

REQUEST FOR PROPOSAL

AUDITING SERVICES



Deadline for Proposals: Friday, April 22, 2022 at 11:00 AM

Issue Date: Friday, March 25, 2022

Questions submitted by email on or before April 11, 2022

Answers sent to vendors by email on April 13, 2022

MERRIMACK VALLEY REGIONAL TRANSIT AUTHORITY

85 RAILROAD AVENUE

HAVERHILL, MA 01835

REQUEST FOR PROPOSALS FOR AUDITING SERVICES

The Merrimack Valley Regional Transit Authority (MVRTA) invites qualified, independent certified public accountants (CPA), licensed to practice in the Commonwealth of Massachusetts to submit proposals to conduct an audit of its financial accounts and records in accordance with the specifications listed below.

I. GENERAL INFORMATION

The Merrimack Valley Regional Transit Authority, a Body Politic of the Commonwealth of Massachusetts is established under Chapter 161 B of the Massachusetts General Laws of the Acts of 1973.

MVRTA has an operating budget for the Fiscal Year ending June 30, 2022 of \$21,092,509. Funding is provided by the Federal Transit Administration (FTA), State Contract Assistance and Local Assessments in addition to Farebox and other Revenues.

MVRTA has capital grants for the purchase of buses, support equipment including communications and software equipment and the rehabilitation of its facilities. Expenditures for each individual capital grant varies from year to year. The operating grants are funded with FTA, State and Local funds.

Under the provisions of Chapter 161 B, the MVRTA must contract for its transportation services. Presently, the Authority has a contract with First Transit, Inc. which provides bus service and service to the Elderly and Disabled through two operating subsidiaries, Merrimack Valley Area Transportation Company (MVATC) and Special Transportation Services (STS). Services are provided from the Authority's facility located at 85 Railroad Avenue, Haverhill. All buses and other fixed assets are the property of MVRTA.

The Authority also contracts with the LAZ Parking, Inc. for the management and operation of the Senator Patricia McGovern Transportation Center and Gateway Surface Parking Area (both located in Lawrence), and the Haverhill Intermodal Parking Facility. The Authority's internal property management staff oversees maintenance of five (5) MVRTA-owned facilities.

II. SCOPE OF WORK

A. Service Requirements

The following services are required for the 2022 fiscal year (7/01/2021 - 6/30/2022):

1. An audit of the financial statements of the Authority for the fiscal year. The audit firm will be provided with a complete set of financial statements.
2. A review, as appropriate, of the revenues and expenses of the MVATC, STS, and LAZ Parking.
3. A review of capital and operating grants
4. Periodic consultation with MVRTA as regards the audit.

The examinations should be made in accordance with generally accepted auditing standards; the standards for financial and compliance audits contained in Government Auditing Standards, issued by the Comptroller General of the United States and the audit requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards* (Uniform Guidance).

B. Report Requirements

1. The information required includes but is not limited to: an examination of the basic financial statements of the entity as a whole; an audit of internal accounting control based solely on a study and evaluation made as a part of the audit of the basic financial statements; compliance with laws and regulations that may have a material effect on the financial statements; an audit of internal controls (accounting and administrative) used in administering federal financial assistance programs; compliance with laws and regulations identifying all findings of noncompliance and questioned costs; a supplementary Information Schedule of Federal Financial Assistance; the Internal Control Structure used in administering the Federal Financial Assistance Program; compliance with the general requirements applicable to the Authority's Major Federal Financial Assistance Program; compliance with the specific requirements applicable to the Authority's Major Federal Financial Assistance Program;
2. A management letter, if required, would be presented at an exit conference.

III. COMPLETION

The Commonwealth of Massachusetts requires that each Regional Transit Authority submit to the State Treasurer on or before October 1st of each year its Annual Audit.

An exit conference should be held with the Authority prior to the issuing of the Audit Reports.

IV. FORM OF AGREEMENT

The MVRTA intends to enter into a contract with the selected proposer for a five-year period, Audit years FY 2022, 2023, 2024, 2025 and 2026.

V. PROPOSAL REQUIREMENTS

Proposals submitted must include the following:

1. Title page specifying R.F.P. project title, name and address of Proposer, and date of submission.
2. State in detail the proposer's understanding of the work to be performed.
3. Confirm that the proposer is an independent agent from the MVRTA.
4. A statement that the required services will be performed within the stated time limits.
5. A brief history of your experience with Federal grant programs and governmental agencies.
6. References pertinent to your experience with Federal grant programs and governmental agencies.
7. Provide a copy of the firm's most recent peer review report.
8. Additional information should be supplied when necessary to explain your proposal for evaluation.
9. Specifications of terms, conditions and limits of errors and omissions and/or professional liability insurance. Provide copies of relevant documents.
10. Proposal sheet with the total hours, hourly rate by staff classification and a maximum fee for performing the required services included on the Proposal Sheets for the base year and the following four, totaling a 5-year period.
11. Certifications in Appendix (A), signed copies of forms.
12. DBE Certification in Appendix (B), if applicable.

VI. CRITERIA FOR EVALUATION

The following criteria will be used in evaluation of proposals with the criteria listed in order of importance.

1. Qualifications and Experience
2. References
3. Proposed Fee for the Contract Period

In the event only a single proposal is received a cost analysis of the proposal fee will be required as a prerequisite to award of a contract.

VII. MISCELLANEOUS PROVISIONS

1. Proposal and Modifications

The proposal and all other accompanying documents or materials submitted by the respondent will be deemed to constitute part of the proposal. Changes in the certificates, alternative proposals, or modifications of the proposal documents that are not specifically called for in the RFP will result in rejection of the proposal. Any proposed change in the response to the RFP should be submitted in writing to the MVRTA for its prior approval.

The submitted proposal must not contain erasures, changes, or corrections. Any changes made to this Request for Proposal will be made by addendum and will be sent to all respondents. Should any addendum be issued, certification of receipt of such must be included in the proposal.

2. Withdrawal of Proposal

Proposals may be withdrawn by written request received by the Authority at any time prior to the deadline for proposals. No proposal may be withdrawn for a period of 90 days after the deadline set herein for receipt of proposals.

3. Cost of Proposal Preparation

No reimbursements will be made by the MVRTA for any costs incurred in the preparation of the proposal.

- a. Negotiation- the MVRTA reserves the right to negotiate with firms that it determines have a reasonable chance of being selected for award based on the evaluation criteria stated in the Request for Proposal and cost. If this provision applies, MVRTA will seek best and final offers.

4. Tax Exemption

The Authority is exempt from the payment of Federal, State, and local taxes. Taxes must not be included in proposal prices. The Authority will furnish necessary exemption certificates upon request. Any additional sales tax, imports, revenues, excise, or other taxes which are now, or which may be levied hereafter by Congress, the Commonwealth of Massachusetts, or any other political subdivision, which would be applicable to this proposal, and which by terms of the tax law, may be passed directly to the MVRTA, will be paid by the MVRTA.

5. Contract Eligibility

Any name appearing on the U.S. Comptroller General's list of ineligible contractors will be considered an ineligible respondent.

6. Protests

The MVRTA procedures for handling of protests may be obtained by writing the Administrator at the address below. Respondents are advised that protests and appeals to the FTA may be only on the basis that the MVRTA does not have written protest procedures for the in-house review of protests or has failed to follow such procedures.

7. Inquiries and Correspondence

All correspondence relating to this project should be addressed to:

Noah S. Berger, Administrator
Merrimack Valley Regional Transit Authority
85 Railroad Avenue
Haverhill, MA 01835
Tel: (978)469-1251 Fax: (978)373-1185
Email: staff@mvrta.com

8. Number of Copies and Proposal Due Date

The respondent will submit two hard copies and one e-copy on USB device of the proposal. Proposals will be received by the MVRTA until **11:00 AM on Friday, April 22, 2022**. The MVRTA reserves the right to reject any and all proposals based on either technical content or cost. The offeror is fully responsible for the delivery of the proposals. Reliance upon mail or public carrier is at the offeror's risk. Late proposals will not be considered.

VIII. CERTIFICATION

The following certifications are required to be submitted with the proposal (Forms included in Appendix A).

1. Certification Regarding Ineligible Contractors
2. Non-Collusion Certification
3. Statement of Tax Compliance
4. If the proposed aggregate five-year price will equal or exceed \$100,000, then the following additional certification is required:
 - a. Lobbying (Appendix A, CFR Part 20)

Cost for Auditing Services and Related Reports for Year Ending:	Total Hours for Audit	Staff Classifications	Hours Estimated for Each Classification	Max. Fee for Services
June 30, 2022				
June 30, 2023				
June 30, 2024				
June 30, 2025				
June 30, 2026				

NOTE: ATTACH ADDITIONAL SHEETS AS NECESSARY TO LIST STAFF CLASSIFICATIONS AND HOURS

The undersigned understands and agrees that if the within proposal is made conditional in any way, or is other than an unequivocal offer, the MVRTA may regard the same as nonresponsive if, in its sole discretion, it deems that it is in the Authority's best interest to do so.

The undersigned further agrees to supply any evidence or certificate of its existence, good standing or authorization to make this proposal or enter into any contract resulting therefrom and reasonably requested by the MVRTA and that its failure to supply the same shall render this proposal unresponsive.

Name of Firm:

Address:

Authorized Signature Printed Name and Title

Date

REQUIRED FTA CLAUSES

For Professional Services

A. Certification Regarding Debarment, Suspension and Other Responsibility Matters

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

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

The certification in this clause is a material representation of fact relied upon by the MVRTA. If it is later determined by the MVRTA that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the MVRTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

B. Restrictions on Lobbying

The lobbying requirements apply to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this agreement, the payor must complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Sign certifications found in Appendix A form d

C. Prohibited Interests

1. No member, officer, or employee of the MVRTA, or of a local public body during their tenure or for one year thereafter will have any interests, direct or indirect, in a contract or the proceeds thereof.
2. In accordance with 41 U.S.C. 22, the Contractor agrees that: No Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon.

D. Termination of Contract

- a. **Termination for Convenience (General Provision)** The MVRTA may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to MVRTA to be paid the Contractor. If the Contractor had any property in its possession belonging to the MVRTA, the Contractor will account for the same, and dispose of it in the manner the MVRTA directs.

- b. Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the MVRTA may terminate this contract for default. Termination shall be affected by serving a notice of termination on the Contractor setting the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the MVRTA that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the MVRTA, after setting up a new delivery performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.
- c. Opportunity to Cure (General Provision)** The MVRTA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to MVRTA's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within [ten (10)days] after receipt by Contractor of written notice from the MVRTA setting forth the nature of said breach or default, MVRTA shall have the right to terminate the contract without any further obligation to Contractor . Any such termination for default shall not in any way operate to preclude MVRTA from also pursuing all available remedies against Contractor and its sureties for said breach or default.
- d. Waiver of Remedies for any Breach**
In the event that MVRTA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by MVRTA shall not limit MVRTA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- e. Termination for Convenience (professional or Transit Service Contracts)**
The MVRTA, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the MVRTA shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- f. Termination for Default (Supplies and Service)**
If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the MVRTA may terminate this contract for default. The MVRTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.
- g. Termination for Default (Transportation Services)**
If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the MVRTA may terminate this contract for default. The MVRTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of the MVRTA goods, the Contractor shall, upon direction of the MVRTA, protect and preserve the goods until surrendered to the MVRTA or its agent. The Contractor and MVRTA shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination, for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the MVRTA.

h. Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the MVRTA may terminate this contract for default. The MVRTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The MVRTA may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to; complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the MVRTA in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of MVRTA, acts of another Contractor in the performance of a contract with the MVRTA, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. the Contractor, within [10] days from the beginning of any delay, notifies the MVRTA in writing of the causes of delay. If in the judgment of the MVRTA, the delay is excusable, the time for completing the work shall be extended. The judgment of the MVRTA shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the MVRTA.

i. Termination for Convenience or Default (Architect and Engineering)

The MVRTA may terminate this contract in whole or in part, for the MVRTA's convenience or because of the failure of the Contractor to fulfill the contract obligations. The MVRTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the MVRTA, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the MVRTA.

j. Termination for Convenience or Default (Cost-Type Contracts)

The MVRTA may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the MVRTA or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the MVRTA, or property supplied to the Contractor by the MVRTA. If the termination is for default, the MVRTA may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the MVRTA and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the MVRTA, the Contractor shall be paid its close out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the MVRTA determines that the Contractor had an excusable reason for not performing, such as a strike, fire, flood, events which are not the fault of and are beyond the control of the Contractor, the MVRTA, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

E. Patent Rights in Data

1. Patent Rights

- (a) Each funding agreement awarded to a small business firm or nonprofit organization (except those subject to 35 U.S.C. 212) shall contain the clause found in §401.14(a) with such modifications and tailoring as authorized or required elsewhere in this part. However, a funding agreement may contain alternative provisions—
- (1) When the contractor is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government; or
 - (2) In exceptional circumstances when it is determined by the agency that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of Chapter 18 of Title 35 of the United States Code; or
 - (3) When it is determined by a government authority which is authorized by statute or executive order to conduct foreign intelligence or counterintelligence activities that the restriction or elimination of the right to retain title to any subject invention is necessary to protect the security to such activities; or
 - (4) When the funding agreement includes the operation of the government-owned, contractor-operated facility of the Department of Energy primarily dedicated to that Department's naval nuclear propulsion or weapons related programs and all funding agreement limitations under this subparagraph on the contractor's right to elect title to a subject invention are limited to inventions occurring under the above two programs.
- (5) If any part of the contract may require the contractor to perform work on behalf of the Government at a Government laboratory under a Cooperative Research and Development Agreement (CRADA) pursuant to the statutory authority of 15 U.S.C. 3710a, the contracting officer may include alternate paragraph (b) in the basic patent rights clause in §401.14. Because the use of the alternate is based on a determination of exceptional circumstances under §401.3(a)(2), the contracting officer shall ensure that the appeal procedures of §401.4 are satisfied whenever the alternate is used.
- (b) When an agency exercises the exceptions at §401.3(a)(2) or (3), it shall use the standard clause at §401.14(a) with only such modifications as are necessary to address the exceptional circumstances or concerns which led to the use of the exception. For example, if the justification relates to a particular field of use or market, the clause might be modified along lines similar to those described in §401.14(b). In any event, the clause should provide the contractor with an opportunity to receive greater rights in accordance with the procedures at §401.15. When an agency justifies and exercises the exception at §401.3(a)(2) and uses an alternative provision in the funding agreement on the basis of national security, the provision shall provide the contractor with the right to elect ownership to any invention made under such funding agreement as provided by the Standard Patent Rights Clause found at §401.14(a) if the invention is not classified by the agency within six months of the date it is reported to the agency, or within the same time period the Department of Energy does not, as authorized by regulation, law or Executive order or implementing regulations thereto, prohibit unauthorized dissemination of the invention. Contracts in support of DOE's naval nuclear propulsion program are exempted from this paragraph.
- (c) When the Department of Energy exercises the exception at §401.3(a)(4), it shall use the clause prescribed at §401.14(b) or substitute thereto with such modification and tailoring as authorized or required elsewhere in this part.
- (d) When a funding agreement involves a series of separate task orders, an agency may apply the exceptions at §401.3(a)(2) or (3) to individual task orders, and it may structure the contract so that modified patent rights provisions will apply to the task order even though the clauses at either §401.14(a) or (b) are applicable to the remainder of the work. Agencies are authorized to negotiate such modified provisions with respect to task orders added to a funding agreement after its initial award.
- (e) Before utilizing any of the exceptions in §401.3(a) of this section, the agency shall prepare a written determination, including a statement of facts supporting the determination, that the conditions identified in the exception exist. A separate statement of facts shall be prepared for each exceptional circumstances determination, except that in appropriate cases a single determination may apply to both a funding agreement and any subcontracts issued under it or to any funding agreement to which such an exception is applicable. In cases when §401.3(a)(2) is used, the determination shall also include an analysis justifying the determination. This analysis should address with specificity how the alternate provisions will better achieve the objectives set

forth in 35 U.S.C. 200. A copy of each determination, statement of facts, and, if applicable, analysis shall be promptly provided to the contractor or prospective contractor along with a notification to the contractor or prospective contractor of its rights to appeal the determination of the exception under 35 U.S.C. 202(b)(4) and §401.4 of this part.

- (f) Except for determinations under §401.3(a)(3), the agency shall also provide copies of each determination, statement of fact, and analysis to the Secretary. These shall be sent within 30 days after the award of the funding agreement to which they pertain. Copies shall also be sent to the Chief Counsel for Advocacy of the Small Business Administration if the funding agreement is with a small business firm. If the Secretary of Commerce believes that any individual determination or pattern of determinations is contrary to the policies and objectives of this chapter or otherwise not in conformance with this chapter, the Secretary shall so advise the head of the agency concerned and the Administrator of the Office of Federal Procurement Policy and recommend corrective actions.
- (g) To assist the Comptroller General of the United States to accomplish his or her responsibilities under 35 U.S.C. 202, each Federal agency that enters into any funding agreements with nonprofit organizations or small business firms shall accumulate and, at the request of the Comptroller General, provide the Comptroller General or his or her duly authorized representative the total number of prime agreements entered into with small business firms or nonprofit organizations that contain the patent rights clause in this part or under OMB Circular A-124 for each fiscal year beginning with October 1, 1982.
- (h) To qualify for the standard clause, a prospective contractor may be required by an agency to certify that it is either a small business firm or a nonprofit organization. If the agency has reason to question the status of the prospective contractor as a small business firm, it may file a protest in accordance with 13 CFR 121.9. If it questions nonprofit status, it may require the prospective contractor to furnish evidence to establish its status as a nonprofit organization.

2. Intellectual Property Rights

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the AGENCY intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

- 1) The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal

Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

- a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
 - b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
- 2) Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
- 3) Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- 4) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- 5) Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
- 6) The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

F. Disadvantaged Business Enterprise

The DBE contracting requirements flow down to all third-party contractors and their contracts at every tier. It is the recipient's and prime contractor's responsibility to ensure the DBE requirements are applied across the board to all subrecipients/contractors/subcontractors. Should a subcontractor fail to comply with the DBE regulations, FTA would look to the recipient to make sure it intervenes to monitor compliance. The onus for compliance is on the recipient.

Clause Language

For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material

breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1). As an additional resource, recipients can draw on the following language for inclusion in their federally funded procurements.

Overview

It is the policy of the MVRTA and the United States Department of Transportation (“DOT”) that Disadvantaged Business Enterprises (“DBE’s”), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of the MVRTA to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE’s can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE’s;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

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

Contract Assurance

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

DBE Participation

For the purpose of this Contract, the MVRTA will accept only DBE's who are:

1. Certified, at the time of bid opening or proposal evaluation, by the [certifying agency or the Unified Certification Program (UCP)]; or
2. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or
3. Certified by another agency approved by the MVRTA.

DBE Participation Goal

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

Proposed Submission

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

1. A completed DBE Utilization Form (see below) that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.
2. A list of those qualified DBE's with whom the Bidder/Offeror intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the **DBE Participation Schedule** (form in Appendix B). No work shall be included in the Schedule that the Bidder/Offeror has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeror may not deviate from the DBE Participation Schedule submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by the MVRTA.
3. An original **DBE Letter of Intent** (form in Appendix B) from each DBE listed in the **DBE Participation Schedule**.
4. An original **DBE Affidavit** (form in Appendix B) from each DBE stating that there has not been any change in its status since the date of its last certification.

Good Faith Efforts

If the Bidder/Offeror is unable to meet the goal set forth above (DBE Participation Goal), the MVRTA will consider the Bidder/Offeror's documented good faith efforts to meet the goal in determining responsiveness. The types of actions that the MVRTA will consider as part of the Bidder/Offeror's good faith efforts include, but are not limited to, the following:

1. Documented communication with the MVRTA's DBE Coordinator (questions of IFB or RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
2. Pre-bid meeting attendance. At the pre-bid meeting, the MVRTA generally informs potential Bidder/Offeror's of DBE subcontracting opportunities;
3. The Bidder/Offeror's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
4. Written notification to DBE's encouraging participation in the proposed Contract; and
5. Efforts made to identify specific portions of the work that might be performed by DBE's.

The Bidder/Offeror shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBE's for elements of the Contract:

1. The names, addresses, and telephone numbers of DBE's that were contacted;
2. A description of the information provided to targeted DBE's regarding the specifications and bid proposals for portions of the work;

3. Efforts made to assist DBE's contacted in obtaining bonding or insurance required by the Bidder or the Authority.

Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract. 49 C.F.R. § 26.53(b) (2) (VI). In determining whether a Bidder has made good faith efforts, the Authority may take into account the performance of other Bidders in meeting the Contract goals. For example, if the apparent successful Bidder failed to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, the Authority may view this as evidence of the Bidder having made good faith efforts.

Administrative Reconsideration

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

As part of this reconsideration, the Bidder/Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeror will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The MVRTA will send the Bidder/Offeror a written decision on its reconsideration, explaining the basis for finding that the Bidder/Offeror did or did not meet the goal or make adequate A-34 good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Termination of DBE Subcontractor

The Contractor shall not terminate the DBE subcontractor(s) listed in the **DBE Participation Schedule** (see below) without the MVRTA's prior written consent. The MVRTA may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify the MVRTA in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with Section 8 below (Sanctions for Violations).

Continued Compliance

The MVRTA shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, **it will be the responsibility of the Contractor to submit quarterly written reports to the MVRTA** that summarize the total DBE value for this Contract. These reports shall provide the following details:

- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the quarter;
- The value of expenditures with each DBE firm for the quarter by race and gender;
- Total value of expenditures with DBE firms from inception of the Contract; and
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the DBE Coordinator with copies provided to the MVRTA. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

- The MVRTA to have access to necessary records to examine information as the MVRTA deems appropriate for the purpose of investigating and determining compliance with this provision, including, but

not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.

- The authorized representative(s) of the MVRTA, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.
- All data/record(s) pertaining to DBE shall be maintained as stated in Section [insert reference to record keeping requirements for the Project.]

Sanctions for Violations

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

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

DBE UTILIZATION FORM

The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

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

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

DBE PARTICIPATION SCHEDULE

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

DBE IDENTIFICATION AND INFORMATION FORM

Name and Address	Contact Name and Telephone Number	Participation Percent (of Total Contract Value)	Description of work to be Performed	Race and Gender of Firm

G. Civil Rights The following requirements apply to the underlying contract:

The MVRTA is an Equal Opportunity Employer. As such, the MVRTA agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the MVRTA agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

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

1. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for A-26 employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue

3. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- 1. Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § A-27 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

H. Employee Protections

1. The Contract Work Hours and Safety Standards Act apply to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers. The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance

with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

2. The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
3. Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.
4. The Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

I. Air Quality

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

J. Clean Water

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

K. Energy Conservation

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

L. Privacy

The following requirements apply to the Contractor and its employees that administer any

system of records on behalf of the Federal Government under any contract:

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

M. Access to Records & Reports

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a major capital project excludes contracts less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, an hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1), through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonable needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exception related thereto. Reference 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

N. Third Party Contract Disputes or Breaches

Disputes.

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of MVRTA's Administrator. This decision shall be final and conclusive unless within [ten (10) days] from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Administrator. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Administrator shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute.

Unless otherwise directed by MVRTA, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages.

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies.

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the MVRTA and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the MVRTA is located.

Rights and Remedies.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the MVRTA, its Architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder except as may be specifically agreed in writing.

P. Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between MVRTA and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Q. No Obligation by the Federal Government

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government is not a party to this contract and shall not subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

R. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other

provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any MVRTA requests which would cause MVRTA to be in violation of the FTA terms and conditions.

S. Fly America Requirements

The Contractor agrees to comply with 49 U.S.C. 4011.8 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

U. Recycled Products

The Resource Conservation and Recovery Act, as mandated, (42 U.S.C. § 6962 *et. seq.*) requires States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practical, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,0000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,0000.

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and the U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials”, 40 C.F.R. part 247.

V. Program Fraud and False or Fraudulent Statements and Related Acts

- 49 U.S.C. § 5323 (l) (1)
- 31 U.S.C. §§ 3801-3812
- 18 U.S.C. § 1001
- 49 C.F.R. part 31

The Contractor acknowledges that the Provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and the U.S. DOT regulations, “Program Fraud Civil Remedies,”

49 C.F.R. part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make or causes to be made, pertaining to the underlying contract or the FTA assisted project for which the contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement, or certification to the Federal Government under a contract connected with the project that is financed in whole or in part with Federal assistance originally awarded by the FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323 (l) on the Contractor, to the extent the Federal Government deems appropriate.

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

W. Buy America Requirements

The contractor agrees to comply with 49 C.F.R. § 5323 (j)(2)(C) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by the FTA or the product is subject to a general waiver. General waivers are list in 49 C.F.R. § 661.7. The Contractor must submit the certification form, Appendix A, even if they believe that a general public interest waiver applies.

APPENDIX A

1. Certification Regarding Ineligible Contractors
2. Non-Collusion Certification
3. Revenue Enforcement Attestation Certification
4. Appendix A, 49 CFR Part 20, Certification Regarding Lobbying
(To be submitted if the proposed aggregate five-year price will exceed \$100,000)

INELIGIBLE CONTRACTORS CERTIFICATE

The _____ (name of third-party contractor)

hereby certifies (check one) that it is is not included on the U.S. Comptroller General's

Consolidated List of Persons or Firms Currently Debarred for Violations for Various Public Contracts

Incorporating Labor Standard provisions.

Company

Signature

(Also type or print name)

Date

NON-COLLUSION CERTIFICATION

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF ESSEX

I, _____ of the City of _____ in the County of _____ and the State of _____ of full age, being duly sworn according to law on my oath depose and say that:

I am _____ of the firm of _____, the offerer making the proposal for the above named project, and that I executed the said proposal with full authority to do so; that said offerer has not, directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free, competitive bidding in connection with the above named project; and that all statements contained in said proposal and in this affidavit are true and correct, and made with full knowledge that the Commonwealth of Massachusetts relies upon the truth of the statements contained in said proposal and in the statements contained in this affidavit in awarding the contract for the said project.

I further warrant that no person or selling agency has been employed or retained to solicit or secure such contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by

_____ (Name of Contractor)

_____ (Signature)

(Also type or print name under signature.)

Subscribed and sworn to before me this

Date: _____

Notary Public of

My commission expires _____

STATEMENT OF TAX COMPLIANCE

Pursuant to Massachusetts General Laws Chapter 62C, Section 49A,

I certify under the penalties of perjury that I, to the best of my knowledge and belief, have filed all State tax returns and paid all State taxes required under law.

Signature of Individual
or Corporate Name

Social Security Number
or Federal Identification Number

By: _____

Date: _____

Corporate Officer (Name and Title)

Approval of a contract or other agreement will not be granted unless this certification clause is signed by the applicant.

Your Social Security Number will be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended.

This request is made under the authority of Mass. G.L. c.62C s.49A.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants, Loans and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

APPENDIX B

DISADVANTAGED BUSINESS ENTERPRISE

DBE AFFIDAVIT

STATE OF _____ (Date _____)

COUNTY OF _____ S.S.

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

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

of _____
(Name of DBE)

and certifies that since the date of its certification by Supplier Diversity Office of the Commonwealth of Massachusetts:

Insert Date

That this certification has not been revoked nor has it expired nor has there been any change in the minority status of _____
(Name of DBE)

(Signature and Title of
Person Making Affidavit)

Sworn to before me this _____ day of _____ 2012

(Notary Public)

NOTE: The Offeror must attach the DBEs most current certification letter or document to this affidavit.

APPENDIX C

ADDENDA ACKNOWLEDGMENT FORM

ADDENDA ACKNOWLEDGMENT FORM

The undersigned acknowledges receipt of the following addenda to the Request For Proposal.

(Give number and date of each):

Addendum No.	_____	Date	_____
Addendum No.	_____	Date	_____
Addendum No.	_____	Date	_____
Addendum No.	_____	Date	_____
Addendum No.	_____	Date	_____
Addendum No.	_____	Date	_____
Addendum No.	_____	Date	_____

Failure to acknowledge receipt of all addenda may cause the proposal to be considered non-responsive to the Invitation, which will require rejection of the proposal.

Signature

Title
