, submitting its Bid to the MBTA, negotiating with the MBTA any matter related to this RFQ, and inspection, testing, shipping, and return shipping of proposed goods or samples.

3.16 Tax Exemption

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

The Bidder alone shall be responsible for payment of all federal, state and local taxes of all types and kinds applicable to any Agreement it enters into with the MBTA and/or to the compensation it receives from the MBTA or any other party in connection with such Agreement.

3.17 Insurance

The insurance policies that the successful bidder shall carry are outlined in the attachment **Minimum Insurance Requirements** document with this solicitation. The successful bidder shall submit proof of insurance for the requirements detailed at the time of submitting their bid. If proof of insurance is not available at the time the Bidder submits its Bid, the successful bidder certifies that it will carry such



insurance policies and all costs associated with the insurance requirements are included in its Bid pricing. The successful bidder shall provide proof of all required insurance within three business days of conditional notice of award.

4. SUBMISSION OF RESPONSE

4.1 Response Submissions

Responses shall be submitted to jdelalla@mbta.com and consist of:

- Bid Cover Letter
- Form A: Bidder Response Form
- Form B: Small Business Attestation Response Form

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

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

Bidders shall submit Responses including all forms and schedules and shall not remove pages from the provided forms.

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

4.2 Incomplete Response

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

5. MBTA POLICIES

5.1 Small, Minority, Women, and Other Disadvantaged Businesses

It is the policy of the Commonwealth and the MBTA to ensure non-discrimination in the Procurement of goods and services by continually modernizing systems and processes to include diversity criteria within state-funded RFQs greater than \$250k. All awarded prime vendors that commit to partnerships with diverse subcontractors will be responsible for submitting a Supplier Diversity Affidavit detailing any spend with subcontractors monthly. Direct spend with subcontractors will be prioritized over indirect spend.

The MBTA is dedicated to promoting more equitable opportunities in state contracting, and to that end, encourages full participation of the Commonwealth's Supplier Diversity Office's recognized certifications, which include small business, Minority Business Enterprises (MBEs), Women Business Enterprises (WBEs), Veterans Business Enterprises (VBEs), Service-Disabled Veteran Business Enterprises (SDVOBEs), Disability-Owned Business Enterprises (DOBEs), and Lesbian, Gay, Bisexual, and Transgender Business Enterprises (LGBTBEs) and Disadvantaged Business Enterprises (DBEs). The MBTA also acknowledges certifications by third-party certifying organizations including the Greater New England Minority Supplier Development Council (GNEMSDC), Center for Women & Enterprise (CWE) (New England - WBENC), City of Boston, VetBiz/U.S. Department of Veterans Affairs, NGLCC - National LGBT Chamber of Commerce, Disability: IN (formerly The US Business Leadership Network-



USBLN). More on how to certify through the Supplier Diversity Office can be found here: <https://www.mass.gov/certification-program-for-sdo>.

6. SELECTION PROCESS AND EVALUATION

6.1 Response Opening and Confidentiality

Subject to applicable law, prior to Contract execution, the MBTA intends to treat all information received from each Bidder as confidential information to be used for the purpose of evaluating the Response.

6.2 Responsiveness Review and Basis of Award

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

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

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

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

6.3 Evaluation and Notification

The MBTA will evaluate each Response and seek clarifications as necessary through requests for clarification or in meetings to be arranged at MBTA discretion.

6.4 Pass/Fail Evaluation

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



Criteria	Evaluation Methodology	Evaluation Basis
Legal	Pass/Fail	Form A response
Financial Stability	Pass/Fail	Form A response
Insurance Minimum	Pass/Fail	Form A response
Comptroller General's List of Ineligible Contractors	Pass/Fail	Form A response
Utility Company affiliation	Pass/Fail	Form A response

6.5 Reservation of Rights

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

- a) Modify the RFQ process in its sole discretion to address applicable law and/or the best interests of the MBTA.
- b) Develop the work to be performed under the Contract in any manner that it, in its sole discretion, deems necessary. If the MBTA is unable to negotiate a Contract to its satisfaction with a Bidder, it may negotiate with the Bidder with the next highest ranked proposal, terminate this RFQ and pursue other developments or solicitations relating to the work to be performed under the Contract, or exercise such other rights under the provisions of Massachusetts law as it deems appropriate.
- c) Cancel this RFQ in whole or in part at any time prior to the execution by the MBTA of a Contract, without incurring any cost, obligations, or liabilities.
- d) Issue a new Request for Qualifications after withdrawal of this RFQ.
- e) Not select any Bidder or cancel this procurement.
- f) Reject any and all submittals and Responses received at any time.
- g) Modify all dates set or projected in this RFQ.
- h) Terminate evaluations of Responses received at any time.
- i) Exclude any potential Bidder from submitting any response to the RFQ based on failure to comply with any requirements of those documents.
- j) Suspend and terminate Contract negotiations at any time, elect not to commence Contract negotiations with any responding Bidder, and engage in negotiations with the Bidder with the next highest ranked proposal if negotiations are unsuccessful with the apparent successful Bidder.
- k) Issue addenda, supplements, and modifications to this RFQ.
- l) Appoint an Evaluation Team to evaluate Responses, make recommendations to the MBTA and MassDOT Boards of Directors, and seek the assistance of MBTA, MassDOT, and consultant technical experts in Response evaluations.
- m) Require confirmation or clarification of information furnished by a Bidder, require revised or additional information from a Bidder concerning its Response, and require additional information to clarify a Response.



- n) Conduct presentations with Bidders, identify a short-list of Bidders, and conduct on-site visits at Bidder facilities.
- o) Declare a competitive range, conduct discussions, and request Response revisions and best and final offers.
- p) Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFQ.
- q) Add or delete Bidder responsibilities from the information contained in this RFQ.
- r) Waive deficiencies in a Response, accept and review a non-conforming Response, or permit clarifications, revisions, or supplements to a Response.
- s) Negotiate with a Bidder without being bound by any provision in its Response or choose to award and/or execute the Contract without negotiations.
- t) Disqualify any Bidder that changes its submittal without MBTA approval.
- u) Disqualify any Bidder under this RFQ for violating any rules or requirements of the procurement set forth in this RFQ or in any other communication from MBTA.
- v) Delay issuance of notice to proceed after execution of the Contract.
- w) Conduct all or any portion of the Scope of Work itself.
- x) Exercise any other right reserved or afforded to the MBTA under this RFQ or available pursuant to applicable law.

This RFQ does not commit the MBTA to enter into a Contract or proceed with the procurement described herein. The MBTA assumes no obligations, responsibilities, and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFQ. All of such costs shall be borne solely by each Bidder.

In no event shall the MBTA be bound by, or liable for, any obligations with respect to the work to be performed under the Contract until such time (if at all) as the Contract, in form and substance satisfactory to the MBTA, has been executed and authorized by the MBTA and, then, only to the extent set forth therein.

In submitting a response to the RFQ, each Bidder is specifically acknowledging these disclaimers.

6.6 Appeal / Protest Procedures

Bid appeals / protests relative to this procurement will be reviewed and adjudicated in accordance with the MBTA's Appeals / Protest Procedure - Goods & Services. A copy of this procedure is available online at www.mbtacom.com.



Enclosure 1 – Bid Cover Letter

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

Instructions: Bidders shall complete the Bid Cover Letter below with their company name and completed check boxes to indicate the bid documents that constitute their bid. **The Bid Cover Letter should be included with all bid documents submitted to the MBTA.**

RFQ #: 20-24	Energy Conservation Program – MGL Chapter 25A Section 14
EMAIL TO	jdelalla@mbta.com
Project Name:	Energy Conservation Program – MGL Chapter 25A Section 14
Bidder (Company Name):	

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

Forms	Check to Indicate Submitted Bid Documents
Form A: Bidder Response Form	☐
Form B: Small Business Attestation Program	☐
Signed Section 8.3 Massachusetts Bay Transportation Authority Standard Terms and Conditions Note: Section 8 Massachusetts Bay Transportation Authority Standard Contract is NOT to be submitted; it is not completed until award.	☐
Utility Company self-certification; submit with utility reference name and email.	☐
Payment Bond 50%; Submit letter from Surety that bonding is obtainable up to \$300,000.00 per project.	☐
Proof of Insurance, MBTA named as additionally insured. Proof of Insurance, or confirmation that insurance will be provided within five (5) business days of contract execution	☐

We confirm that our Bid is in exact accordance with the solicitation with no exceptions to, or comments upon, the solicitation documents. We confirm that the submission of our Bid with the signature below



makes all certifications as outlined in the solicitation documents. This Bid shall constitute a binding offer open for acceptance by the MBTA.

We confirm that this Bid has been prepared and is compliant with the solicitation instructions and agree to conduct ourselves in accordance with the solicitation. We confirm receipt of all addenda related to this solicitation. We confirm the 180 days Acceptance Period of this Proposal.

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

Bidder (company name): _____

Authorized Representative Name: _____

Authorized Representative's Signature: _____

Title: _____

Date: _____



Form A: Bidder Response Form

Pre-Award Bidder Evaluation Data			
Name of Firm:			
Federal Identification Number:			
Legal Address:			
Contact Name:			
Telephone Number:			
Email:			
Please select one: ☐ Individual ☐ Partnership ☐ Corporation ☐ Joint Venture ☐ LLC			
Date Organized:		State Incorporated:	
Names of Officers or Partners:			
As described in M.G.L. Chapter 25A Section 14, provide proof your company is qualified for this program. If you subcontract to a utility, please include a reference name, email, and phone number at the utility.			
Please provide your Audit Fee, as described in Section 2.4.3 above.			
Please provide details of any litigation, suits, or court action taken or pending against Bidder below:			
Indicate the categories of work your company can perform (check at most two options):			
Installation and repair of lighting systems	☐		
HVAC components and systems	☐		
Insulation and weatherization	☐		
Controls and building management systems	☐		
Power systems (including batteries, transformers, renewable energy systems, etc.)	☐		



Specialized process equipment (including compressors, motors/VFDs, third rail and track switch heaters, etc.)	☐
Electric Vehicle Charging Stations	☐
Existing Building Commissioning	☐
Provide the following information that demonstrates that the Bidder together with its selected Affiliates and or Subcontractors has the required capabilities to successfully execute the Work. Submit as attachments the following requested documents:	
Attach, if applicable, a list of similar current contracts and/or recently completed projects that demonstrates your technical proficiency, each with contract value amount, name of contracting party, type of work completed, and percentage of work complete to date.	☐
Submit documentation that provides evidence of financial stability. Bidders may submit audited financial statements if available, or other documents that demonstrate financial viability. If requested, most recent prior 3 financial years are preferred.	☐
Attach, if applicable, a list of all principal subcontractors and the percentage and nature and value of work each will perform on this project. Principal items of work shall include, but not be limited to, those listed in the solicitation.	☐

Please provide answers to the following questions:	Check Answer
Do you have any outstanding indebtedness or unsecured loans or debts or trading losses not reported within the financial reports?	Yes ☐ No ☐
Do you have any contracts over the last two years that were assessed liquidated damages or termination for non-performance?	Yes ☐ No ☐
Is your company registered with the Massachusetts Secretary of State to conduct business in Massachusetts?	Yes ☐ No ☐
Company is on the Comptroller General's List of Ineligible Contractors.	Yes ☐ No ☐

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



Form B: Small Business Program Attestation Form

To qualify under the MBTA's Small Business Program, the following criteria apply:

- Principal place of business in Massachusetts
- Business operating for at least one year
- Currently employs a combined total of 50 or fewer full-time equivalents in all locations
- Gross annual revenues of \$15 million or less based on a 3-year average

Please select one:

☐ YES, the above criteria apply ☐ NO, the above criteria do not apply

If YES, please complete the fields below. If NO, complete 'Name of Firm' field below only.

Return the form with the bid submission.

Name of Firm:	
Federal Identification Number:	
Legal Address:	
Contact Name:	
Telephone Number:	
Email:	
Please select one: ☐ Individual ☐ Partnership ☐ Corporation ☐ Joint Venture ☐ LLC	
Total Number of Full-Time Employees:	
Date Organized:	
State Incorporated:	
Please provide supporting documentation regarding gross annual revenues of \$15 million or less based on a 3-year average (attachments acceptable):	



7. MBTA Standard Contract Instructions (Section 8.0)

Bidder shall review and sign Section 8.0 MBTA Standard Contract Terms and Conditions to submit with their bid. Bidders Do Not sign Section 8 Massachusetts Bay Transportation Authority Standard Contract upon submission of their bid. When the MBTA plans to award contract, the MBTA designated Point of Contact will fill out Section 8.0 Massachusetts Bay Transportation Authority Standard Contract and send it to the successful bidder for signature.

MBTA Standard Terms & Conditions Instructions (Section 8.1)

Each bidder must review and sign Section 8.1 Massachusetts Bay Transportation Authority Standard Terms and Conditions and submit the signed Section 8.1 with their bid for the bid to be responsive and complete.

The MBTA does not encourage attempts to negotiate the Section 8.1 Massachusetts Bay Transportation Authority Standard Contract Terms & Conditions. Many of these provisions are required by law; others are longstanding MBTA policy / practice. Accordingly, Bidders / proposers should only redline or object to provisions that they find absolutely unacceptable. Any rejection or modification of these provisions may disqualify a Bid / proposal as being non-responsive or non-compliant.



8. Massachusetts Bay Transportation Authority Standard Contract

CONTRACTOR LEGAL NAME: (and d/b/a):		Massachusetts Bay Transportation Authority (MBTA)	
Legal Address: (W-9, W-4,T&C):		10 Park Plaza Boston, MA 02116	
Contract Administrator/Manager:		Billing Address : invoices@mbta.com	
E-Mail:		Contract Administrator/Manager:	
Phone:	Fax:	Email:	
		Phone:	
		RFR/RFQ/IFB/Procurement or Other ID Number: 20-24 EMAIL TO JDELALLA@MBTA.COM # BD- INSERT NUMBER	

<u>NEW CONTRACT</u> PROCUREMENT OR EXCEPTION TYPE: (Check one option only) ☐ Statewide Contract (OSD or an OSD-designated Department) ☐ Collective Purchase (Attach OSD approval, scope, budget) ☒ MBTA Procurement Attach RFR/RFQ/IFB and Response or other procurement supporting documentation) ☐ Emergency Contract (Attach justification for emergency, scope, budget) ☐ Contract Employee (Attach <u>Employment Status Form</u>, scope, budget) ☐ Legislative/Legal or Other: (Attach authorizing language/justification, scope and budget)	<u>CONTRACT AMENDMENT</u> Enter Current Contract End Date <u>Prior</u> to Amendment: _____, 20__. Enter Amendment Amount: \$____. (or "no change") AMENDMENT TYPE: (Check one option only. Attach details of Amendment changes.) ☐ Amendment to Scope or Budget (Attach updated scope and budget) ☐ Interim Contract (Attach justification for Interim Contract and updated scope/budget) ☐ Contract Employee (Attach any updates to scope or budget) ☐ Legislative/Legal or Other: (Attach authorizing language/justification and updated scope and budget)
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The MBTA Terms and Conditions (T&C) have been executed, and is incorporated by reference into this Contract.

COMPENSATION: (Check ONE option): The MBTA certifies that payments for authorized performance accepted in accordance with the terms of this Contract

☐ **Rate Contract** (No Maximum Obligation. Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.)

☐ **Maximum Obligation Contract** Enter Total Maximum Obligation for total duration of this Contract (or **new** Total if Contract is being amended). \$_____.

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

BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT: (Enter the Contract title, purpose, fiscal year(s) and a description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.)

ANTICIPATED START DATE: (Complete ONE option only) MBTA and Contractor certify for this Contract, or Contract Amendment, that Contract obligations:

☐ 1. May be incurred as of the Effective Date (latest signature date below) and **no** obligations have been incurred **prior** to the Effective Date.

☐ 2. May be incurred as of __, 20__, a date **LATER** than the Effective Date below and **no** obligations have been incurred **prior** to the Effective Date.

☐ 3. were incurred as of __, 20__, a date **PRIOR** to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the MBTA from further claims related to these obligations

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

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

<u>AUTHORIZING SIGNATURE FOR THE CONTRACTOR:</u> X: _____ Date: _____. (Signature and Date Must Be Handwritten At Time of Signature or utilize an MBTA approved electronic signature) Print Name: _____. Print Title: _____.	<u>AUTHORIZING SIGNATURE FOR THE MBTA:</u> X: _____ Date: _____. (Signature and Date Must Be Handwritten At Time of Signature or utilize an MBTA approved electronic signature) Print Name: _____. Print Title: _____.
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8.1 Standard Terms and Conditions

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

8.1.1 Contract Effective Start Date

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

8.1.2 Payments and Compensation

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

8.1.3 Contractor Payment Mechanism

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

8.1.4 Contract Termination or Suspension

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

8.1.5 Written Notice

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



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

8.1.6 Record-keeping and Retention, Inspection of Records

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

8.1.7 Assignment

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

8.1.8 Subcontracting By Contractor

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

8.1.9 Affirmative Action, Non-Discrimination in Hiring and Employment

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

8.1.10 Indemnification

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



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

8.1.11 Waivers

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

8.1.12 Risk of Loss

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

8.1.13 Forum, Choice of Law and Mediation

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

8.1.14 Interpretation, Severability, Conflicts with Law, Integration

Any amendment or attachment to any Contract which contains conflicting language or has the effect of a deleting, replacing or modifying any printed language of these MBTA Terms and Conditions, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law. All amendments must be executed by the parties in accordance with Section 8.1.1 of these MBTA Terms and Conditions (*Section 8.1*). The printed language of the Standard Contract Form (*Section 8.0*), which incorporates by reference these MBTA Terms and Conditions, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: any applicable federal provisions, any supplemental provisions, any negotiated terms and conditions allowable pursuant to law or regulation; the printed language of the MBTA Terms and Conditions; the Standard Contract; the MBTA's Request for Response/Proposal/Bid (RFR/RFQ/IFB) solicitation document; and the Contractor's Response to the RFR/RFQ/IFB solicitation, excluding any language stricken by the MBTA as unacceptable.

8.1.15 Insurance to be Carried by the Contractor

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



8.1.16 Contractor Certifications and Legal References

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

8.1.16.1 MBTA and Contractor Ownership Rights

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

8.1.16.2 Qualifications

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

8.1.16.3 Business Ethics and Fraud, Waste and Abuse Prevention

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

8.1.16.4 Collusion

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

8.1.16.5 Public Records and Access

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

8.1.16.6 Debarment

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

8.1.16.7 Applicable Laws

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



8.1.16.8 Tax Law Compliance

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

8.1.16.9 Bankruptcy, Judgments, Potential Structural Changes, Pending Legal Matters and Conflicts

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

8.1.16.10 Federal Anti-Lobbying and Other Federal Requirements

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

8.1.16.11 Protection of Commonwealth Data, Personal Data and Information

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

For all Contracts involving the Contractor's access to personal information, as defined in G.L. c. 93H, and personal data, as defined in G.L. c. 66A, or access to MBTA or Commonwealth systems containing such information or data, Contractor certifies under the pains and penalties of perjury that the Contractor (1) has



read M.G.L. c. 93H and c. 66A and agrees to protect any and all personal information and personal data; and (2) has reviewed all of the Enterprise Information Security Policies and Standards published by the Executive Office for Technology Services and Security (TSS), or stricter standards prescribed by the MBTA. Notwithstanding any contractual provision to the contrary, in connection with the Contractor's performance under this Contract, for all public authorities, executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the Contractor shall: (1) obtain a copy, review, and comply with any pertinent security guidelines, standards, and policies; (2) comply with all Enterprise Information Security Policies and Standards published by the Executive Office for Security Services and Technology (TSS), or a comparable set of policies and standards ("Information Security Policy") as prescribed by the MBTA; (3) communicate and enforce such security guidelines, standards, policies and the applicable Information Security Policy among all employees (whether such employees are direct or contracted) and subcontractors; (4) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information and data to which the Contractor is given access by the MBTA from the unauthorized access, destruction, use, modification, disclosure or loss; (5) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or subcontractors during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract; (6) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information or personal data (collectively referred to as the "unauthorized use"): (a) immediately notify the MBTA if the Contractor becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for the MBTA to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for the MBTA and the Contractor to fulfill any notification requirements. Breach of these terms may be regarded as a material breach of this Contract, such that the Commonwealth and MBTA may exercise any and all contractual rights and remedies, including without limitation indemnification under Section 8.1.10 of MBTA's [Terms and Conditions](#), withholding of payments, Contract suspension, or termination. In addition, the Contractor may be subject to applicable statutory or regulatory penalties, including and without limitation, those imposed pursuant to G.L. c. 93H and under [G.L. c. 214, § 3B](#) for violations under M.G.L. c. 66A.

8.1.16.12 Corporate and Business Filings and Reports

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

8.1.16.13 Employer Requirements

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

8.1.16.14 Federal And State Laws And Regulations Prohibiting Discrimination

Contractors certify compliance with applicable state and federal anti-discrimination laws including but not limited to the [Federal Equal Employment Opportunity \(EEO\) Laws](#) the [Americans with Disabilities Act](#); [42 U.S.C Sec. 12,101, et seq.](#), the Rehabilitation Act, [29 USC c. 16 s. 794](#); [29 USC c. 16. s. 701](#); [29 USC c. 14, 623](#); the [42 USC c. 45](#); (Federal Fair Housing Act); [G. L. c. 151B](#) (Unlawful Discrimination); [G.L.](#)



c. 151E (Business Discrimination); the Public Accommodations Law G.L. c. 272, s. 92A; G.L. c. 272, s. 98 and 98A, Massachusetts Constitution Article CXIV and G.L. c. 93, s. 103; 47 USC c. 5, sc. II, Part II, s. 255 (Telecommunication Act; Chapter 149, Section 105D, G.L. c. 151C, G.L. c. 272, Section 92A, Section 98 and Section 98A, and G.L. c. 111, Section 199A, and Massachusetts Disability-Based Non-Discrimination Standards For Executive Branch Entities, and related Standards and Guidance, authorized under Massachusetts Executive Order or any disability-based protection arising from state or federal law or precedent. See also MCAD and MCAD links and Resources.

8.1.16.15 Right-to-Know Law

The Contractor shall certify that it will comply with the Massachusetts Right-To-Know Law, Chapter 470 of the Acts of 1983. Additionally, the Contractor agrees to submit a Material Safety Data Sheet (MSDS) for each toxic or hazardous substance, or mixture containing such substance, pursuant to M.G.L. c. 111F §§ 8, 9, and 10, and the regulations contained in 441 CMR § 21.06 when deliveries are made.

8.1.16.16 Small Business Purchasing Program (SBPP)

A Contractor may be eligible to participate in the SBPP, created pursuant to Executive Order 523, if qualified through the SBPP subscription process.

8.1.16.17 Other Damages

The term “other damages” shall include, but shall not be limited to, the reasonable costs the MBTA incurs to repair, return, replace or seek cover (purchase of comparable substitute commodities and services) under a Contract. “Other damages” shall not include damages to the MBTA as a result of third party claims, provided, however, that the foregoing in no way limits the MBTA’s right of recovery for personal injury or property damages or patent and copyright infringement under *Section 8.1.10* nor the MBTA’s ability to join the contractor as a third party defendant. Further, the term “other damages” shall not include, and in no event shall the contractor be liable for, damages for the MBTA’s use of contractor provided products or services, loss of MBTA records, or data (or other intangible property), loss of use of equipment, lost revenue, lost savings or lost profits of the MBTA. In no event shall “other damages” exceed the greater of \$100,000, or two times the value of the product or service (as defined in the Contract scope of work) that is the subject of the claim. *Section 8.1.10* sets forth the contractor’s entire liability under a Contract. Nothing in this section shall limit the MBTA’s ability to negotiate higher limitations of liability in a particular Contract, provided that any such limitation must specifically reference *Section 8.1.10* of the MBTA Terms and Conditions. In the event the limitation of liability conflicts with accounting standards which mandate that there can be no cap of damages, the limitation shall be considered waived for that audit engagement.

8.1.16.18 Northern Ireland Certification

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

8.1.16.19 Pandemic, Disaster or Emergency Performance

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



8.1.16.20 Subcontractor Performance

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

8.1.17 Executive Orders

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

8.1.17.1 Executive Order 481. Prohibiting the Use of Undocumented Workers on State Contracts

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

8.1.17.2 Executive Order 130. Anti-Boycott

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

8.1.17.3 Executive Order 346. Hiring of State Employees By State Contractors

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

8.1.17.4 Executive Order 444. Disclosure of Family Relationships with Other State Employees

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



8.1.17.5 Executive Orders 523, 526, and 565

Executive Order 523 (Establishing the Massachusetts Small Business Purchasing Program). Executive Order 526 (Order Regarding Non-Discrimination, Diversity, Equal Opportunity and Affirmative Action which supersedes Executive Order 478). Executive Order 565 (Reaffirming and Expanding the Massachusetts Supplier Diversity Program). All programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. The Contractor and any subcontractors may not engage in discriminatory employment practices. The Contractor certifies compliance with applicable federal and state laws, rules, and regulations governing fair labor and employment practices. The Contractor also commits to purchase supplies and services from certified minority, women, veteran, service-disabled veteran, LGBT or disability-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons; and Contractor commits to comply with any applicable Department contractual requirements pertaining to the employment of persons with disabilities pursuant to M.G.L. c. 7 s. 61(s). These provisions shall be enforced through the contracting Department, OSD, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.

8.1.17.6 Laws and Regulations Prohibiting Discrimination and Human Trafficking

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

8.2 Supplemental Provisions for Contracts for Construction, Alteration, Remodeling or Repair

8.2.1 Applicability

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

8.2.2 Force Majeure

- a) General - The MBTA and the Contractor shall both be excused from performance of any obligations to the other under this Contract, where such non-performance is caused by an event beyond the non-performing party's control which shall include, without limitation, any order, rule, or regulation of any federal, state, or local government body, agency, or instrumentality (other than orders relating to the correction by the Contractor of its non-compliance with applicable laws and regulations applicable to the performance of the contract services); natural disaster; or civil disorder, provided, however, that the party excused hereunder shall use all reasonable efforts to minimize its non-performance and to overcome, remedy, or remove such event in the shortest practical time. The Contractor shall use all reasonable efforts to undertake and complete the repair, restoration, or replacement of any property, which is necessary for the provision of the contract services in accordance with the Scope of Services, and shall resume normal contract services and performance of its other obligations under this Contract as soon as reasonably possible. In the event either Party fails or refuses to use all reasonable efforts as aforesaid, the continuation of an event beyond the control of such Party shall not be deemed an excuse for non-performance hereunder.
- b) Labor Disputes - A strike, work stoppage or other labor dispute shall not constitute an event beyond the Contractor's control if the Contractor fails as soon as reasonably possible to proceed to obtain an order



of a court or administrative agency of competent jurisdiction to prevent the continuation of the same or if the Contractor fails to continue to obtain such order or pursue such other means of ending such strike, work stoppage or labor dispute if the court or administrative agency initially denies the Contractor's or the MBTA's request for such order. The MBTA shall not be obliged to make any payments to Contractor during the duration of such interruption, stoppage, or slowdown and may terminate the Contract, at its sole discretion.

- c) Weather Conditions not Force Majeure Events - Conditions caused by a storm or other weather condition shall not constitute an event beyond the Parties' control for the purposes of this section.
- d) Excluded Events- The events described in this section shall not constitute force majeure events if the Contractor knew or should have known about the event, or the reasonable possibility of such event in advance of its occurrence, and failed to take preventative or remedial measures to avoid or lessen the impact of such events.

8.2.3 Contract Termination for Convenience

The MBTA may, in its sole discretion, terminate this Contract at any time for its convenience ("Termination for Convenience") by giving written notice to Contractor thirty (30) calendar days prior to the effective date of termination or such other period as is mutually agreed upon in advance by the parties. If Contractor is not in default or in breach of any material term or condition of this Contract, Contractor shall be paid its reasonable, proper and verifiable costs, including demobilization and Contract closeout costs, and profit on work performed and accepted up to the date of termination to the extent previous payments made by the MBTA to Contractor have not already done so. Such payment shall be Contractor's sole and exclusive remedy for any Termination for Convenience and, upon such payment by the MBTA to Contractor, the MBTA shall have no further obligation to Contractor. The MBTA shall not be responsible for Contractor's anticipatory profits or overhead costs attributable to unperformed work.

8.2.4 Contract Termination for Cause

Either party may terminate this Contract and the rights granted herein if the other party

- a) if the other party ceases, proposes to cease, has submitted an application to cease or is otherwise in the process of ceasing to carry on business, or breaches any of the material provisions of this Contract and (i) fails to remedy such breach within thirty (30) days after receiving written notice thereof, or (ii) fails to (A) commence a good faith action to remedy such breach within ten (10) days after receiving written notice thereof, and (B) diligently pursue such action to conclusion; or (iii) the other party commits any material breach of this Contract which is not capable of being remedied;
- b) commenced, or a resolution is passed or proposed in a notice of meeting for the winding up, dissolution, official management or administration (including bankruptcy protection) of the other party or the other party enters into any arrangement, compromise or composition with, or any assignment for the benefit of its creditors or any class of them, or a receiver, receiver and manager, official manager or provisional liquidator is appointed with respect to the other party or any of its assets.

Termination of this Contract for any reason shall not release either party from any accrued liability to the other party. A party's right to terminate this Contract as provided herein shall be without prejudice to any other rights provided to it by law or in equity.

8.2.5 Right-of-Way Safety Requirements

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



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

Additionally, the Contractor shall:

- Ensure its personnel who access or work near the ROW attend an initial eight (8) hour ROW Safety course to receive a ROW license and maintain ROW Safety certification in compliance with the 24-month recertification training renewal schedule. The training and recertifications are at no cost to the Contractor.
- Obtain and comply with the latest revision of the MBTA's requirements for personal protective equipment as outlined in the current ROW Safety policies and summarized at <https://www.mbta.com/engineering/safety-resources>
- Supply its personnel with personal protective equipment that meets the MBTA's requirements and ensure that its personnel properly utilize such equipment in accordance with MBTA requirements.

8.2.6 Liquidated Damages

There are no Liquidated Damages required for this contract.

8.2.7 Security Requirements

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

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

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

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



of this solicitation throughout the Term of this Agreement or any extensions thereof, shall not be assigned by the Contractor to perform work under this Agreement.

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

3. Insure that Contractor's employees, subcontractors, and agents:
 - a) Are not allowed on MBTA property except as required for stated work;
 - b) Are not allowed on MBTA property before and after service hours unless explicitly, contractually required to be there; and
 - c) Are forbidden from carrying firearms on MBTA property.
4. Provide to the MBTA, upon its request, any documents that pertain to:
 - a) Contractor employee, subcontractor or agent conduct on MBTA property.
 - b) Security training; and
 - c) Monitoring/auditing of Contractor employees or agents while on MBTA property.

If, at any time during the term of this Agreement, and also during any and all extensions thereof, the MBTA establishes new or revised security policies and procedures as they relate to the Contractor's performance under this Agreement, the Contractor shall comply with such policies and procedures as deemed reasonable by the MBTA and the Contractor.

8.2.8 Bonding

Payment bond (50%) - This is required for 50% of the contract price per MGL Chapter 149, Section 29.

8.2.9 Labor Harmony, OSHA Training Certification

In accordance with M.G.L. c. 30, sec. 39S, Contractor certifies, under the penalties of perjury, as follows: (1) that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; (2) that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and (3) that all employees to be employed in the work subject to this bid have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration.

8.2.10 Responsibility for Employees and Subcontractors

Contractor shall supervise and be responsible for acts and omissions of Contractor's employees, agents, officers and Subcontractors and other Persons performing portions of the Work, as though all such Persons were directly employed by Contractor.

8.2.11 Subcontracts

Each instrument evidencing any agreement of Contractor with any Subcontractor shall provide, in terms and in form and substance satisfactory to MBTA, that (a) the rights of Contractor under such instrument are assigned to MBTA contingent only upon written request from MBTA or its successors or assigns following default by Contractor or termination or



expiration of this Contract; and (b) all warranties (express and implied) of such Subcontract shall inure to the benefit of the MBTA.

Contractor shall provide MBTA with a list of all Subcontracts and the applicable scope for the Project promptly upon execution.

8.2.12 Prevailing Wage

Contractor shall require prevailing wages to be paid for labor performed on the Project in accordance with the requirements of Mass. Gen. L. c. 149, ss. 26-27H, inclusive, and Exhibit 1 hereto. In addition, Contractor shall provide certified weekly payroll reports that affirm that all employees working on the project have been paid wages in accordance with the prevailing wage rates contained within, Attachment. Certified payroll to be submitted with invoices.

Contractor shall pay to any reserve police officer employed by him in any city or town the prevailing rate of wage paid to regular police officers in such city or town in accordance with M.G.L. c. 149, sec. 34B.

8.2.13 Testing, Completion and Acceptance

8.2.13.1 M.G.L. c. 30, sec. 39G. Completion of public works; semi-final and final estimates; payments; extra work; disputed items

- (a) Upon substantial completion of the work required by a contract with the commonwealth, or any agency or political subdivision thereof, for the construction, reconstruction, alteration, remodeling, repair or improvement of public ways, including bridges and other highway structures, sewers and, water mains, airports and other public works, the contractor shall present in writing to the awarding authority its certification that the work has been substantially completed. Within twenty-one days thereafter, the awarding authority shall present to the contractor either a written declaration that the work has been substantially completed or an itemized list of incomplete or unsatisfactory work items required by the contract sufficient to demonstrate that the work has not been substantially completed. The awarding authority may include with such list a notice setting forth a reasonable time, which shall not in any event be prior to the contract completion date, within which the contractor must achieve substantial completion of the work. In the event that the awarding authority fails to respond, by presentation of a written declaration or itemized list as aforesaid, to the contractor's certification within the twenty-one day period, the contractor's certification shall take effect as the awarding authority's declaration that the work has been substantially completed.
- (b) Within sixty-five days after the effective date of a declaration of a substantial completion, the awarding authority shall prepare and forthwith send to the contractor for acceptance a substantial completion estimate for the quantity and price of the work done and all but one per cent retainage, if held by the awarding authority, on that work, including the quantity, price and all but one per cent retainage, if held by the awarding authority, for the undisputed part of each work item and extra work item in dispute but excluding the disputed part thereof, less the estimated cost of completing all incomplete and unsatisfactory work items and less the total periodic payments made to date for the work. The awarding authority also shall deduct from the substantial completion estimate an amount equal to the sum of all demands for direct payment filed by subcontractors and not yet paid to subcontractors or deposited in joint accounts pursuant to section thirty-nine F, but no contract subject to said section thirty-nine F shall contain any other provision authorizing the awarding authority to deduct any amount by virtue of claims asserted against the contract by subcontractors, material suppliers or others.



- (c) If the awarding authority fails to prepare and send to the contractor any substantial completion estimate required by this section on or before the date herein above set forth, the awarding authority shall pay to the contractor interest on the amount which would have been due to the contractor pursuant to such substantial completion estimate at the rate of three percentage points above the rediscount rate then charged by the Federal Reserve Bank of Boston from such date to the date on which the awarding authority sends that substantial completion estimate to the contractor for acceptance or to the date of payment therefor, whichever occurs first. The awarding authority shall include the amount of such interest in the substantial completion estimate.
- (d) Within fifteen days after the effective date of the declaration of substantial completion, the awarding authority shall send to the contractor by certified mail, return receipt requested, a complete list of all incomplete or unsatisfactory work items, and, unless delayed by causes beyond his control, the contractor shall complete all such work items within forty-five days after the receipt of such list or before the then contract completion date, whichever is later. If the contractor fails to complete such work within such time, the awarding authority may, subsequent to seven days' written notice to the contractor by certified mail, return receipt requested, terminate the contract and complete the incomplete or unsatisfactory work items and charge the cost of same to the contractor.
- (e) Within thirty days after receipt by the awarding authority of a notice from the contractor stating that all of the work required by the contract has been completed, the awarding authority shall prepare and forthwith send to the contractor for acceptance a final estimate for the quantity and price of the work done and all retainage, if held by the awarding authority, on that work less all payments made to date, unless the awarding authority's inspection shows that work items required by the contract remain incomplete or unsatisfactory, or that documentation required by the contract has not been completed. If the awarding authority fails to prepare and send to the contractor the final estimate within thirty days after receipt of notice of completion, the awarding authority shall pay to the contractor interest on the amount which would have been due to the contractor pursuant to such final estimate at the rate hereinabove provided from the thirtieth day after such completion until the date on which the awarding authority sends the final estimate to the contractor for acceptance or the date of payment therefor, whichever occurs first, provided that the awarding authority's inspection shows that no work items required by the contract remain incomplete or unsatisfactory. Interest shall not be paid hereunder on amounts for which interest is required to be paid in connection with the substantial completion estimate as hereinabove provided. The awarding authority shall include the amount of the interest required to be paid hereunder in the final estimate.
- (f) The awarding authority shall pay the amount due pursuant to any substantial completion or final estimate within thirty-five days after receipt of written acceptance for such estimate from the contractor and shall pay interest on the amount due pursuant to such estimate at the rate hereinabove provided from that thirty-fifth day to the date of payment. Within 15 days, 30 days in the case of the commonwealth, after receipt from the contractor, at the place designated by the awarding authority, if such place is so designated, of a periodic estimate requesting payment of the amount due for the preceding periodic estimate period, the awarding authority shall make a periodic payment to the contractor for the work performed during the preceding periodic estimate period and for the materials not incorporated in the work but delivered and suitably stored at the site, or at some location agreed upon in writing, to which the contractor has title or to which a subcontractor has title and has authorized the contractor to transfer title to the awarding authority, upon certification by the contractor that he is the lawful owner and that the materials are free from all encumbrances. The awarding authority shall include with each such payment interest on the amount due pursuant to such periodic estimate at the rate herein above provided from the due date. In the case of periodic payments, the contracting authority may deduct from its payment a retention based on its estimate of the fair value of its claims against the contractor, a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of section thirty-nine F, and a retention to secure satisfactory performance of the contractual work not exceeding five per cent of the approved amount of any periodic payment, and the same right to retention shall



apply to bonded subcontractors entitled to direct payment under section thirty-nine F of chapter thirty; provided, that a five per cent value of all items that are planted in the ground shall be deducted from the periodic payments until final acceptance.

- (g) No periodic, substantial completion or final estimate or acceptance or payment thereof shall bar a contractor from reserving all rights to dispute the quantity and amount of, or the failure of the awarding authority to approve a quantity and amount of, all or part of any work item or extra work item.
- (h) Substantial completion, for the purposes of this section, shall mean either that the work required by the contract has been completed except for work having a contract price of less than one per cent of the then adjusted total contract price, or substantially all of the work has been completed and opened to public use except for minor incomplete or unsatisfactory work items that do not materially impair the usefulness of the work required by the contract.

8.2.13.2 Final Acceptance

Promptly after Substantial Completion of the Project, Contractor shall perform all Work, if any, that was waived by MBTA for purposes of Substantial Completion, and shall satisfy all of its other obligations under the Contract Documents, including ensuring that the Project has been completed and all components have been properly adjusted and tested. Final Acceptance of the Project shall be deemed to have occurred when all of the following have occurred:

- a. all requirements for Substantial Completion of the Project shall have been fully satisfied;
- b. MBTA shall have received all As-Built Drawings and Documents, Site record maps, surveys, test data and other deliverables required under the Contract;
- c. all of Contractor's and Subcontractors' personnel, supplies, equipment, waste materials and debris, rubbish and temporary facilities shall have been removed from the Site;
- d. Contractor shall have delivered to the MBTA a certification representing that there are no outstanding claims of Contractor or claims, Liens or stop notices of any Subcontractor or laborer with respect to the Work. For purposes of such certificate, the term "claim" shall include all matters or facts which may give rise to a claim;
- e. any Punch List items shall have been completed to the reasonable satisfaction of MBTA, and all of Contractor's other obligations under the Contract (other than obligations which by their nature are required to be performed after Final Acceptance) shall have been satisfied in full or waived, and MBTA shall have delivered to Contractor notice of Final Acceptance to the effect of the foregoing; and
- f. all conditions under the Contract Documents have been met.

The occurrence of Final Acceptance shall not relieve Contractor from any of its continuing obligations hereunder.

8.2.14 Indemnifications by Contractor

Contractor shall release, defend, indemnify and hold harmless the MBTA and its officers, agents and employees (collectively referred to in this Section 23 as the "Indemnified Parties") from and against any and all claims, demands, liabilities, judgments, penalties, costs, expenses and damages, including personal injury, property damages and natural resource damages, and including attorney and expert consultant fees



and costs incurred in connection with the enforcement of this indemnity, arising out of, relating to or resulting from the following:

- b. the breach or alleged breach of the Contract Documents by Contractor, its employees, agents, officers or Subcontractors or any other Persons performing any of the Work, for whom Contractor may be contractually or legally responsible;
- c. the failure or alleged failure by Contractor or its employees, agents, officers or Subcontractors or any other Persons for whom Contractor may be contractually or legally responsible, to comply with any applicable Laws, including Environmental Laws, in performing the Work;
- d. any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in performance of the Work or undertaking any other activities under the Contract Documents, or arising out of any use in connection with the Project or methods, processes, designs, information, or other items furnished or communicated to the MBTA or another Indemnified Party pursuant to the Contract Documents, provided that this indemnity shall not apply to any infringement resulting from MBTA's or the MBTA's failure to comply with specific written instructions regarding use provided to the MBTA by Contractor;
- e. the alleged negligent act or omission or willful misconduct of Contractor, its employees, agents, officers or Subcontractors or any other Persons performing any of the Work, for whom Contractor may be contractually or legally responsible;
- f. any and all stop notices and/or Liens filed in connection with the Work, including all expenses and attorneys' fees incurred in discharging any stop notice or Lien, provided that there is no default in payments owing to Contractor with respect to such Work;
- g. (i) any release(s) of oil and hazardous materials attributable to the negligence, willful misconduct, or breach of contract by Contractor or any of its officers, employees, agents, Subcontractors, visitors, or any other persons for whom Contractor is responsible; or (ii) the release of any oil and hazardous materials caused to be present on the Site or elsewhere by Contractor or any of its officers, employees, agents, Subcontractors, visitors, or any other persons for whom Contractor is responsible regardless of whether those are the persons who actually caused the release and regardless of the cause for the release;
- h. the claim or assertion by any contractor of inconvenience, disruption, delay or loss caused by interference by Contractor (or its employees, agents, officers or Subcontractors or any other Persons for whom Contractor may be contractually or legally responsible) with or hindering the progress or completion of work being performed by other contractors relating to the Project or Facility, or failure of Contractor or its employees, agents, officers or Subcontractors or any other Persons for whom Contractor may be responsible to cooperate reasonably with other contractors in accordance with the requirements of the Contract Documents; or
- i. any claim, demand or cause of action brought against the MBTA in connection with the Work, resulting from any action of Contractor or failure of Contractor to comply with the requirements of the Contract Documents.



Contractor shall release, defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, losses, liabilities and costs, including attorneys' fees, arising out of, relating to or resulting from errors, omissions, inconsistencies or other defects in the Work.

8.2.14.1 Restrictions

- a. Contractor's indemnity obligations hereunder shall not extend to any loss, damage or expense incurred by an Indemnified Party to the extent caused by:
 - (i) the negligence, reckless or willful misconduct, bad faith or fraud of such Indemnified Party or its agents, servants or independent contractors who are directly responsible to such Indemnified Party; or
 - (ii) any defect inherent in prescriptive design or construction specifications included in the Contract Documents, provided Contractor complied with such standard and did not actually know and did not have reason to know of its deficiency or, if Contractor actually knew of its deficiency, unsuccessfully sought the waiver of or approval of a deviation from such standard; or
 - (iii) MBTA's material breach of any of its obligations under the Contract Documents.
- b. Statutes of Limitations: Such indemnities shall not be construed to effect any extension of statutes of limitations otherwise applicable to causes of action for breach of contract held by the MBTA against Contractor.

8.2.14.2 Employee Claims

In claims by an employee of Contractor, Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation herein shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

8.2.15 Reporting Requirements

Contractor shall deliver to MBTA financial and narrative reports, statements, certifications, budgets and information as and when required under the Contract.

Contractor shall ensure that MBTA receives, as and when produced or received, all financial, narrative, consultant and other reports, statements, certifications, budgets and information related to the project which Contractor causes to be produced. In addition, Contractor shall furnish or cause to be furnished to MBTA such information and statements as MBTA may reasonably request from time to time for any purpose related to the Project, this Contract or the other Contract Documents.

8.2.16 Maintenance of, Access to and Audit of Records

Contractor shall maintain a complete set of all books and records prepared or employed by Contractor in its management, scheduling, cost accounting and other activities related to the Project. Contractor shall grant to the MBTA such audit rights and shall allow the MBTA such access to and the right to copy such books and records as the MBTA may request in connection with the issuance of Change Orders and the resolution of disputes as the MBTA may reasonably deem necessary for purposes of verifying compliance with this Contract and applicable Law.



Where the payment method for any Work is on a time and materials basis, such examination and audit rights shall include all books, records, documents and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Work. If an audit indicates Contractor has been overcredited under a previous progress report or Milestone Payment, that overcredit will be credited against current progress reports or Milestone Payment.

For cost and pricing data submitted in connection with pricing Change Orders, (unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by Law or regulation), MBTA and its representatives shall have the right to examine all books, records, documents and other data of Contractor related to the negotiation of or performance of Work under such Change Orders for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. Such right of examination shall extend to all documents deemed necessary by MBTA and its representative to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

8.2.17 Retention of Records

Contractor shall maintain all records and documents relating to the Work (including copies of all original documents delivered to MBTA) for seven (7) years after the Final Acceptance or termination date, as applicable. Contractor shall notify MBTA where such records and documents are kept. Notwithstanding the foregoing, all records which relate to Demands being processed or actions brought under any dispute resolution process shall be retained and made available until such actions and Demands have been finally resolved. Records to be retained include all books and other evidence bearing on Contractor's costs under the Contract Documents. Contractor shall make these records and documents available for audit and inspection to MBTA at Contractor's office, at all reasonable times, without charge, and shall allow such Persons to make copies of such documents (at no expense to Contractor). If approved by MBTA, photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents.

8.2.17.1 Public Records Act

- a. Contractor acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials that may come into the MBTA's possession, including materials submitted by Contractor, are subject to the provisions of the Massachusetts Public Records Law (Mass. Gen. L. c. 66, s. 10). Contractor shall be solely responsible for all determinations made by it under such Law, and for clearly and prominently marking each and every page or sheet of materials with "Trade Secret" or "Confidential" as it determines to be appropriate. Contractor is advised to contact legal counsel concerning such Law and its application to Contractor.
- b. If any of the materials submitted by Contractor to the MBTA are clearly and prominently labeled "Trade Secret" or "Confidential" by Contractor, MBTA will endeavor to advise Contractor of any request for the disclosure of such materials prior to making any such disclosure. Under no circumstances, however, will the MBTA be responsible or liable to Contractor or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by Law, or court order, or occurs through inadvertence, mistake or negligence on the part of the MBTA.
- c. In the event of litigation concerning the disclosure of any material submitted by Contractor to the MBTA, the MBTA's sole involvement will be as stakeholders retaining the material until otherwise ordered by a court and Contractor shall be fully responsible



for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk.

8.2.18 Warranty Period

Contractor's warranties for the performance and operation of all Work shall inure to, and remain in effect for the benefit of, the MBTA and may be fully enforced by the MBTA for a minimum period of one (1) year after Final Acceptance; provided that the warranty period for the following elements of the Work shall be extended to five (5) years in accordance with the following requirements:

- a. Precast concrete materials, sealants, traffic topping and sealers provided that the MBTA and/or its operator shall comply with recommended maintenance procedures on a semi-annual schedule and certify to the precast manufacturer that the regular maintenance is being performed in accordance with said schedule;
- b. Electrical pipe, conduit, wire, breakers and switchgear;
- c. Standby generator and life safety system, provided that the MBTA and/or its operator purchases a service contract from the vendors of such systems;
- d. Manhole structures, pipe and precast or granite curb, except as caused by settlement of soils or damage from traffic or plows;
- e. Signage and graphics from fading and discoloration; and
- f. Finish on aluminum storefront and metal roof systems from fading or discoloration.

If the MBTA determines that any of the Work has not met the standards set forth in the Contract Documents at any time during the warranty period for such Work, then Contractor shall correct such Work as specified below, even if the performance of such corrective work extends beyond the stated warranty period.

Contractor's warranty excludes remedy for normal wear and tear from normal usage and damage or defect caused by abuse, alterations to the Work not executed by Contractor, improper or insufficient maintenance, or improper operation.

8.2.18.1 Remedy

Within seven (7) Days of receipt by Contractor of notice from the MBTA identifying a failure of any of the Work to satisfy the warranties set forth in the Contract Documents, Contractor and, the MBTA shall mutually agree when and how Contractor shall remedy such failure. If Contractor and the MBTA fail to reach such agreement within such seven (7) Day period, then the MBTA, after notice to Contractor, shall have the right to perform, or have performed by third parties, the necessary remedy and the costs thereof shall be borne by Contractor.

In case of an emergency associated with the failure of any of the Work to satisfy the warranties set forth in the Contract Documents that requires immediate curative action, Contractor shall implement such curative action as it deems reasonably necessary, and shall notify the MBTA of said emergency and the resulting curative action. If Contractor and the MBTA fail to reach an agreement immediately regarding Contractor's remedy of such emergency, then the MBTA, after notice to Contractor, shall have the right to perform, or have performed by third parties, the necessary remedy and the costs thereof shall be borne by Contractor.



8.2.18.2 Warranty Costs

All costs of correcting Work that violates the warranty provisions contained herein, including additional testing and inspections, shall be deemed to be included in the Price. Contractor shall reimburse the MBTA or pay the MBTA's expenses made necessary thereby within ten (10) Days after Contractor's receipt of invoices therefor. Any dispute relating to this section shall be subject to any Dispute Resolution provisions contained in the Contract Documents, provided that Contractor shall proceed as directed by the MBTA pending resolution of the dispute.

8.2.18.3 Applicability of Warranties to Re-Done Work

Contractor's warranties shall apply to all Work redone pursuant to the terms of this Section 8.2.18. Contractor's warranty for re-done elements of the Work shall extend beyond the original warranty period, if necessary, to provide at least a one-year warranty period following acceptance of the re-done Work, but not to exceed one year more than the original length of warranty for the respective element of the Work after the date that Final Acceptance is achieved.

8.2.18.4 No Limitation on Liability

The foregoing warranties are in addition to all rights and remedies available under the Contract Documents or applicable Law, and shall not limit Contractor's liability or responsibility imposed by the Contract Documents or applicable Law with respect to the Work, including liability for design defects, latent construction defects, strict liability, negligence or fraud.

8.2.18.5 Damages for Breach of Warranty

If Contractor fails or refuses to provide the warranty remedies described in this Section 8.2.18, notwithstanding a valid request by the MBTA, Contractor shall be liable to the MBTA for the cost of performance of the warranty work by others, throughout the warranty periods provided in this Contract and any extension thereof.

8.2.19 Award of Contracts; Accounting Statements; Annual Financial Statements; Definitions (M.G.L. c. 30, section 39R)

- a. The words defined herein shall have the meaning stated below whenever they appear in this section:
 - i. "Contractor" means any person, corporation, partnership, joint venture, sole proprietorship, or other entity awarded a contract pursuant to sections thirty-eight A1/2 to thirty-eight O, inclusive, of chapter seven and any contract awarded or executed pursuant to section eleven C of chapter twenty-five A, section thirty-nine M of chapter thirty, or sections forty-four A to forty-four H, inclusive, of chapter one hundred and forty-nine, which is for an amount or estimated amount greater than one hundred thousand dollars.
 - ii. "Contract" means any contract awarded or executed pursuant to sections thirty-eight A1/2 to thirty-eight O, inclusive, of chapter seven and any contract awarded or executed pursuant to section eleven C of chapter twenty-five A, section thirty-nine M of chapter thirty, or sections forty-four A through forty-four H, inclusive, of chapter one hundred and forty-nine, which is for amount or estimated amount greater than one hundred thousand dollars.
 - iii. "Records" means books of original entry, accounts, checks, bank statements and all other banking documents, correspondence, memoranda, invoices, computer



printouts, tapes, discs, papers and other documents or transcribed information of any type, whether expressed in ordinary or machine language.

- iv. “Independent Certified Public Accountant” means a person duly registered in good standing and entitled to practice as a certified public accountant under the laws of the place of his residence or principal office and who is in fact independent. In determining whether an accountant is independent with respect to a particular person, appropriate consideration should be given to all relationships between the accountant and that person or any affiliate thereof. Determination of an accountant’s independence shall not be confined to the relationships existing in connection with the filing of reports with the awarding authority.
 - v. “Audit”, when used in regard to financial statements, means an examination of records by an independent certified public accountant in accordance with generally accepted accounting principles and auditing standards for the purpose of expressing a certified opinion thereon, or, in the alternative, a qualified opinion or a declination to express an opinion for stated reasons.
 - vi. “Accountant’s Report”, when used in regard to financial statements, means a document in which an independent certified public accountant indicates the scope of the audit which he has made and sets forth his opinion regarding the financial statements taken as a whole with a listing of noted exceptions and qualifications, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed the reason therefor shall be stated. An accountant’s report shall include as a part thereof a signed statement by the responsible corporate officer attesting that management has fully disclosed all material facts to the independent certified public accountant, and that the audited financial statement is a true and complete statement of the financial condition of the contractor.
 - vii. “Management”, when used herein, means the chief executive officers, partners, principals or other person or persons primarily responsible for the financial and operational policies and practices of the contractor.
 - viii. Accounting terms, unless otherwise defined herein, shall have a meaning in accordance with generally accepted accounting principles and auditing standards.
- b. Subsection a. ii. hereof notwithstanding, every agreement or contract awarded or executed pursuant to sections thirty-eight A ½ to thirty-eight O, inclusive, of chapter seven, or eleven C of chapter twenty-five A, and pursuant to section thirty-nine M of chapter thirty or to section forty-four A through H, inclusive, of chapter one hundred and forty-nine, shall provide that:
- i. The contractor shall make, and keep for at least six years after the final payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the contractor, and
 - ii. Until the expiration of six years after final payment, the office of inspector general, and the commissioner of capital asset management and maintenance shall have the right to examine any books, documents, papers or records of the



contractor or of his subcontractors that directly pertain to, and involve transactions relating to, the contractor or his subcontractors, and

- iii. If the agreement is a contract as defined herein, the contractor shall describe any change in the method of maintaining records or recording transactions which materially affect any statement filed with the awarding authority, including in his description the date of the change and reasons therefor, and shall accompany said description with a letter from the contractor's independent certified public accountant approving or otherwise commenting on the changes, and
 - iv. If the agreement is a contract as defined herein, the contractor has filed a statement of management on internal accounting controls as set forth in paragraph c below prior to the execution of the contract, and
 - v. If the agreement is a contract as defined herein, the contractor has filed prior to the execution of the contracts and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in paragraph d below.
- c. Every contractor awarded a contract shall file with the awarding authority a statement of management as to whether the system of internal accounting controls of the contractor and its subsidiaries reasonably assures that:
- i. The transactions are executed in accordance with management's general and specific authorization;
 - ii. Transactions are recorded as necessary
 - 1. To permit preparation of financial statements in conformity with generally accepted principles, and
 - 2. To maintain accountability for assets;
 - iii. Access to assets is permitted only in accordance with management's general or specific authorization; and
 - iv. The recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference.
- d. Every contractor awarded a contract shall also file with the awarding authority a statement prepared and signed by an independent certified public accountant, stating that he has examined the statement of management on internal accounting controls, and expressing an opinion as to:
- i. Whether the representations of management in response to this paragraph and paragraph (b) above are consistent with the results of management's evaluation of the system of internal accounting controls; and



- ii. Whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the applicant's financial statements.
- e. Every contractor awarded a contract by the commonwealth or by any political subdivision thereof shall annually file with the commissioner of capital asset management and maintenance during the term of the contract a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountant's report. Such statements shall be made available to the awarding authority upon request.
- f. The office of inspector general, the commissioner of capital asset management and maintenance and any other awarding authority shall enforce the provisions of this section. The commissioner of capital asset management and maintenance may after providing an opportunity for the inspector general and other interested parties to comment, promulgate pursuant to the provisions of chapter thirty A such rules, regulations and guidelines as are necessary to effectuate the purposes of this section. Such rules, regulations and guidelines may be applicable to all awarding authorities. A contractor's failure to satisfy any of the requirements of this section may be grounds for debarment pursuant to section forty-four C of chapter one hundred and forty-nine.
- g. Records and statements required to be made, kept or filed under the provisions of this section shall not be public records as defined in section seven of chapter four and shall not be open to public inspection; provided, however, that such records and statements shall be made available pursuant to the provisions of clause (2) of paragraph (b).

8.2.20 Extension Due to Delays

- 8.2.20.1** The right of Contractor to proceed shall not be terminated nor Contractor charged with liquidated or actual damages because of any delays to the completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor, including, but not restricted to the following: acts of God; acts of Owner; acts of another Contractor in the performance of a contract with owner; floods, fires, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather; and delays of Subcontractors or suppliers due to such causes.
- 8.2.20.2** Any delay in receipt of materials on the site, caused by other than one of the specifically mentioned occurrences above, does not of itself justify a time extension.

8.2.21 Essence of Contract

- 8.2.21.1** All time limits stated in the Contract Documents are of the essence to the Contract.

8.2.22 Reasonable Completion Time

- 8.2.22.1** It is expressly understood and agreed by and between Contractor and Owner that the date of beginning and the time for Final Completion of the Work described herein are reasonable times



for the completion of the Work.

8.2.23 Delay in Completion of the Work

- 8.2.23.1** In the event that Contractor does not proceed with the Work within the time frame stipulated in the Contract Documents or otherwise fails to perform the other work specified in the Contract Documents in reasonable accordance with the Project Schedule, so as to complete the Work on or before the time for Final Completion, the MBTA may terminate the Contract, and seek to complete the Work with another Contractor.
- 8.2.23.2** Whether or not Contractor's right to proceed with the Work is terminated, Contractor shall be liable for damages resulting from Contractor's refusal or failure to complete the Work within the specified time.

8.2.24 Warranty and Guaranty

- 8.2.24.1** Contractor warrants and guarantees to the MBTA that all Work will be in accordance with the Contract Documents and will not be defective.
- 8.2.24.2** Prompt notice of all defects shall be given to Contractor. All defective work, whether or not in place, may be rejected corrected or accepted as provided for in this Article.

8.2.25 Access to Work

- 8.2.25.1** The MBTA, its representatives, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. Contractor shall provide proper and safe conditions for such access.

8.2.26 Tests and Inspections

- 8.2.26.1** Contractor shall give the MBTA timely notice of readiness of the Work for all required inspections.

8.2.27 Retainage

- 8.2.27.1** A percentage of Contractor's Application for Payment may be withheld if, in Owner's judgement, a portion of the Work for which payment is requested has not been completed according to the Project Plans and Specifications. The percentage withheld will be commensurate with the proportion of the incomplete Work in relation to the total amount of the Application for Payment. Any amount withheld shall be promptly processed for payment upon satisfactory completion and acceptance of the Work.

8.2.28 Contractor's Continuing Obligation

- 8.2.28.1** Contractor's obligation to perform and complete the Work and pay all laborers, sub-contractors, and material in accordance with the Contract Documents shall be absolute.
- 8.2.28.2** Neither any progress or final payment by the MBTA, nor the



issuance of a Certificate of Substantial Completion, nor any use or occupancy of the Work or any part thereof by Owner, nor any act of acceptance by Owner nor any failure to do so, nor any correction of defective Work by Owner will constitute an acceptance of Work not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents.

8.2.29 Waiver of Claims by Contractor

- 8.2.29.1** The making and acceptance of final payment will constitute a waiver of all claims by Contractor against Owner, other than those previously made in writing and that remain unsettled.

8.2.30 No Waiver of Legal Rights

- 8.2.30.1** The MBTA shall not be precluded or be estopped by any payment, measurement, estimate, or certificate made either before or after the completion an acceptance of the Work and payment therefore, from showing the true amount and character of the Work performed and materials furnished by Contractor, nor from showing that any payment, measurement, estimate or certificate is untrue or is incorrectly made, or that the Work or materials are defective.
- 8.2.30.2** The MBTA shall not be precluded or be stopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from Contractor such damages as it may sustain by reason of Contractor's failure to comply with requirements of the Contract Documents.
- 8.2.30.3** Neither acceptance by the MBTA, or any representative of the MBTA, nor any payment for or acceptance of the whole or any part of the Work, nor any extension of the Contract time, nor any possession taken by the MBTA, shall operate as a waiver of any portion of the Contract or of the power herein reserved, or of any right to damages.
- 8.2.30.4** A waiver by the MBTA of any breach of the Contract shall not be held to be a waiver of any other subsequent breach.

8.2.31 Default of Contractor

1. The MBTA may give Notice in writing to Contractor of such delay, neglect, or default ("Notice of Default") if Contractor:
 - a. Fails to begin the Work under the Contract within the time specified in the Contract Documents, or
 - b. Fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workmen or suitable materials or equipment or failure to adhere to the established progress schedule), or



- c. Performs the Work unsuitably or neglects or refuses to remove materials or to correct defective Work, or
 - d. Discontinues the prosecution of the Work, or
 - e. Fails to resume Work which has been discontinued within a reasonable time after notice to do so, or
 - f. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency except as prohibited by 11 U.S.C. 363, or
 - g. Allows any final judgment to stand against him unsatisfied for period of sixty (60) days, or
 - h. Makes an assignment for the benefit of creditor without the consent of the MBTA, or
 - i. Disregards requirements or orders of any public body having jurisdiction, or
 - j. Otherwise violates in any substantial way any provisions of the contract Documents, or
 - k. For any cause whatsoever, fails to carry on the Work in an acceptable manner, or
 - l. Fails to provide and maintain any insurance policy as set forth herein.
2. If Contractor, within the time specified in the above Notice of Default, shall not proceed in accordance therewith, the MBTA may, upon written notification to Contractor and Contractor's surety of the fact of such delay, neglect or default and Contractor's failure to comply with such notice, have full power and authority without violating the contract, to take the prosecution of the Work out of the hands of Contractor.
3. The MBTA may terminate the services of Contractor, exclude Contractor from the site and take possession of the Work.
4. The MBTA may enter into an agreement for the completion of said Contract Work according to the terms and provisions of the Contract, or use such other methods that in the opinion of Owner are required for the completion of said contract in an acceptable manner.
5. The MBTA may, by written notice to Contractor, transfer the completion of the Work from Contractor to another organization, or, if Contractor abandons the Work, undertaken under the Contract, the MBTA may, at its option and without any written notice to Contractor, transfer the completion of the Work to another organization.

8.2.32 Rights or Remedies

1. Where Contractor's services have been so terminated by the MBTA, the termination will not affect any rights or remedies of the MBTA against Contractor then existing or which may thereafter accrue.
2. Any retention or payment of moneys due Contractor by the MBTA will not release Contractor from liability.

[Signatures on following page]



8.3 Terms & Conditions Signature

IN WITNESS WHEREOF, the Contractor certifies under the pains and penalties of perjury that it shall comply with these MBTA Terms and Conditions under Section 8.0 for any applicable Contract executed with the MBTA as certified by their authorized signatory below:

Contractor Authorized Signatory: _____

Print Name: _____

Title: _____

Date: _____