**MASSACHUSETTS BAY TRANSPORTATION AUTHORITY**

**COMMUTER RAIL PROCUREMENT**

**REQUEST FOR PROPOSALS**

**INSTRUCTIONS TO PROPOSERS**

**RFP No. 159-12**

**July 17, 2013**

 

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# Introduction and General Information

The Massachusetts Bay Transportation Authority (MBTA) has issued this Request for Proposals (RFP) in order to seek competitive Proposals for the operation and maintenance of the MBTA's commuter rail system. Proposals will only be considered from those Proposers that have been included on the Short-List.

In preparing Proposals, Proposers should address and/or consider the Procurement and Contract Goals identified in Section 4.1 (Procurement and Contract Goals) and Appendix A (Detailed Scope and Contracting Structure).

# Abbreviations and Definitions

For purposes of this RFP, the following abbreviations and capitalized terms have the meanings set forth below. Additional capitalized terms are defined in context.

## Abbreviations

ADA Americans with Disabilities Act

BAFO Best and Final Offer

DBE Disadvantaged Business Enterprise

EEO Equal Employment Opportunity

FTA Federal Transit Administration

ITP Instructions to Proposers

JV Joint Venture

LLC Limited Liability Company

MBTA Massachusetts Bay Transportation Authority

MassDOT Massachusetts Department of Transportation

NTP Notice to Proceed

RFP Request for Proposals

RFQ Request for Qualifications

SOQ Statement of Qualifications

US DOT United States Department of Transportation

## Definitions

**“Addenda”** means supplemental additions, deletions and modifications to the provisions of the RFP after its initial issuance.

**“Best and Final Offer”** or **“BAFO”** means a supplement or revision to the Proposal (including, but not limited to, the Financial/Price Proposal) submitted at the request of the MBTA allowing a responsive Proposer determined to be in the Competitive Range the opportunity to clarify its initial Proposal and/or submit additional information requested by the MBTA and/or desired by the Proposer. A request for Best and Final Offer (BAFO) follows Discussions between the MBTA and those Proposers in the Competitive Range.

**“Bidders' Library”** means the online library containing various due diligence Reference Documents made available to Proposers in connection with the MBTA's Commuter Rail Procurement.

**“Clarifications”** means written exchanges of information between a Proposer and the MBTA during the Proposal solicitation and evaluation process to address ambiguities, omissions, errors or mistakes and clerical revisions in Proposals.

**“Communications”** means written exchanges between the MBTA and Proposers, after receipt of the Proposals, leading to the establishment of the Competitive Range.

**“Commuter Rail Operating Agreement”** or **“Operating Agreement”** means the operating agreement that is provided to Proposers as part of the Request for Proposals.

**“Commuter Rail Services”** means the operation and maintenance of commuter rail trains and special trains within the commuter rail system, together with other services, activities, tasks, functions and responsibilities of the operator functionally related thereto.

**“Competitive Range”** means the list of the most highly rated Proposals, based on initial Proposal ratings, that have a reasonable chance of being selected.

**“Contract”** or **“Contract Documents”** means the written agreement between the MBTA and the successful Proposer setting forth the parties' obligations including, but not limited to, the performance of the Commuter Rail Services. The Contract includes: (i) the Operating Agreement and its Schedules; (ii) those portions of the successful Proposer’s Proposal that the MBTA elects, in its sole discretion, to incorporate; (iii) the Notice to Proceed (NTP); and (iv) any amendments and change orders that are required to complete the performance of the Contract in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument. Whenever separate publications are referenced in the Contract Documents, it is understood to mean the publication, as amended, current on the date of issuance of the final RFP (December 11, 2012), unless otherwise noted.

**“Discussions”** means written or verbal exchanges taking place after the establishment of the Competitive Range with the intent of allowing the Proposer to revise its Proposal and/or submit a BAFO.

**“Equity Member”** means each entity with a direct equity interest in the Proposer (whether as a member, partner, Joint Venture member, or otherwise).

**“Federal Certifications and Assurances”** has the meaning set out in Section 4.5.2 (Federal Law).

**“Financially Responsible Party”** means a parent or affiliate company that will guarantee all obligations of another entity (Equity Member or Proposer).

**“Instructions to Proposers”** or **“ITP”** means those documents containing directions for the preparation and submission of information by Proposers in response to the RFP.

**“Massachusetts Bay Transportation Authority”** or **“MBTA”** means the authority created in 1964 by an act of the Massachusetts General Court, operating under and empowered by Chapter 161A of the General Laws, as the same may be amended from time to time. Among other things, the MBTA is empowered to provide public transportation services, including Commuter Rail Services, either directly or by contract.

**“Operator”** means the Proposer who is selected as the successful Proposer and enters into the Contract with the MBTA.

**“Proposal”** means a Proposer's offer (in response to the RFP) for the performance of the Contract, when executed and submitted in the prescribed format and on the prescribed forms.

**“Proposal Due Date”** has the meaning set out in Section 5.5 (Procurement Schedule).

**“Proposer”** means an entity submitting a Proposal in response to this RFP.

**“Reference Documents”** means those documents that meet the following two criteria: the documents (i) are provided in connection with the RFP, and (ii) are designated as "reference documents" or "Reference Documents." The Reference Documents are not Contract Documents and are provided to the Proposers for informational purposes only.

**“Request for Proposals”** or **“RFP”** means a written solicitation issued by the MBTA seeking Proposals to be used to identify the Proposer offering the best value to the MBTA. The RFP includes: (i) the Instructions to Proposers (ITP); (ii) the Contract Documents; and (iii) the Reference Documents. This RFP is issued only to Proposers that are on the Short-List.

**“Request for Qualifications”** or **“RFQ”** means the written solicitation issued by the MBTA seeking SOQs to be used to identify and short-list the most highly qualified Proposers to receive the RFP.

**“RFP Components”** has the meaning set out in Section 3.1 (Documents in the Request for Proposals).

**“Short-List”** means those Proposers that the MBTA has determined, through evaluation of the SOQs, to be the most highly qualified Proposers and that were invited to submit Proposals in response to the RFP.

**“State Certifications and Assurances”** has the meaning set out in Section 4.5.1 (State Law).

**“Statement of Qualifications”** or **“SOQ”** means the information prepared and submitted by a Proposer in response to the RFQ.

# Explanation of the Request for Proposals Documents

## Documents in the Request for Proposals

The following documents are issued as part of this RFP (collectively, the "**RFP Components**"):

##### Additional requirements and clarifications issued by Addenda documents to this RFP;

##### Instructions to Proposers;

##### Additional documents issued by Addenda to this Request for Proposals;

##### Contract Documents, inclusive of the following parts:

###### The Operating Agreement; and

###### Schedules; and

##### Reference Documents.

The RFP Components are intended to complement and describe the procurement process and to ensure that said process is fair and competitive. Prior to execution of the Contract, the RFP Components complement one another in the descending order of precedence stated above. Within the Operating Agreement, the order of precedence is governed by Article 44.

## Operations and Management Proposal Instructions

The Operations and Management Proposal must be submitted as specified in Appendix B (Operations and Management Proposal Instructions).

## Financial/Price Proposal Instructions

The Financial/Price Proposal must be submitted as specified in Appendix C (Financial/Price Proposal Instructions).

## Required Forms

Failure to provide all information and all completed forms (set out in Appendix D (Forms)) in the format specified in Appendix B (Operations and Management Proposal Instructions) and Appendix C (Financial/Price Proposal Instructions) may result in the MBTA’s rejection of the Proposal, or giving it a lower rating. All blank spaces in the Proposal forms must be filled in as noted and no changes may be made in the phraseology of the RFP or in the items mentioned therein. Any alterations, additions (other than expanding forms in order to properly include all required information) or deletions made to the format of the forms contained in Appendix D (Forms) may render a Proposal non-responsive.

## Inclusion in the Contract

Subject to Section 4.3.2 (Form of the Proposed Contract) of this ITP, the Operations and Management Proposal and the Financial/Price Proposal submitted by the successful Proposer, including any Proposal revision and BAFO documents, shall be incorporated into, and made part of, the Contract at execution.

## Property of the Massachusetts Bay Transportation Authority

All documents submitted by Proposers in response to this RFP will become the property of the MBTA, except for any documents that have been properly identified as containing confidential proprietary or trade secret information in accordance with Section 5.2 (Non-Public Process). Notwithstanding anything to the contrary, no documents shall be returned to Proposers.

# Overview of the Scope and Contracting Opportunity

## Procurement and Contract Goals

The MBTA's goals for this procurement and Contract are as follows:

##### Procurement of a Contract that will deliver immediate and identifiable improvements for the MBTA and its passengers, early and sustainable improvements in operating performance and a program of sustainable and affordable enhancements to the passenger experience;

##### Identification of a contractor that will be a long-term partner for the MBTA and that will be committed to a joint goal of ensuring that the new Contract underpins the MBTA’s reputation as one of the leading public transportation authorities in the United States;

##### Selection of a contractor able to ensure that the MBTA’s passengers experience a reliable, on-time service that is both safe and comfortable;

##### Selection of a contractor able to demonstrate and ensure diversity, inclusion, creativity, accountability and transparency in its overall employment, contracting, subcontracting and purchasing practices over the life of the Contract so that there is continuing compliance with all local, state and federal laws and regulations, including the Federal Disadvantaged Business Enterprise (DBE) Program, Equal Employment Opportunity (EEO), Affirmative Action, and FTA and US DOT civil rights requirements;

##### Innovative delivery of service and infrastructure improvements, on an efficient and economic basis, at a time of financial challenge; and

##### Demonstration of the contractor’s ability to deliver the highest possible standards of safe operation on every day of commuter rail operation.

## Role of the Massachusetts Bay Transportation Authority

In the context of the Contract, the MBTA is responsible for the following activities:

##### Development of specifications that will meet the needs of the MBTA and its passengers, while reflecting national and international best practices;

##### Principal provision of capital, administration and oversight of the Contract to ensure the continued delivery of operational excellence and investment in people, infrastructure and rolling stock throughout the life of the Contract;

##### Engagement as a committed customer and partner, dedicated to providing significant enhancement to the Commuter Rail Services; and

##### Primary relation to the Massachusetts Department of Transportation (MassDOT), municipalities and federal funding partners.

## General Scope and Contracting Form and Methodology

### Scope of Services

A general statement of the scope of services is included in Appendix A (Detailed Scope and Contracting Structure).

Additional detail regarding the scope of services and the requirements under the Contract can be found in the Schedules, which are included in the Operating Agreement.

### Form of the Proposed Contract

The "Operating Agreement" is the form of contract to be executed between the parties. Once executed, the Contract will include the written Operating Agreement between the MBTA and the successful Proposer setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the Commuter Rail Services. The Contract will include: (i) the Operating Agreement and its Schedules; (ii) those portions of the successful Proposer’s Proposal that the MBTA elects, in its sole discretion, to incorporate; (iii) the NTP; and (iv) any amendments and change orders that are required to complete the performance of the Contract in an acceptable manner, including authorized extensions thereof, all of which will constitute one instrument.

### Reference Documents

Reference Documents are provided by the MBTA for use in the Proposer’s Proposal preparation, at the Proposer’s discretion. Accordingly, Reference Documents, including plans contained therein and/or so designated elsewhere in the RFP, are not considered Contract Documents, and are provided to the Proposers for informational purposes only. The Reference Documents are filed in the "Bidders' Library."

## Examination of the Request for Proposals and Work Site and Assets

The Proposer shall carefully examine the site of the proposed work and assets subject to the Contract and the complete RFP, including Reference Documents contained in the Bidders' Library, before submitting a Proposal.

The submission of a Proposal will be considered prima facie evidence that the Proposer has made such examination and is informed as to the conditions to be encountered in performing the Contract and as to the requirements of the Contract.  The Proposer must so certify on the Form of Proposal (*see* Appendix D – Proposal Forms) in order for the Proposal to be valid. Proposers are encouraged to visit all publicly-accessible portions of the MBTA's property and commuter rail system.

## Governing Law

### State Law

The laws of the Commonwealth of Massachusetts shall govern the RFP and Contract.

Proposers must comply with the following certifications and assurances as required by the MBTA and Commonwealth of Massachusetts (collectively, the "**State Certifications and Assurances**"):

##### Affidavit of Non-Collusion;

##### Certification of Compliance with Regulation 102 CMR 12.00;

##### Certification regarding Companies Doing Business With or in Northern Ireland;

##### Confidential Information Agreement;

##### Conflict of Interest Certification;

##### MBTA Retiree Certification;

##### Prohibit Use of Undocumented Workers Certification;

##### Right-of-Way Safety Requirements Certification;

##### Right-to-Know Law Certification; and

##### Security Requirements Certification.

##### Each Proposer is responsible for ensuring that it complies with the State Certifications and Assurances. Non-compliance with the State Certifications and Assurances may render a Proposer non-responsive and disqualify the Proposer from further consideration. Forms for the State Certifications and Assurances are included in Appendix D (Forms).

### Federal Law

The Federal Transit Administration’s (FTA) federal cross-cutting requirements shall apply to the Contract, and Proposers must comply with the following federal certifications and assurances (collectively, the "**Federal Certifications and Assurances**"):

##### Fly America;

##### Energy Conservation;

##### Clean Water;

##### Lobbying;

##### Federal Changes;

##### Clean Air;

##### No Government Obligation to Third Parties;

##### Program Fraud and False or Fraudulent Statements and Related Acts;

##### Termination;

##### Government-Wide Debarment and Suspension;

##### Civil Rights Requirements;

##### Breaches and Dispute Resolution;

##### Disadvantaged Business Enterprise;

##### Buy America Requirements;

##### Cargo Preference Requirements;

##### Bonding Requirements;

##### Incorporation of FTA Terms; and

##### Notification of Federal Participation for States.

Each Proposer is responsible for ensuring that it complies with the Federal Certifications and Assurances. Non-compliance with the Federal Certifications and Assurances may render a Proposer non-responsive and disqualify the Proposer from further consideration. Forms for the Federal Certifications and Assurances are included in Appendix D (Forms).

### Diversity Requirements

The MBTA's policy is to ensure non-discrimination in the award and administration of MBTA contracts and in the procurement of goods and services. It is the MBTA's intention to create a level playing field on which DBEs can compete fairly for federally-funded contracts, subcontracts and purchase orders. The MBTA's commitment to complying with the Federal DBE Program, including a DBE goal, is not intended to, and shall not be used, as a justification to discriminate against any qualified company or group of companies. The successful Proposer shall not discriminate on the basis of race, color, national origin, sex, age or disability.

As stated above, the successful Proposer will be required to comply with the US DOT's and FTA’s Civil Rights and DBE requirements as well as the MBTA’s policies regarding Civil Rights and DBE requirements. In addition, the successful Proposer will be required to cooperate with the MBTA in implementing the Contract obligations concerning Equal Employment Opportunity (EEO), Affirmative Action, workforce diversity and DBE utilization in the Contract.

#### Disadvantaged Business Enterprise Stated Goal

The DBE participation goal for this RFP and the proposed Contract to be awarded is set at fifteen percent (15%). This DBE participation goal represents those elements of work performed by qualified DBEs for amounts totaling fifteen percent (15%) of the goods and services purchased or subcontracted.

The DBE participation goal is a percentage representing the DBE race-ethnic-and-gender (race-gender) conscious participation, in accordance with the Federal DBE Program and the federal regulation at 49 CFR Part 26.

The Proposer is obligated to meet the stated DBE goal or to exercise good faith efforts to do so, as provided in 49 CFR Part 26 and its Appendix A to Part 26 entitled "Guidance Concerning Good Faith Efforts," at the time of Proposal submission. Failure to provide the required DBE information as set forth in Appendix B (Operations and Management Proposal Instructions) will be considered a breach of the Proposal requirements and will render a Proposal non-responsive.

*See* Appendix B (Operations and Management Proposal Instructions) Section B11.0 for additional information regarding the submission of DBE Proposal information.

#### Disadvantaged Business Enterprise Proposal Submission Information

Proposers are required to submit the following information (further details on the Proposal submissions are defined in Appendix B (Operations and Management Proposal Instructions)) using the forms provided in Appendix D (Forms):

##### A DBE Plan and Program that meets the requirements of, and ensures overall compliance with, 49 CFR Part 26;

##### A DBE Utilization Certificate that includes a completed DBE Participation Schedule listing those qualified DBEs with which the Proposer intends to contract for the performance of portions of the work under the Contract;

##### A completed original DBE Letter of Intent signed by each DBE listed in the DBE Participation Schedule;

##### A copy of the most recent certification letter or document of each DBE listed in the DBE Participation Schedule;

##### An original DBE Affidavit executed by each DBE listed in the DBE Participation Schedule stating that there has not been any change in its status since the date of its last certification; and

##### Upon award of the Contract, the successful Proposer will have 30 days to submit executed subcontracts or purchase orders to the MBTA for all DBEs identified on the DBE Participation Schedule, unless such time is extended by the MBTA for good cause.

For the purposes of this Contract, the MBTA will only accept DBEs that are certified, at the time of Proposal opening, by the Massachusetts Supplier Diversity Office formally known as the State Office of Minority and Women Business Assistance.

The DBE participation documentation and forms identified in the Section 4.5.3.2 (B) through (F), along with the successful Proposer's approved DBE Plan and Program (including annual updates), will be incorporated into the Contract.

#### Equal Employment Opportunity

Proposers (and their subcontractors) that employ 50 or more persons, and will be entering into a contract hereunder in an amount of $50,000 or more, will be required to submit an Affirmative Action/EEO Plan for the employment of minorities (as defined by applicable laws and regulations) and women in response to the RFP.

The successful Proposer will be required to give, prior to the commencement of the Contract, notice to all pertinent personnel (i.e., managers, supervisors, employees, unions and subcontractors) of the Proposer’s EEO policies and procedures and its intent and effort to realize such procedures in connection with the EEO requirements that the MBTA is required to follow as an FTA grantee. The successful Proposer is expected to timely and effectively implement FTA Circular 4702.1B, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," effective October 1, 2012, as well as the non-discrimination requirements found in 49 CFR Part 27 (Nondiscrimination on the Basis of Disability); FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," effective August 15, 2012; and 49 CFR Part 38 (ADA Requirements).

Proposer shall comply with all applicable requirements under Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d *et seq*., with the Title VI Program of the MBTA, and with all applicable FTA Circulars (including FTA Circular 4702.1B) and federal regulations (including 49 C.F.R. Part 21) implementing Title VI, including general requirements of Title VI as follows:

A) Public participation plan including public outreach efforts and involvement activities to ensure meaningful access to activities;

B) Procedures for tracking and investigating Title VI complaints;

C) List of public transportation-related Title VI investigations, complaints

and lawsuits;

(D) Language assistance programs (for providing language assistance to persons with limited English proficiency);

(E) Title VI notices to the public and instructions to the public regarding how

to file a Title VI complaint (notifying public of their rights afforded to

them by Title VI); and

(F) Environmental Justice analysis.

The successful Proposer will be required to assign a person with the responsibility for securing compliance with reporting progress to the successful Proposer’s General Manager/executive team and the MBTA’s Office of Diversity and Civil Rights on all EEO efforts initiated and taken. The successful Proposer will be contractually required to cooperate fully with the MBTA and ensure equal employment opportunity to the maximum extent possible during the Contract term.

Further information on the Proposal submissions related to EEO, Affirmative Action and other civil rights requirements is set out in Appendix B (Operations and Management Proposal Instructions).

# Procurement Process

## Rules of Contact

The following rules of contact, which are designed to promote a fair, unbiased and legally defensible procurement process, shall apply during this procurement process. Contact includes mail, face-to-face, telephone, facsimile, Electronic-mail (E-mail) or formal written contact. As stated in Section 5.6 (Proposer Questions and Answers), the MBTA’s point of contact for the procurement is the First Deputy General Counsel in the MBTA Legal Department. Written correspondence from the First Deputy General Counsel is the single source of information regarding the procurement. By way of clarification, and not limitation, only correspondence sent by the First Deputy General Counsel constitutes information regarding the procurement and Proposers rely on all other correspondence at their own risk.

The procurement process began with the advertisement of the public notice, and will be completed with the award of the Contract. Accordingly, these rules of contact are now in effect. The specific rules are as follows:

##### No Proposer or any of its members may contact another Proposer (or its members) regarding this procurement or the Contract, except that a Proposer may contact a subcontractor that is on both its team and another Proposer’s team, so long as those Proposers establish a protocol to ensure that the subcontractor will not act as a conduit of information between the Proposers. Please note that contact among Proposers and their members is allowed during MBTA sponsored site visits and meetings;

##### Contact between the Proposers and the MBTA (questions and responses to questions) must only be made through the MBTA’s First Deputy General Counsel and the Proposer’s designated representatives;

##### Oral explanations or instructions shall not be binding. Any official contact regarding the procurement will be disseminated from the First Deputy General Counsel on MBTA letterhead. Any official contact will be in writing and signed by the First Deputy General Counsel;

##### Although the MBTA does not prohibit oral contact with the MBTA's First Deputy General Counsel, the MBTA will not be responsible for any oral contact or any other information or contact that occurs outside the written communication process specified herein;

##### Proposers shall not contact MBTA employees including, but not limited to, department heads and any official regarding the procurement except through the process identified above; and

##### Any contact that the MBTA determines to be improper (in its sole discretion) may result in disqualification.

##### Except for the Proposals submitted pursuant to Section 6.1 (Date, Time and Location of Receipt) of the Instructions to Proposers, the Proposer shall provide a copy of all correspondence and other submissions to the following recipient contemporaneously with its transmittal of the same to the First Deputy General Counsel:

Susan Cobb

Legal Counsel

Massachusetts Bay Transportation Authority

Legal Department, 7th Floor

Ten Park Plaza

Boston, MA 02116-3974

For purposes of clarification, "all correspondence and other submissions" includes, but is not limited to, all written communications, Proposer question and answers submitted pursuant to Section 5.6 (Proposer Questions and Answers) of the Instructions to Proposers, modifications to Proposals submitted pursuant to Section 6.3 (Modifications to a Proposal) of the Instructions to Proposers and requests for Clarification submitted pursuant to Section 7.2 (Requests for Clarification) of the Instructions to Proposers.

## Non-Public Process

The MBTA will seek to hold all SOQs, Proposals and subsequent submissions in confidence, to the extent consistent with applicable law, until the Contract is awarded or the selection process is terminated. Proposers are advised that all materials the MBTA receives that fall within the definition of a “public record” pursuant to M.G.L. c. 4, §7, cl.26 will be disclosed by the MBTA after Contract award upon a request made in compliance with applicable public records laws.

The MBTA may require each Proposer to furnish sufficient information demonstrating the Proposer's financial and other capacities to perform under the proposed Contract.  This information may be subject to audit and must be submitted by the Proposer in a format clearly marked “confidential,” and the information contained therein will be treated as confidential.

Further, if the Proposer submits information in its Proposal that it wishes to protect from disclosure, the Proposer must:

##### Clearly mark all proprietary or trade secret information as such in its Proposal at the time the Proposal is submitted, and include a cover sheet stating “DOCUMENT CONTAINS CONFIDENTIAL PROPRIETARY OR TRADE SECRET INFORMATION” and that identifies each section and page that has been so marked;

##### Include a statement with its Proposal justifying the Proposer’s determination that certain records are proprietary or trade secret information for each record so defined;

##### Submit one copy of the Proposal that has all of the proprietary or trade secret information deleted from the Proposal, and label such copy of the Proposal “Public Copy”; and

##### Defend any action seeking release of the records it believes to be proprietary or containing trade secret information and indemnify, defend and hold harmless the MBTA and its agents and employees from any judgments awarded against the MBTA and its agents and employees in favor of the party requesting the records, including any and all costs connected with that defense. This indemnification survives the MBTA’s cancellation or termination of this procurement or award and subsequent execution of a Contract. In submitting a Proposal, the Proposer agrees that this indemnification survives as long as the confidential business information is in the MBTA's possession.

## Ineligible Firms and Organizational Conflicts of Interest

The Proposer is responsible for disclosing all potential organizational conflicts of interest in its Proposal. A potential organizational conflict of interest may occur in any of the following instances:

##### Where a Proposer is unable, or potentially unable, to provide impartial and objective assistance or advice to the MBTA due to other activities, relationships, contracts or circumstances;

##### Where a Proposer has an unfair competitive advantage through obtaining access to non-public information during the performance of an earlier contract; or

##### Where, during the conduct of an earlier procurement, a Proposer has established the ground rules for a future procurement by developing specifications, evaluation factors or similar documents.

The Proposer is required to provide information concerning potential organizational conflicts of interest in its Proposal. If a potential or real organizational conflict of interest is determined to exist that cannot be neutralized or mitigated, the firm or firms subject to the potential or real organizational conflict of interest will be ineligible to propose. Any determinations rendered by the MBTA regarding organizational conflicts of interest will be final.

The successful Proposer and its members must disclose all relevant facts concerning any past, present or currently planned interests that may present an organizational conflict of interest. The successful Proposer and its members must state how their interests, or those of their chief executives, directors, key personnel or any proposed subcontractor may result in, or could be viewed as, an organizational conflict of interest.

The MBTA will analyze any potential organizational conflicts of interest in order to avoid, neutralize or mitigate potential conflicts before Contract award. In addition, any firm that is rendered ineligible through any state or federal action is rendered ineligible to participate with any Proposer/Proposal (or foreign equivalent thereof).

## Changes to the Proposer’s Organizations

The MBTA requires that the Proposer’s organization, including key personnel (as identified in the SOQ), remain intact for the duration of the procurement process and for a reasonable time after execution of the Contract. A Proposer may propose substitutions for participants after the SOQ submittal. However, such changes will require written approval by the MBTA, which approval may be granted or withheld in the MBTA’s sole discretion. Requests for changes during the procurement process must be made in writing no later than 30 days prior to the due date for submittal of the Proposals. Requests for changes in any members of a Joint Venture (JV), Limited Liability Company (LLC) or general partnership (if the Proposer is a JV, LLC or general partnership) will be particularly scrutinized. The MBTA's rejection of the request, or the failure of the Proposer to request MBTA approval of the change, may result in the Proposer's disqualification.

If a Proposer requests to add to the organization (other than the addition of subcontractors), then the Proposer must submit with its request that information specified for a JV, LLC or general partnership member, including legal and financial data as well as the information for quality evaluation required under the RFQ. If a JV, LLC or general partnership member is being deleted, then the Proposer must submit such information as may be required by the MBTA to demonstrate that the changed team meets the RFQ criteria. The MBTA specifically reserves the right to accept or reject the requested change in its sole discretion. The MBTA's rejection of the requested change, or the failure of the Proposer to request MBTA approval of the change, may result in the Proposer's disqualification.

If the Proposer wishes to change the key personnel identified in its SOQ, then the Proposer must submit a request to change its key personnel in writing not later than 30 days prior to the Proposal Due Date. If a request is made to change key personnel, then the Proposer shall submit with its request that information specified for the key personnel in the RFQ including, but not limited to, a resume. The MBTA specifically reserves the right to accept or reject the requested change in its sole discretion. The MBTA's rejection of the requested change, or the failure of the Proposer to request MBTA approval of the change, may result in the Proposer's disqualification.

The Proposer’s submission of a Proposal in response to this RFP is an acknowledgment and certification that the Proposer has the necessary resources and capacity to perform and is committed to assigning to this Contract the resources identified in its SOQ and Proposal, including key personnel and other staff identified by name, equipment, material, supplies and facilities, to the extent that assigning these resources remains within the Proposer's control.

## Procurement Schedule

The following represents the current schedule for the procurement process. The schedule is subject to change at the discretion of the MBTA. For purposes of clarification, the term "Proposal Due Date" means August 9, 2013.

| **Activity** | **Due Date** |
| --- | --- |
| MBTA-Sponsored Diversity Outreach Meeting | September 13, 2012 |
| Issue Draft Request for Proposals | October 4, 2012 |
| Final Date for Receipt of Proposers' Comments to Draft Request for Proposals | November 5, 2012 |
| Issue Final Request for Proposals | December 11, 2012 |
| First Site Visit - Environmental Tour | December 7, 2012 |
| Second Site Visit - Mechanical Facilities | December 8, 2012 |
| Final Date for Receipt of Proposers' Questions Regarding Draft Schedules 3.18 and 6 | February 7, 2013 |
| Site Visit Snow Day (if necessary) | January 6, 2013 |
| Individual Meetings with Proposer Teams | Week of January 7, 2013 |
| Final Date for Receipt of Proposers' Questions Regarding Draft: (i) Schedule 3.15; (ii) Schedule 3.16; (iii) Schedule 3.17; and (iv) Schedule 3.18 | April 1, 2013 |
| Issue Date for Addendum No. 5 | April 22, 2013 |
| Final Date for Receipt of Proposers' Questions Regarding Addendum No. 5\* | May 3, 2013 |
| Final Date of Receipt of Proposers' OMM Concepts | May 8, 2013 |
| Issue Date for MBTA Responses to Proposer Questions Regarding Addendum No. 5 | May 17, 2013 |
| MBTA Response to OMM Concept Submittals | May 22, 2013 |
| Final Date of Proposers' Questions (Excepting the 9th Addendum) | May 29, 2013 |
| Issue Date for Final Addenda and/or Answers to Proposers' Questions | June 12, 2013 |
| Final Date for Receipt of Proposer Questions Regarding the 9th Addendum\*\* | June 19, 2013 |
| MBTA Response to Proposer Questions Regarding the 9th Addendum | June 27, 2013 |
| Proposal Due Date | August 9, 2013 |
| Agreement Services Commencement Date | July 1, 2014 |

\*Please note that, after the May 3, 2013 deadline, the MBTA expects Proposers to only submit questions relating to clarifications and ambiguities.

\*\*Proposers shall only submit questions that meet the following two criteria, the question: (i) directly relates to revisions made to the RFP in the 9th Addendum, and (ii) seeks a clarification to ambiguous language. The MBTA shall disregard all other questions including, but not limited to, questions that Proposers resubmit, requests for further documentation and questions that otherwise relate to portions of the RFP not expressly revised in the 9th Addendum.

## Proposer Questions and Answers

The MBTA will only consider questions submitted in writing by Proposers regarding the RFP. All such questions must be submitted in writing in the format shown on [Form RFP-C](https://ww2.projectsolve2.com/eRoomReq/Files/26505%20NYSDOT/Task%205/Final%20Draft/Ex%20II%20-%20RFQ/%20Text/NM%20528%20RFQ%20App%20C%20-%20Forms/RFQ%20Form%20RFQ-C.doc) included in Appendix D (Forms) to Gerald Kelley, the First Deputy General Counsel of the MBTA, via postal mail or courier at the following address (e-mail communications are unacceptable):

Gerald Kelley

First Deputy General Counsel

Massachusetts Bay Transportation Authority

Legal Department, 7th Floor

Ten Park Plaza

Boston, MA 02116-3974

Only written questions to the above addressee will be considered. No requests for additional information or other questions to any other MBTA office, consultant or employee will be considered. If the MBTA determines that a change or clarification to the RFP is needed, all responses shall be in writing and delivered without attribution to all Proposers.

Only questions received by 2:00 p.m.(EasternTime) on the date specified in Section 5.5 (Procurement Schedule) as the final date for receipt of Proposer's questions will be addressed.

All questions must include the Proposer’s name, address, E-mail, telephone, and facsimile numbers.

A response to questions will be issued and sent to all recipients of this RFP not later than the date specified as the "Issue Date for Final Addenda and/or Answers to Proposer’s Questions" set out in Section (Procurement Schedule).

## Request for Proposals Addenda

If necessary, and prior to the Proposal Due Date, the MBTA will issue Addenda to modify conditions or requirements of this RFP.

## Site Visits

Two site visits are currently planned for the pre-proposal period. The first site visit will be an environmental tour of the MBTA's commuter rail property and will be held from 9:00 a.m. to 1:00 p.m. on December 7, 2012. Proposers will meet at the MBTA Commuter Rail Maintenance Facility located at 70 R Third Ave., Somerville, Massachusetts 02145. Attendance at this site visit is not mandatory, but strongly recommended.

The second site visit will focus on the mechanical facilities and will be held from 9:00 a.m. to 1:00 p.m. on December 8, 2012. Proposers will meet at the MBTA Commuter Rail Maintenance Facility located at 70 R Third Ave., Somerville, Massachusetts 02145. Attendance at this site visit is not mandatory, but strongly recommended.

Attendance at both site visits must be confirmed with Lauren Coughlin, Project Coordinator, via E-mail at [LCoughlin@mbta.com](mailto:LCoughlin@mbta.com), no later than November 28, 2012, so that appropriate accommodations may be made.

## Operations, Maintenance, and Management Concept Review

The MBTA encourages Proposers to present with their Proposals innovative and alternative ideas or concepts to the MBTA which improve operational performance, enhance the customer experience, introduce cost savings or efficiencies, or otherwise improve operations or maintenance of the system.

The Proposer may submit operations, maintenance and management concepts (each, an "**OMM Concept**") for review to the MBTA until the date identified in Section 5.5 (Procurement Schedule). All OMM Concepts shall be submitted in writing to the MBTA representative at the email address identified in Section 5.6 (Proposer Questions and Answers).

The Proposer shall submit its OMM Concepts for review on [Form RFP-C](https://ww2.projectsolve2.com/eRoomReq/Files/26505%20NYSDOT/Task%205/Final%20Draft/Ex%20II%20-%20RFQ/%20Text/NM%20528%20RFQ%20App%20C%20-%20Forms/RFQ%20Form%20RFQ-C.doc) included in Appendix D (Forms), and shall clearly identify such submissions as OMM Concepts. The MBTA shall disregard any OMM Concept not clearly designated as such on Form RFP-C.

The MBTA shall review each OMM Concept submitted and will make an initial determination as to whether it is accepted or rejected. If an OMM Concept is accepted, the MBTA will make a further determination as to whether the OMM Concept is within the scope of the RFP (so that the Proposer could include that OMM Concept in its Proposal without the necessity of the MBTA issuing a further Addendum), or whether the accepted OMM Concept is outside of the scope of the RFP. In that event, the MBTA will issue a further Addendum changing the requirements of the RFP to permit the OMM Concept, as further articulate below.

The MBTA will return its acceptance or rejection, or additional questions pertaining to any specific OMM Concept, within two weeks of the MBTA's receipt of the OMM Concept. If the Proposer does not receive a return response from the MBTA within two weeks of MBTA’s receipt of the OMM Concept, the Proposer shall presume that the MBTA has rejected the OMM Concept.

Each OMM Concept submitted by the Proposer, and all subsequent communications regarding that OMM Concept, will be confidential in accordance with Section 5.2 (Non-Public Process). However, if an accepted OMM Concept changes the scope of the requirements of the final RFP, the change in the requirements of the final RFP only will be communicated to all Proposers. The OMM Concept itself will not be shared with other Proposers.

# Proposal Submission Requirements

## Date, Time and Location of Receipt

All Proposals must be received (i) no earlier than 11:00 a.m. (eastern daylight time) on August 5, 2013, and (ii) no later than 4:00 p.m. (eastern daylight time) on the Proposal Due Date. The Proposals must be clearly identified as “PROPOSAL FOR MBTA COMMUTER RAIL SERVICES.” Submittals must be enclosed in sealed containers and identify the Proposer’s official name and address in the upper left hand corner. Late submittals will not be considered and will be returned to the address indicated on the cover of the package. Proposals shall be submitted to the following address:

Gerald K. Kelley

First Deputy General Counsel

Massachusetts Bay Transportation Authority

4th Floor

77 Franklin Street

Boston, MA 02110-1510

Each Proposer will be responsible for obtaining a written receipt appropriate to the means of delivery from the MBTA office specified in this Section 6.1 (Date, Time and Location of Receipt) at time of the delivery of its Proposal. Each Proposer shall notify First Deputy General Counsel Kelley at least five (5) hours in advance of the delivery of its Proposal to 77 Franklin Street (each, a "**Proposal Delivery Notification**"). The Proposal Delivery Notification shall be made by contacting First Deputy General Counsel Kelley via telephone at 617-222-3469. In the event that a Proposer cannot reach First Deputy General Counsel via telephone, the Proposer shall contact James Whalen via telephone at 617-222-4787. Each Proposer shall not attempt to deliver its Proposal until receiving confirmation (oral or written) from either First Deputy General Counsel Kelley or James Whalen that an authorized representative will be present at 77 Franklin Street to receive the Proposal.

It is the Proposer’s sole responsibility to ensure delivery of its Proposal to the MBTA at the time and place specified herein, and the MBTA will have no liability or responsibility resulting from the Proposer's failure to comply with the requirements set out in this Section 6.1 (Date, Time and Location of Receipt).

## Formatting Requirements

The Proposal must be limited to no more than 500 pages in Sections 2 through 12 of the Operations and Management Proposal (see Appendix B (Operations and Management Proposal Instructions)), including required forms, but exclusive of dividers and forms related to Disadvantaged Business Enterprises required pursuant to Section B11.0 (Disadvantaged Business Enterprise Plan and Program Evaluation Factor (Rated)) of Appendix B to the ITP and the Mobilization Price Form required pursuant to Section B13.2(B) of Appendix B to the ITP.  The 500 page limit also excludes the information submitted in response to Section B2.0 (Legal Pass/Fail Evaluation Factor) and the Financial/Price Proposal in its entirety.  The 500 page limit further excludes supplemental appendices to the following rated evaluation factors within the Operations and Management Proposal: (i) Safety Plan; (ii) Mechanical Services Plan; (iii) Engineering Services Plan; (iv) Transportation Services Plan; (v) Customer Service Plan; and (vi) Information Technology Services Plan (collectively, the **"Supplemental Appendices"**).  The Supplemental Appendices shall not exceed 100 pages in total, and Proposers shall use their discretion in determining how to allocate the 100 pages across the six identified rated evaluation factors.  One signed original and 39 copies of the Operations and Management Proposal must be provided.  One signed original and 14 copies of the Financial/Price Proposal must be provided. The signed originals must be identified as the original(s) on the cover(s) and marked as “ORIGINAL.”  All copies must be provided in loose-leaf binders.  Bound copies will not be accepted.  Each copy must be identified on the cover(s) as “Copy #         of 39 Copies” or “Copy #         of 14 Copies,” respectively. The document must be organized to correspond with the outlines presented in [Appendix](https://ww2.projectsolve2.com/eRoomReq/Files/26505%20NYSDOT/Task%205/Final%20Draft/Ex%20II%20-%20RFQ/%20Text/NM%20528%20RFQ%20App%20B%2012-28-01.doc) B (Operations and Management Proposal Instructions) and Appendix C (Financial/Price Proposal Instructions).

## Modifications to a Proposal

A Proposer may modify its Proposal prior to 4:00 p.m. (Eastern Time) on the Proposal Due Date by submitting the modification in writing to the First Deputy General Counsel at the address identified in Section 6.1 (Date, Time and Location of Receipt). The modification must conform in all respects to the requirements for submission of a Proposal. Modifications must be clearly delineated as such on the face of the document to prevent confusion with the previously submitted Proposal, and must specifically state that the modification supersedes the previous Proposal (and all previous modifications (if any)). If multiple modifications are submitted, they must be sequentially numbered so that the MBTA can accurately identify the final Proposal. The modification must contain complete Proposal sections, complete pages and complete forms as described in Appendix B (Operations and Management Proposal Instructions) and Appendix C (Financial/Price Proposal Instructions). Line item changes will not be accepted. Telegraphic, facsimile or other electronically transmitted modifications will not be considered by the MBTA as modifications.

## Withdrawal of a Proposal or Intent to Propose

If a Proposer submits its Proposal prior to the Proposal Due Date, the Proposer may withdraw its Proposal only by a written and signed request that is received by the First Deputy General Counsel prior to the Proposal Due Date at the address identified in Section 6.1 (Date, Time and Location of Receipt). The withdrawal of any portion of its Proposal shall be treated as a withdrawal of the entire Proposal.

Following withdrawal of its Proposal, the Proposer may submit a new Proposal, provided that it is received prior to 4:00 p.m. (Eastern Time) on the Proposal Due Date and otherwise complies with the requirements of this RFP. The Proposer agrees that its Proposal will remain valid for 180 calendar days following the Proposal Due Date.

Similarly, a Proposer may withdraw its intent to propose by a written and signed request that is received by the First Deputy General Counsel prior to the Proposal Due Date at the address identified in Section 6.1 (Date, Time and Location of Receipt).

## Proposal Organizational and Content Requirements

This Section 6.5 (Proposal Organizational and Content Requirements) briefly describes the general information that must be included in the Proposal. A detailed description of the specific information to be submitted in the Operations and Management Proposal, as well as an outline of the required format for the Operations and Management Proposal, is provided in Appendix B (Operations and Management Proposal Instructions). A detailed description of the specific information to be submitted in the Financial/Price Proposal, as well as an outline of the required format for the Financial/Price Proposal, is provided in Appendix C (Financial/Price Proposal Instructions). Required forms for the Proposal are contained in [Appendix](https://ww2.projectsolve2.com/eRoomReq/Files/26505%20NYSDOT/Task%205/Final%20Draft/Ex%20II%20-%20RFQ/Local%20Settings/Temporary%20Internet%20Files/OLK27/NM%20528%20RFQ%20App%20C%20-%20Forms/Cover%20&%20RFQ%20Forms%20Index.doc) D (Forms).

### Cover Letter

The Proposer must provide a one-page letter indicating its desire to be considered for the Contract and stating the official names and roles of all members on its team. The Proposer must identify a single point of contact for the Proposer and the address, telephone number, fax number and E-mail address where questions should be directed. Authorized representatives of the Proposer’s organization must sign the letter.

### Operations and Management Proposal: Evaluation Factors

In providing the Operations and Management Proposal, Proposers should be guided by the goals set out in Section 4.1 (Procurement and Contract Goals). The specific Operations and Management Proposal evaluation factors as well as the objectives and specific detailed requirements associated with each evaluation factor are detailed in Appendix B (Operations and Management Proposal Instructions).

### Financial/Price Proposal: Evaluation Factors

In providing the Financial/Price Proposal, Proposers should be guided by the goals set out in Section 4.1 (Procurement and Contract Goals). The specific Financial/Price Proposal evaluation factors and the objectives and specific detailed requirements associated with each evaluation factor, as well as pricing information, are detailed in Appendix C (Financial/Price Proposal Instructions).

### Suggested Modifications

Proposers may present suggested modifications to the language of the draft Operating Agreement only if the Proposer believes that the proposed change, if accepted by the MBTA, would (A) result in a price-reduction, (B) improve the clarity of the Operating Agreement, or (C) constitute an innovation to the Agreement Services including, but not limited to, improvements to all aspects of operational performance, enhancements to the customer experience and other efforts that would result in a benefit to the MBTA and its customers. For example, a Proposer may suggest a modification of the required credit rating of the Qualified Bank issuing the letter-of-credit pursuant to Appendix 2 of Schedule 2 of the Operating Agreement, together with the cost-savings to be achieved if the suggested modification were to be accepted.

Proposers submitting suggested modifications must clearly describe why the suggested modification is proposed and clearly state why acceptance of the modification would be advantageous to the MBTA. Suggested modifications must be categorized as being intended solely for purposes of clarification, price reduction or innovation.

Any suggested modifications must be separately bound in a binder entitled "Suggested Modifications," and submitted with the Proposal. Each Suggested Modifications binder must be divided in sections, tabbed to correlate to the specific evaluation factor using the titles set out in Table B of Appendix B (Operations and Management Proposal Instructions) to the Instructions to Proposers. For example, all innovations relating to Legal shall be included within the "Legal Pass/Fail Evaluation Factor Information" tab, all innovations related to customer services shall be included within the "Customer Services Plan Evaluation Factor Information" tab and all innovations related to information technology shall be included in the "Information Technology Evaluation Factor Information" tab. One signed original and 39 copies of the Suggested Modifications binder must be provided with the Proposal. The signed original must be identified as the original on the cover(s) and marked as "ORIGINAL." All copies must be provided in loose-leaf binders. Bound copies will not be accepted. Each copy must be identified on the cover(s) as "Copy # of 39 Copies." The MBTA is under no obligation to accept any suggested modification.

If the MBTA determines that consideration of one or more suggested modifications are acceptable, the MBTA reserves the right to amend the RFP to allow Proposers the opportunity to submit revised Proposals based on the amended RFP, in accordance with Section 7.6.4 (Amendment of the Request for Proposals After Receipt of Proposals).

# Evaluation and Selection Process

The process for procurement of the Contract will be in accordance with M.G.L. c. 161A. The intent of the MBTA is to award the Contract to the Proposer that provides the Proposal with the best combination of price, quality and value.

Proposals submitted in response to this RFP must include a response to each evaluation factor.

The purpose of the RFP is to select a Proposer with the capability and experience necessary to successfully undertake and complete the performance of the Contract. The contractor's primary purpose under the Contract is to operate and maintain the MBTA’s Commuter Rail Service. The specific objectives relating to each of the evaluation factors are listed in Appendix B (Operations and Management Proposal Instructions) and Appendix C (Financial/Price Proposal Instructions).

At the end of the Proposal evaluations and after considering the submissions received in response to this RFP, the MBTA will select the Proposer that it determines is the most advantageous..

## Review and Evaluation of the Proposals

The information submitted in accordance with the evaluation factors identified in Appendix B (Operations and Management Proposal Instructions) and Appendix C (Financial/Price Proposal Instructions) will be evaluated in accordance with the evaluation criteria listed in Section 7.1.1.1 (Pass/Fail Evaluation Factors), Section 7.1.1.2 (Operations and Management Proposal Rated Evaluation Factors) and Section 7.1.1.3 (Financial/Price Proposal Evaluation).

Pricing information submitted on Form FFP, Firm Fixed Price, (Appendix D (Forms)) will be evaluated to determine whether the pricing information is reasonable and responsible.

When determining the “best value,” the Operations and Management Proposal will be more important than the Financial/Price Proposal.

### Evaluation Factors

The MBTA has identified the following evaluation factors that are of particular importance. This information is provided here to assist Proposers in organizing their teams and preparing their Proposals.

#### Pass/Fail Evaluation Factors

The pass/fail evaluation factors are as follows, and will be rated based on the included criteria:

##### **Legal**. The Proposer has presented additional and updated evidence showing that it is a legally constituted entity able to submit a Proposal and enter into and perform the Contract, and that the Proposer has obtained any certificates and licenses required by the RFP.

##### **Financial Capacity**. The Proposer has presented updated information pertaining to its ability to meet the financial requirements of undertaking and performing the Contract. The Proposer's financial condition and capabilities shall not have materially adversely changed from its financial condition and capabilities as evidenced by the financial and other data submitted in the SOQ, such that the Proposer continues to have the financial capacity to provide the Commuter Rail Services, as determined by a review of the financial information for each Proposer, both on its own merit and as compared to industry standards.

##### **Performance Guarantee.** The Proposer has demonstrated its capability to undertake the security responsibilities associated with the Contract, as determined by the delivery of a letter(s) of support from a qualified surety or bank/financial institution as described in Appendix C (Financial/Price Proposal). In addition, the Proposer has demonstrated how working capital requirements as forecast by the Contract costs set out in Form FFP, Firm Fixed Price, (Appendix D (Forms)) will be maintained throughout the Contract term. Working capital should be sufficient to meet any potential cost overruns and shortfalls estimated in the firm fixed price.

If a Proposer passes all pass/fail evaluations, its Proposal will be further evaluated using the criteria for evaluation set out in Sections 7.1.1.2 (Operations and Management Proposal Rated Evaluation Factors) and 7.1.1.3 (Financial/Price Proposal Evaluation). Failure of any single pass/fail requirement may result in rejection of the Proposal.

#### Operations and Management Proposal Rated Evaluation Factors

The Operations and Management Proposal rated evaluation factors will be considered in the following order of importance, and will be rated based on the included criteria:

##### **Safety**. The Proposer has demonstrated its plan to successfully integrate safety into all management, training and work plans, and has designed safety plans and processes in full compliance with all applicable laws, rules and regulations. The Proposer has identified a plan to handle safety incidents and develop accident reduction plans in partnership with the MBTA, regulatory authorities and municipalities.

##### **Security**, **Emergency Preparedness and Emergency Response**.The Proposer has clearly defined roles for security and emergency preparedness and response and has set forth its plan detailing its accountability for the security of the system in full compliance with all applicable laws, rules and regulations.

##### **Mechanical Services Plan.** The Proposer has submitted a plan that best maximizes equipment availability and reliability and that provides for cost effective facility utilization, work scheduling and integration of new training and technology. The Proposer has described an integrated approach to customer and employee safety and hazard reduction, as well as an approach that preserves and prolongs asset lifespans. Additionally, the Proposer has demonstrated that it understand the economies of the integration of the new fleet as it is introduced to the Commuter Rail Services and the associated maintenance changes that will accompany changes to the fleet.

##### **Engineering Services Plan.** The Proposer has demonstrated an organizational and technical ability to inspect, maintain, repair and install the full range of right of way, bridge, signal and facility assets, along with a plan to provide cost effective work scheduling and integration of new technologies. The Proposer has identified both an integrated approach to safety management and hazard reduction and an engineering services approach that preserves and prolongs asset lifespans.

##### **Transportation Services Plan.** The Proposer has submitted a plan that maximizes commuter rail on-time performance. The Proposer has detailed plans that provide an integrated approach to customer, public and employee safety and hazard reduction. The Proposer has identified a plan to sufficiently ensure collection of all fare revenues. The Proposer has described a process for developing and implementing train cycling plans to maximize available vehicle revenue service hours.

##### **Customer Service Plan.** The Proposer has demonstrated the ability to maximize customer satisfaction measured by MBTA-approved metrics. The Proposer has shown that it will continuously improve messaging regarding customer and public safety and that it is committed to innovation in the provision of all regular and special service information.

##### **Management.** The Proposer has identified personnel who will ensure full compliance with all Contract requirements and the cost effective provision of all Commuter Rail Services. The Proposer has proposed personnel who are committed to providing the MBTA will all required information related to the operation, maintenance, compliance and costs of operating the Commuter Rail Service. The Proposer has demonstrated a capability to work cooperatively with the MBTA to integrate new technologies and industry practices to improve overall systems safety, cost effectiveness and performance. The Proposer has identified an effective staffing plan, labor structure, and workforce training.

##### **Information Technology Services Plan.** The Proposer has demonstrated the ability to develop, implement, operate, maintain and upgrade an information technology organization and related systems and elements, all in compliance with industry best practices. The Proposer has demonstrated its experience in complying with various best practices including, but not limited to, PCI-DSS. Furthermore, the Proposer has demonstrated reliable approaches to ensuring full data and system access with agency management to ensure proper oversight and monitoring, as well as the ability to ensure efficient and uninterrupted operations consisting of both legacy systems and new technology.

##### **Disadvantaged Business Enterprises Plan and Program.** The Proposer has complied with DBE participation goals or conducted good faith efforts to do so, and the Proposer has committed to consistent and open communication with the Office of Diversity and Civil Rights and timely submission of required reports. The Proposer has submitted a quality DBE Plan and Program that complies with the Federal DBE Program and its implementation through the MBTA's DBE Program and that includes creative strategies and approaches to achieve and maintain compliance over the Contract term, including technical assistance and supportive services strategies designed to increase participation and build capacity in the DBE community.

##### **Equal Employment Opportunity and Other Civil Rights Programs Requirements.** The Proposer has submitted an Affirmative Action Plan that complies with FTA's Circular 4704.1 and is committed to establishing a workforce that is inclusive of minorities and women and creating employment practices that are inclusive of minorities and women.

##### **Mobilization Plan.** The Proposer has submitted a plan that will ensure a seamless transition for customers and employees. The Proposer has demonstrated the capacity to establish all operational support and administrative functions and to prepare all necessary documents in a timely and professional manner and is committed to ensuring consistent and complete communication with the MBTA. The Proposer will minimize overall cost to the MBTA.

#### Financial/Price Proposal Evaluation

The Proposer shall submit a firm fixed price in the Financial/Price Proposal as set forth on Form FFP, Firm Fixed Price, (Appendix D (Forms)). Pricing information submitted on Form FFP, Firm Fixed Price, (Appendix D (Forms)) will be evaluated to determine whether it is reasonable and responsible. The MBTA reserves the right to reject any Proposal in which any of the prices are significantly unbalanced to the potential detriment of the MBTA.

### Rating Guidelines

The rated evaluation factors and the overall Operations and Management Proposal will be rated by a qualitative/descriptive method. The following qualitative/descriptive ratings will be used in evaluation of each rated evaluation factor and the rating of the overall Operations and Management Proposal:

*EXCEPTIONAL*: The Proposer has demonstrated an approach that is considered to significantly exceed stated criteria in a way that is beneficial to the MBTA. This rating indicates a consistently outstanding level of quality, with very little or no risk that this Proposer would fail to meet the requirements of the solicitation. There are no weaknesses.

*GOOD*: The Proposer has demonstrated an approach that is considered to exceed stated criteria. This rating indicates a generally better than acceptable quality, with little risk that this Proposer would fail to meet the requirements of the solicitation. Weaknesses, if any, are very minor. Correction of the weaknesses would not be necessary before the Proposal would be considered further.

*ACCEPTABLE*: The Proposer has demonstrated an approach that is considered to meet the stated criteria. This rating indicates an acceptable level of quality. The Proposal demonstrates a reasonable probability of success. Weaknesses exist but can be readily corrected through requests for Clarification or Communications.

*POTENTIAL TO BECOME ACCEPTABLE*: The Proposer has demonstrated an approach that fails to meet stated criteria as there are weaknesses, but they are susceptible to correction through Discussions. The response is considered marginal in terms of the basic content and/or amount of information provided for evaluation, but overall the Proposer is capable of providing an acceptable or better Proposal.

*UNACCEPTABLE*: The Proposer has demonstrated an approach that indicates significant weaknesses and/or unacceptable quality. The Proposal fails to meet the stated criteria and/or lacks essential information and is conflicting and/or unproductive. There is no reasonable likelihood of success; weaknesses are so major and/or extensive that a major revision to the Proposal would be necessary.

## Request for Clarification

The Proposer shall provide accurate and complete information to the MBTA. If information is not complete, the MBTA may either declare the Proposal non-responsive or notify the Proposer that it will not be allowed to participate further in the procurement until all information required is provided. Any insufficient statements or incomplete affidavits will be returned directly to the Proposer by the MBTA with notations of the insufficiencies or omissions and with a request for Clarifications and/or submittal of corrected, supplemental or missing documents. If a response is not provided prior to the deadline for submission of the response, the Proposal may be declared non-responsive.

The MBTA may waive minor irregularities in the form of the Proposal that do not alter the quality or quantity of the information provided.

The MBTA may, at its sole discretion, request Clarifications and/or supplemental information from Proposers during the Proposal evaluation and selection process.

All requests for Clarification will be in writing to the First Deputy General Counsel via regular mail or courier, with responses submitted as per the instructions contained in the request for Clarification. Responses must be limited to answering the specific information requested by the MBTA.

## Presentations and Interviews

The MBTA may utilize presentations and/or interviews during the evaluation and selection process if, in the MBTA's sole discretion, it is considered to be in the MBTA’s best interest. If the MBTA determines that presentations and/or interviews are in its best interest, the MBTA will notify all Proposers of the decision to utilize presentations and/or interviews, and schedule the presentations and/or interviews in such a way as to not unduly delay the Proposal evaluation and selection process.

The MBTA reserves the right, in its sole discretion, to conduct multiple rounds of presentations and/or interviews, if it deems necessary to do so, with one or more Proposers.

## Communications

Communications may be required as part of the Proposal evaluation and selection process. The purpose of Communications are to address minor or clerical revisions in a Proposal in preparation for declaration of a Competitive Range. During the process of evaluations there may be instances where meaningful evaluation cannot take place or proceed, or where an erroneous evaluation might occur without seeking Communications. In such cases, the MBTA will submit a request for Communications in writing to the Proposer stating the information needed and a date and time by which the information must be provided. The Proposer shall provide the requested information in writing by the date and time indicated. If requested information is not timely received, the Proposer’s ratings may be adversely affected and/or the Proposal may be rejected.

## Competitive Range

The MBTA may (in its sole discretion) determine a Competitive Range after a careful analysis of the Operations and Management and Financial/Price Proposals. The Competitive Range would include all Proposers that have a reasonable chance of being selected. Borderline Proposals will not be excluded from further consideration if the Proposers have a reasonable chance of being listed if meaningful Discussions are conducted and appropriate improvement is achieved. Proposals that would be excluded from further consideration include a Proposal that, after the initial evaluation, is rated “unacceptable” for any rated evaluation factor, a fail for any pass/fail evaluation factor, or a Proposal that for any other reason is under consideration for rejection.

## Discussions

The MBTA may, in its sole discretion, conduct written and/or verbal Discussions with any of the Proposers in the Competitive Range regarding the content of their Proposal. If Discussions are held, they will be held with all Proposers in the Competitive Range.

### Purpose

If the MBTA determines that Discussions are required, they will be conducted for the following purposes:

##### Advising the Proposers of weaknesses in their Proposals (relative to the RFP);

##### Attempting to resolve any uncertainties, thereby obtaining any significant additional understanding concerning the Proposal;

##### Resolving any suspected mistakes by calling them to the attention of the Proposers as specifically as possible without disclosing information concerning other competing Proposals or the evaluation process;

##### Providing Proposers with a reasonable opportunity to submit any further Proposal information; and

##### Reviewing a suggested modification with a Proposer, submitted pursuant to Section 6.5.4 (Suggested Modifications), in order to better understand the proposal and the necessity for an amendment to the RFP seeking revised Proposals.

### Procedures

The following specific procedures will apply:

##### Information disclosed by Proposers in the Competitive Range during Discussions will not be made public until after execution of the Contract (subject to the Freedom of Information Act);

##### Discussions may be written and/or verbal; and

##### No indication will be made to any Proposer of the evaluation status of any other Proposer or Proposal.

During Discussions, MBTA personnel involved in the Discussions will not engage in conduct that:

###### Favors one Proposer over another or engages in “technical leveling” or “technical transfusion;”

###### Reveals a Proposer’s Financial/Price Proposal without that Proposer’s permission. However, the MBTA may inform a Proposer that its Financial/Price Proposal is considered by the MBTA to be non-competitive and reveal the results of the analysis supporting that conclusion;

###### Reveals the names of individuals providing reference information about a Proposer’s past performance; or

###### Knowingly furnishes selection information in violation of the MBTA’s procurement policies and/or Massachusetts law.

### Proposal Revisions and/or BAFOs

Although the MBTA reserves the right to issue a request for Proposal revisions (including BAFOs), the MBTA is under no obligation to do so. The MBTA may make its selection based on the initial Proposals submitted.

If the MBTA requests Proposal revisions and/or BAFOs, Proposers in the Competitive Range may be requested and/or allowed to revise their Proposals, including correction of any weaknesses, minor irregularities and/or errors identified to the Proposers by the MBTA following initial evaluation of the Proposals. The request for Proposal revisions and/or BAFOs will allow adequate time for the Proposers to revise their Proposals. Upon receipt of Proposal revisions and/or BAFOs, the process of evaluation will be repeated. The process will consider the revised information and re-evaluate and revise ratings as appropriate. Although this RFP allows for Proposal revisions and/or BAFOs, all efforts will be made to make a selection based on initial Proposals. If Discussions are held, the MBTA will attempt to limit the selection process to a single BAFO following Discussions. If a Proposal revision and/or BAFO is requested of a Proposer, and that Proposer opts to not submit a Proposal revision and/or BAFO, that Proposer’s original Proposal or most recent Proposal revision, as appropriate, will be treated as its BAFO.

### Amendment of the Request for Proposals After Receipt of Proposals

After receipt of Proposals, the MBTA may issue an amendment to the RFP under the following two circumstances:

##### If, during the Proposal evaluation process, an error is discovered in the RFP; or

##### If the MBTA determines it is in its best interest to consider suggested modification submitted pursuant to Section 6.5.4 (Suggested Modifications).

### If the MBTA issues an amendment to the RFP after receipt of Proposals, the amendment will be issued to all Proposers that continue to be eligible for selection at the time the amendment to the RFP is issued. The amendment to the RFP will request submission of revised Proposals.

### Best Value Determination

The MBTA has concluded that selection of the most advantageous Proposer will be based on a best value determination that provides the best opportunity to obtain the right contractor to assure successful performance of the Contract. The MBTA’s procedures for the evaluation and selection of Proposals were designed to provide a comprehensive evaluation of the Operations and Management Proposals and Financial/Price Proposals that will result in the selection of the most advantageous contractor.

In determining the best value, the MBTA will determine whether the Proposals are responsive and evaluate both the pass/fail and rated evaluation factors, and assign an overall rating for the Operations and Management Proposal. Then, after evaluating the firm fixed price, the MBTA will conduct trade-offs and determine the best value.

The MBTA will not select any Proposer that receives a rating of fail on any pass/fail evaluation factor or less than an “acceptable” on any rated evaluation factor. The MBTA will not select any Proposer that the MBTA determines has submitted a non-responsive Proposal or to have submitted any pricing information that is not reasonable, responsible or balanced.

### Negotiations

After selection, but prior to execution of the Contract, the MBTA may, in its sole discretion, either (i) conduct negotiations with the selected Proposer, or (ii) choose not to conduct negotiations with the selected Proposer and execute the Contract with the selected Proposer based on its written Proposal and any additional information received during Discussions, Proposal revisions and/or BAFOs (if conducted).

If the MBTA elects, in its sole discretion, to conduct negotiations with the selected Proposer, the MBTA will conduct negotiations with the selected Proposer until either of the following events:

##### The MBTA and the selected Proposer come to mutual agreement on the scope, contractual terms and financial terms of the Contract, and the Contract is executed; or

##### Either party determines that the parties cannot successfully agree as to the scope, contractual terms and/or financial terms of the Contract, and negotiations are terminated.

If the parties are unable to reach agreement on the scope, contractual terms and/or financial terms of the Contract, then the MBTA may, in its sole discretion, negotiate with the next most advantageous Proposer or choose to terminate the procurement in its entirety.

Once negotiations have been terminated with any Proposer, the negotiations may not be reopened with that Proposer under any circumstances.

# Protests

*See* Appendix E for the MBTA’s “Appeal/Protest Procedures.”

# Massachusetts Bay Transportation Authority Rights and Disclaimers

## Massachusetts Bay Transportation Authority Rights

The MBTA may investigate the qualifications of any Proposer under consideration, may require confirmation of information furnished by a Proposer and may require additional evidence of qualifications to perform under the Contract. The MBTA reserves the right, in its sole and absolute discretion, to do any of the following:

##### Reject any or all Proposals;

##### Issue a new Request for Proposals;

##### Cancel, modify or withdraw the RFP;

##### Issue Addenda, supplements and modifications to the RFP;

##### Modify the RFP process (with appropriate notice to Proposers);

##### Appoint the selection and evaluation personnel to review Proposals and seek the assistance of outside technical experts in the Proposal evaluations, if necessary;

##### Approve or disapprove the use of particular subcontractors and/or substitutions and/or changes in Proposals;

##### Revise and modify, at any time before the Proposal Due Date, the factors it will consider in evaluating Proposals and otherwise revise or expand its evaluation methodology. If such revisions or modifications are made, the MBTA will circulate an Addendum to all Proposers setting forth such revisions and modifications;

##### Correspond with the Proposers responding to this Proposal, including holding meetings to seek an improved understanding and evaluation of the Proposals;

##### Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the Proposals including, but not limited to, contacting references identified by the Proposer in its Proposal;

##### Disqualify any Proposer that changes its organization (as represented in its SOQ) without MBTA written approval;

##### Waive Weaknesses, informalities and minor irregularities in Proposals; and/or

##### Refuse to issue an RFP to a prospective Proposer and refuse to receive or open a Proposal, once submitted, or reject a Proposal if such refusal or rejection is based upon, but not limited to, the following:

###### Failure on the part of the Proposer or a member of the Proposer’s team to pay, satisfactorily settle or provide security for the payment of claims for labor, equipment, material, supplies or services legally due on previous or ongoing contracts with the MBTA;

###### Default on the part of the Proposer or a member of the Proposer’s team under previous contracts with the MBTA;

###### Unsatisfactory performance by the Proposer or a member of the Proposer’s team under previous contracts with the MBTA;

###### Issuance of a notice of debarment or suspension to the Proposer or a member of the Proposer’s team;

###### Submission by the Proposer of more than one Proposal in response to this RFP under the Proposer’s own name or under a different name;

###### Existence of an organizational conflict of interest or evidence of collusion between a prospective Proposer (or any member of the Proposer’s team) and other Proposer(s) (or members of the Proposer’s team) in the preparation of an SOQ, proposal or bid for any MBTA contract; and/or

###### Uncompleted work or default on a contract in another jurisdiction for which the prospective Proposer or a member of the Proposer’s team is responsible which, in the judgment of the MBTA, might reasonably be expected to hinder or prevent the prompt and full performance of the Contract, if awarded.

The RFP does not commit the MBTA to enter into a Contract nor does it obligate the MBTA to pay for any costs incurred in preparation and submission of the Proposals or in anticipation of a Contract. By submitting a Proposal, Proposers disclaim any right to be paid for such costs.

In no event shall the MBTA be bound by, or be liable for, any obligations with respect to 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 approved by all required parties, and then only to the extent set forth therein.

## Massachusetts Bay Transportation Authority Disclaimers

In issuing this RFP and undertaking the procurement process contemplated hereby, the MBTA specifically disclaims the following:

##### Any obligation to award or execute a Contract pursuant to this RFP; and

##### Any obligation to reimburse a Proposer for any costs it incurs under this procurement.

In submitting a Proposal in response to this RFP, the Proposer is specifically acknowledging these disclaimers.