



MERRIMACK VALLEY REGIONAL TRANSIT AUTHORITY

RFQ FOR A&E SERVICES



Request for Proposal Document # G-2312

- **RFQ Schedule of Important Dates:**
- **Issue date: March 27, 2024**
- **Questions Submitted: April 5, 2024**
- **Q&A Responses posted: April 9, 2024**
- **Proposals Due by: April 22, 2024 by EOD**
- **Notification for Interviews for Top 5 Candidates: April 25, 2024 with interviews the following week.**
- **Notice of Award: May 6, 2024**

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I. Introduction

The Merrimack Valley Regional Transit Authority (MeVa), located at 85 Railroad Avenue, Haverhill MA, is seeking qualified firms to submit Statements of Qualifications for Architectural & Engineering (A&E) Services. MeVa wishes to establish a pool of retained A&E organizations who will assemble a team to provide multi-disciplined A&E services on a work-order basis for various projects over the next 3-5 years.

This Request for Qualifications (RFQ) document outlines instructions and the format for the Statements. Copies of this RFQ document, and any subsequently issued addenda, may be obtained through MeVa's website at <https://www.mvrta.com/doing-business-mvrta/>. If you cannot download, please email staff@mevatransit.com.

II. Scope of Work

A. Background:

MeVa is a provider of public transit that serves 16 communities in the Merrimack Valley area. Although providing transportation to the citizens in our communities is MeVa's first priority, it takes infrastructure to operate such an important undertaking. Infrastructure requires good maintenance of assets and sometimes expansion to accommodate growth. MeVa has the following facilities in our real property portfolio:

1. Headquarters Complex located at 85 Railroad Avenue, Haverhill, MA 01835. This complex consists of 5 buildings and structures along the Merrimack River. It is fully enclosed by a fence with 4 gates, 2 of which are automated for electronic opening. This is the oldest in our portfolio with buildings of varying ages, uses, and configurations:
 - a. Admin/Bus Garage – this is a multi-level facility that houses staff as well as large bus storage with 12 garage doors.
 - b. Maintenance Facility – this two-story building is used for vehicle maintenance. It has 7 garage doors.
 - c. Bus Wash – this single-story building houses a bus wash and a decommissioned money room. Fuel pumps are on the inside (diesel) and outside (gas) of this building. It has a garage door on each end of the straight rectangular building.
 - d. Warehouse – this small single-story building is simply for storage. It has a single rolling door with a loading dock.
 - e. There is also a wood and metal pitched canopy that covers smaller cutaway style buses.
2. Haverhill Parking Garage – this is a 315 space 4-level parking facility built in 2011 and located at 53 Granite Street, Haverhill MA.
3. McGovern Transportation Center – this is an 895 space, 5-level parking facility built in 2005 and located at 211 Merrimack Street in Lawrence, MA adjacent to the MBTA commuter rail platform. It houses retail space for 3 tenants, a passenger waiting area, and ticket office space on the opposite side. This facility is currently under construction to convert the 1st floor from parking to an 8-bay bus transfer station. The 4 upper floors will remain customer parking.
4. Costello Transportation Center – this is a 3-story building built in 2012 located at 68 Elm Street in Amesbury, MA. It acts as a bus transfer station and has a customer waiting area. The building also houses office space currently occupied by the Town of Amesbury.
5. Gateway Parking Lot – this is a 370,260 square foot surface lot with 865 parking spaces.

B. Scope of Services:

MEVA wishes to establish a pool of Architectural & Engineering (A&E) organizations who will assemble a team to provide architectural and engineering services on a project basis. Projects may include all, or part of, of a full design-bid-build, including: consulting, pre-design/existing conditions study, schematic design,

design development, contract documents, bidding services, construction administration, and closeout services.

Examples of projects that reflect all or part of these services may include but are not limited to:

- Feasibility and investigative studies
- Design of a new building facility
- Replace/Movement of diesel tanks & fueling station
- Design of office planning and reconfiguration of interior spaces
- Solar array/canopy & vehicle electrification infrastructure
- Building façade rehabilitation
- Mechanical upgrades such as HVAC
- Land Surveying

Ideally an A&E organization will have a team comprised of a variety of disciplines such as:

- Architectural Services
- Mechanical Engineering
- Electrical Engineering
- Structural Engineering
- Civil Engineering
- Environmental Services

However, MEVA doesn't want to limit competition to only large firms. Therefore, smaller firms that specialize in some of these disciplines, yet have the management capability to subcontract the other disciplines, are encouraged to submit an SOQ that explains their approach to this group dynamic. Firms are encouraged to use DBE subcontractors on task specific work orders.

C. Term of Services:

The on-call contract is for a three-year period with up to 2 one-year term renewal options. Work will be performed as needed on an individual task order basis. The above list of anticipated projects was included as a demonstration of current need; projects are subject to be modified, eliminated, or added to the list as planning needs change during the contract period. Projects will be initiated on an on-call basis and performed with a project specific scope of work.

D. Statement of Qualifications:

Each respondent must submit a Statement of Qualifications (SOQ) in response to this RFQ. The format of this submission is described in Section III.A below. The SOQ must illustrate how the organization can meet the following minimum qualifications:

1. Firm Qualifications
 - a. Be a qualified and licensed architectural and/or professional engineering company registered in the Commonwealth of Massachusetts.
 - b. Must have at least five (5) years of experience in the design and construction of public buildings and other related engineering projects in Massachusetts.
2. Key Personnel
 - a. Project manager with five years minimum experience managing public projects
 - b. Possess a thorough knowledge of all Massachusetts State Building Codes, the regulations of the Massachusetts Architectural Access Board, and the Americans with Disabilities Act.
 - c. Have past successful performance on previous projects



- 3. Capacity
 - a. Experience managing multiple simultaneous projects;
 - b. Depth of available personnel;
 - c. Responsiveness to work requests
 - i. Acknowledging request
 - ii. Preparing a time and cost estimate for work
 - iii. Completing request within agreed timeline

III. QUALIFICATIONS SUBMISSION

A. Submission Content

Each submission must comply with the guidelines set forth below. Each Statement of Qualifications (SOQ) shall consist of the following elements in the prescribed order:

1. Cover Letter

The SOQ shall begin with a letter describing the firm’s interest and commitment to a potential multi-year contract for A&E services for multiple projects. It shall include the name, title, address, email, and telephone number of the individual to whom correspondence should be directed during the selection process. The person authorized by the firm to negotiate a contract with MeVa shall sign the cover letter.

2. Project Team and Availability

The SOQ shall provide the name and address of the A&E organization with the names and addresses of the officers, directors, and owners. Please indicate those officers, directors, and owners who are registered architects and/or professional engineers. Provide a brief written description of the proposed key team members anticipated for the duration of the project. This section is intended to be brief. More detailed discussion of each key team member’s experience and qualifications shall be provided in response to Item 5 below.

Each firm shall identify a Project Manager (PM) to serve as the point of contact for MEVA throughout the duration of the contract. The PM shall have recent, relevant experience. It will be the PM’s responsibility, when called upon, to identify and articulate the A&E needs of MEVA. MEVA will issue Task Orders to the PM, who will coordinate the various disciplines within their organization and/or subcontractors.

It should be noted that it is the MEVA’s expectation that all key personnel listed as part of this Item will be available as appropriate for work on MEVA projects. For each key team member, include a resume at Attachment 1 of the Appendix.

3. Minimum Qualifications

The SOQ shall provide a clear and concise explanation of how this team satisfies the Minimum Qualifications described in Section II.D of this RFQ. In response to this item, the respondent may provide a cross reference to relevant information provided elsewhere in the SOQ.

4. Project Management and Approach

The SOQ shall provide the firm’s proposed approach and management plan for providing A&E services. The respondent shall provide an organization chart listing the team members by area of expertise. The respondent shall describe how it will organize team members (including potential subcontractors), using

the talents available to effectively assist MEVA. Identify the processes and procedures that will be implemented to manage and coordinate between the various entities involved in each project.

In addition, this item should discuss the firm's approach for delivering the services for project completion on-time and within budget constraints.

Provide any other information that the respondent may deem relevant. In particular, the respondent is invited to describe any particular aspects of its organization that sets its team apart from the competition.

5. Qualifications and Experience

The SOQ should provide the qualifications and experience of the entire team that will be available for providing the requested services. Please emphasize the specific qualifications and experience of key team members from similar projects. This section should address each relevant category of services anticipated in the Scope of Services.

Each SOQ shall express the respondent's understanding of the unique environment of MEVA's services, including local conditions and challenges, and the respondent's understanding of and experience with applicable federal, state, and local requirements that may pertain to work conducted under the Scope of Services.

6. References

Provide five (5) client references (names and current phone numbers) from recent work (previous three (3) years) that is specific to the different disciplines outlined in the Scope of Services (II.B). Include a brief description of each project associated with the reference and note the roles of the respective team members. MEVA may request information from these clients and any other available sources while investigating the respondent's experience and qualifications. Submittal of the SOQ constitutes consent to such requests.

7. Fee Information

Fee information must be emailed as a separate document with the words "Service Rates" at the beginning of the document name so as to be clearly identified. ***Fee information will not be used in the evaluation process***, but will be used in the negotiation process once tentative award has been made.

The fee information must include the following:

- Labor rates for the personnel anticipated to support task order projects;
- Indirect cost proposal;
- Profit proposal.

8. Required Forms & Certifications

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

- a. Financial & Legal Status Statement
- b. W-9
- c. Non-Collusion Certification
- d. Statement of Tax Compliance
- e. Lobbying Certification
- f. Addenda Acknowledgement Form



If any subcontractors are to be used in the performance of this contract, then the “DBE Participation Schedule” form found in **Appendix C** must be submitted. This form must be submitted regardless of whether or not the subcontractor is a Certified DBE. If the subcontractor is a DBE, then the other two forms located in Appendix C must also be submitted. **There are no DBE Contract Goals for this RFQ.**

B. General Requirements

Proposals must be submitted via email to procurement@mevatransit.com.

MeVa will accept hard copies mailed or hand-delivered (in a labeled sealed envelope); **but it is NOT preferred.**

C. Submission Deadline

Proposals must be received by MeVa by the **End of Day (EOD) on Monday April 22, 2024**. Proposals received after the date and time specified will be considered late. However, MeVa reserves the right to accept or to reject any and/or all responses.

D. Pre-Proposal Meeting

A pre-proposal site visit is not required for this solicitation.

E. Q & A

Questions and clarifications maybe submitted to MeVa via email at procurement@mevatransit.com by **Friday April 5, 2024**. Responses will be published in the form of an Addendum available on MeVa’s website on or before **Tuesday, April 9, 2024**. A notification of addenda posting will be emailed to all known interested parties.

F. Other Applicable Processes:

1. Changes to RFQ

MeVa reserves the right to make changes to the RFQ. All changes shall be issued via written addendum. Addenda will also be posted on MeVa’s website. Requests for clarification to the scope of services, etc. must be received by MeVa, in writing, in accordance with the Q&A period defined above in Section III.D. MeVa will evaluate any requests submitted but reserves the right to determine whether or not to respond. Proponents shall not rely on verbal or written representations regarding this RFQ, except for written addenda issued by MeVa.

2. Rejection of Proposals

MeVa reserves the right to postpone, accept, or reject any and/or all proposals, or part of any proposal, to re-advertise, or to waive any informalities or irregularities in the RFP process as it deems to be in its own best interest.

3. Single Response

In the event of a single bid response, FTA Guidelines for negotiation will be followed. If the bid is accepted a cost analysis must be performed. All proposers must comply with the information request to perform this analysis.

4. Cancellation of RFQ

MeVa has the authority to terminate this Request for Qualifications at any time.

IV. Submission Evaluation & Selection

A. Evaluation:

All submissions will be evaluated and ranked according to the following Selection Criteria. As a prospective bidder please be sure to include all information, paperwork, and any other selection criteria outlined below to receive full points for each item. The criterion below is listed in order of importance and value and is based upon the Submission Content detailed in section III.A. above.

1. Experience & Performance:

- a. Evaluation is based on extent of directly related experience in the design and management of public construction projects, including those under federal funding.
- b. Past performance on contracts with government agencies and transit authorities;
- c. Record of completing work within the agreed timeline and budget;

2. Capacity and Approach:

- a. Ability to respond to work requests and complete requests within agreed timeline;
- b. Approach to project and team management;
- c. Depth of available team members
- d. Experience managing multiple simultaneous projects

3. Key Personnel:

- a. Professional qualifications and certifications of personnel assigned to work on the contract;
- b. Staff knowledge and experience working on varying engineering and construction projects;

4. Required Documentation:

All documentation asked for in this RFQ is mandatory (unless otherwise noted) and will be a minor evaluation factor as to completeness of response.

B. Selection

This RFQ is meant to create a pool of firms to perform A&E services so a number of candidates will be selected. All submittals will be reviewed and evaluated by the Evaluation Team based on the weighted evaluation criteria above. The top five candidates will be required to give an oral presentation to the MeVa Evaluation Team to clarify or elaborate on the submitted SOQ. Notification for candidates' interviews will be sent via email to the contact person indicated in the cover letter on April 25, 2024 with interviews to be scheduled the following week.

Proponents are advised that the Administrator of the MeVa, as Chief Executive Officer, is solely responsible for the award of a contract. Any proponent who communicates with any MeVa Advisory Board members, the press, or engages the services of any individual or firm for the purposes of influencing the outcome of the proposal process will be disqualified from further consideration as this is considered collusion. A 'Certification of Non-Collusion' is required under section III.A.8 above.

V. Miscellaneous Provisions

A. Submission and Modifications

The SOQ and all other accompanying documents or materials submitted by the respondent will be deemed to constitute part of the submission. Changes in the certificates, alternative proposals, or modifications of the submission documents that are not specifically called for in the RFQ will result in rejection of the proposal. Any proposed change in the response to the RFQ should be submitted in writing to MeVa for its prior approval. Any changes made to this Request for Qualifications will be made by addendum. Should any



addendum be issued, certification of receipt of such must be included in the proposal. Use the form provided in Appendix B

B. Withdrawal of Submission

Submission may be withdrawn by written request received by the Authority at any time prior to the deadline for proposals. All proponents specifically waive any right to withdraw a submission after it has been submitted to MeVa for a period of 90 days after the deadline set herein, except as provided in the following:

1. A respondent may withdraw a submission if a written request to withdraw the proposal is emailed, hand-delivered or sent by U.S. mail to MeVa by an accredited Representative. This representative should be the same individual that sent the submission to guarantee that knowledge of the withdrawal is known and certified. The most senior executive or owner may be a substitute for this representative with a statement that the representative has been notified of the withdrawal or has left the employ of the respondent.

C. Cost of Proposal Preparation

No reimbursements will be made by MeVa for any costs incurred in the preparation of the submission.

D. Tax Exemption

MeVa (as an Authority of the Commonwealth) is exempt from the payment of Federal, State, and Local taxes. Taxes must not be included in proposal prices. The Authority will furnish any necessary exemption certificates upon request. Any additional sales tax, import, revenue, 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 MeVa, will be paid by MeVa.

E. Contract Eligibility

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

F. Protests Procedures

MeVa's procedures for filing a protest against any aspect of this procurement are provided for your reference in Appendix E.

G. Award of Contract

1. MeVa shall award a single contract to the most responsive and responsible proposer based on the selection criteria presented in IV: Proposal Evaluation & Selection.
2. The final selection will be at the sole discretion of MeVa.
3. MeVa reserves the right to cancel the award of any contract at any time before the execution of such contract by all parties without any liability against MeVa.
4. MeVa will provide written notification of its intent to award a contract to the successful proponent.
5. The successful proposer will supply, after notification of award, Certificates of Insurance that provides evidence of the limits contained in the Contract Form.
6. The successful proposer will be expected to execute a contract with MeVa. See Sample Agreement Included in **Appendix F. The agreement form is provided for as a guide to MeVa contract standards.** Most information will remain the same with additions to include the Final Scope of Work based on this RFP, your proposal, and any negotiations.

7. The successful proposal, with approved changes, will be incorporated into the contract by reference and made a part thereof.

H. Inquiries and Correspondence.

All correspondence relating to this RFP should be addressed via email to procurement@mevatransit.com

I. Commonwealth of Massachusetts Public Records Law

The Public Records Law; General Laws, Title X, Chapter 66, Sections 1 through 21 of the Commonwealth of Massachusetts allows access to all public records held by agencies or divisions of the state. Please review this statute if you have any concerns about proprietary submissions other than price contained in your proposal. The Secretary of the Commonwealth and the Division of Public Records has produced a guide which may be downloaded at: www.sec.state.ma.us/pre/prepdf/guide.pdf

VI. Required Federal Clauses for Procurement of Professional Services

The following Federal clauses apply to this contract, see Appendix D.

- 1) Access To Records and Reports
- 2) Civil Rights and Equal Opportunity
- 3) Energy Conservation
- 4) Federal Changes
- 5) Incorporation Of Federal Transit Administration (FTA) Terms
- 6) No Government Obligation to Third Parties
- 7) Notice to Third Party Participants
- 8) Program Fraud and False or Fraudulent Statements and Related Acts
- 9) Prohibition On Certain Telecommunications and Video Surveillance Services or Equipment
- 10) Safe Operation of Motor Vehicles
- 11) Trafficking in Persons
- 12) Procurement Of Recovered Materials
- 13) Termination
 - a. Termination for Convenience (General Provision)
 - b. Termination for Default [Breach or Cause] (General Provision)
 - c. Opportunity to Cure (General Provision)
 - d. Waiver of Remedies for any Breach
 - e. Termination for Convenience or Default (Architect and Engineering)
- 14) Debarment And Suspension
- 15) Federal Tax Liability & Recent Felony Convictions
- 16) Notification To FTA
- 17) Restrictions on Lobbying
- 18) Clean Air Act and Federal Water Pollution Control Act
- 19) Violation And Breach of Contract
- 20) Disadvantaged Business Enterprise (DBE)
- 21) Prompt Payment
- 22) Americans With Disabilities Act (ADA)
- 23) Seismic Safety



APPENDIX A

Cost Proposal Form

No specific form is given or required for this RFQ. Submitted cost information must follow the instructions located in Section III.A.7 of this RFQ.

APPENDIX B

Required Certifications & Forms

1. Financial & Legal Status Statement
2. W-9
3. Non-Collusion Certification
4. Statement of Tax Compliance
5. Debarment Certification
6. Lobbying Certification
7. Addenda Acknowledgement Form



FINANCIAL AND LEGAL STATUS STATEMENT

A. Identification of Company and General Information

1. Tax Identification Number: _____

Name of Organization: _____

Business Address: _____

Telephone Number: _____

2. Legal Status of Organization: (Check One)

_____ For-profit corporation or Joint Venture Corporation

_____ For-profit partnership or sole proprietorship

_____ Non-profit corporation _____ Public Agency

_____ Other (Identify): _____

3. How many years has your firm been engaged in this business under its present name? _____

4. Have you ever refused to sign a contract at your original proposal or proposed price? _____

5. Have you ever defaulted on a contract: _____

6. Upon request you will furnish any other information (appropriate to this solicitation) that MeVa may require. _____

7. Name of Chief Executive Officer (or Administrator) of Organization: _____

8. Name of individual designated to represent your organization in subsequent discussions or negotiations related to this solicitation:

(Name)

(Phone)

SIGNATURE OF CHIEF EXECUTIVE OFFICER

DATE

Form W-9
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

▶ Go to www.irs.gov/FormW9 for instructions and the latest information.

**Give Form to the
requester. Do not
send to the IRS.**

Print or type. See specific instructions on page 5.	<p>1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.</p> <p>2 Business name/disregarded entity name, if different from above</p> <p>3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.</p> <p><input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate</p> <p><input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____</p> <p><small>Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.</small></p> <p><input type="checkbox"/> Other (see instructions) ▶ _____</p>	<p>4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):</p> <p>Exempt payee code (if any) _____</p> <p>Exemption from FATCA reporting code (if any) _____</p> <p><small>(Applies to accounts maintained outside the U.S.)</small></p>
	<p>5 Address (number, street, and apt. or suite no.) See instructions.</p> <p>6 City, state, and ZIP code</p> <p>7 List account number(s) here (optional)</p>	<p>Requester's name and address (optional)</p>

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number								
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> </tr> <tr> <td style="text-align: center;">-</td> <td style="text-align: center;">-</td> <td></td> <td></td> </tr> </table>					-	-		
-	-							
OR								
Employer identification number								
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> </tr> <tr> <td style="text-align: center;">-</td> <td style="text-align: center;">-</td> <td></td> <td></td> </tr> </table>					-	-		
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Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What Is backup withholding, later.



AFFIDAVIT OF NON-COLLUSION

PROJECT NAME: _____

The undersigned being duly sworn according to law on my oath depose and say that that I am the

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

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

having a usual place of business in _____
(City/Town, State and County)

And that I executed this proposal with the full authority to do so. I certify under penalties of perjury that this proposal is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this paragraph the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity. The bidder/proposer 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 the proposal and in this affidavit are true and correct.

(Signature)

(Name and Title of Person Making Affidavit)

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

Notary Public: _____

My commission expires: _____

STATEMENT OF TAX COMPLIANCE

Pursuant to Massachusetts General Laws, Chapter 62C, Section 49A, the undersigned certifies under the penalties of perjury that to the best of their knowledge and belief that I, the owner, and principals thereof are in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Name of Individual or
Corporate Name

Social Security Number
or Federal Identification Number

By: _____ Date: _____

(Name and Title)

Approval of a contract or other agreement will not be granted unless this certification is signed by the contractor. Your Social Security Number (SSN) or Federal Employer Identification Number (FEIN) may 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.

NOTE: Any questions concerning the law, or its implementation may be directed to the Massachusetts Department of Revenue; Telephone Number (617) 727- 4201.

FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

The contractor certifies that it:

1. Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
2. Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months. If the contractor cannot so certify, MeVa will refer the matter to FTA and not enter into any Third-Party Agreement with the Third-Party Participant without FTA's written approval.
3. The contractor will flow this requirement down to participants at all lower tiers (subcontractors), without regard to the value of any sub-agreement.

By: _____ Date: _____

(Name and Title)



DEBARMENT CERTIFICATIONS

Company Name	
Authorized Official's Name	
DUNS Number	
Company Address	
Phone Number	
Contact Email	
*Is the Company currently register with SAM.gov?	
Is your Registration Status listed as Active?	

* All contractors entering into agreements with agencies such as MeVa are encouraged to register at www.sam.gov. This allows MeVa to see any exclusion status and opens up opportunities for other federal work.

Federal Debarment Certification:

By signing below, I hereby certify that our company (as presented in the table above), its principals, (defined at 2 C.F.R. § 180.995), affiliates, (defined at 2 C.F.R. § 180.905), and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be Debarred, Suspended, Proposed for Disbarment, Declared Ineligible, Voluntarily Excluded, or Disqualified from participation in any federally assisted Award.

Commonwealth of Massachusetts Debarment Certification:

By signing below, I hereby certify that our company (as presented in the table above), its principals, affiliates, and subcontractors are not on the list for Debarment from doing business in the Commonwealth of Massachusetts with any Massachusetts State Agencies. (The list is found at <https://www.mass.gov/doc/ags-fair-labor-division-debarment-list>)

Executed this _____ day of _____, 20__.

By _____
(Signature of Contractor's Authorized Official)

(Title of Authorized Official)

CERTIFICATION REGARDING LOBBYING

I, _____, hereby certify on behalf
(Name and Title of Contractor’s Authorized Official)

of _____ that:
(Name of Contractor’s Organization)

- 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 any 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 of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for 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 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.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering this transaction imposed by Section 1352, Title 31 U.S. Code. Any person who fails to file the 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 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.]

Executed this _____ day of _____, 20__.

By _____
(Signature of Contractor’s Authorized Official)

(Title of Authorized Official)



ADDENDA ACKNOWLEDGEMENT FORM

The undersigned acknowledges receipt of the following addenda to the Documents.

(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

APPENDIX C

Disadvantaged Business Enterprise (DBE)

The DBE contracting requirements flow down to all third-party contractors and their contracts at every tier. It is the recipient's (MeVa) and the prime contractor's responsibility to ensure the DBE requirements are applied across the board to all contractors and 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.

Overview

It is the policy of the Merrimack Valley Regional Transit Authority (MeVa) and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBEs"), 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 MeVa 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. MeVa shall make all determinations with regard to whether or not a Bidder/Proposer is in compliance with the requirements stated herein. In assessing compliance, MeVa may consider during its review of the Bidder/Offeror's submission package, the Bidder/Proposer's documented history of non-compliance with DBE requirements on previous contracts with MeVa.

Contract Assurance

The Contractor, or any lower-tier 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 MeVa deems appropriate.

DBE Participation

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

1. Certified, at the time of bid opening or proposal evaluation, by the Supplier Diversity Office (SDO) of the Commonwealth of Massachusetts; 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 MeVa.

Proposed Submission

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

1. A list of all subcontractors, including Certified DBEs, with whom the Bidder/Proposer intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each sub for work, the Contract items or parts to be performed by each sub, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the **DBE Participation Schedule** (see below). No work shall be included in the Schedule that the Bidder/Proposer has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Proposer 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 MeVa.
2. An original **DBE Letter of Intent** (see below) from each DBE listed in the **DBE Participation Schedule**.
3. An original **DBE Affidavit** (see below) from each DBE stating that there has not been any change in its status since the date of its last certification. A copy of the DBE's most recent Certification must accompany this Affidavit.

Termination of DBE Subcontractor

The Contractor shall not terminate the DBE subcontractor(s) listed in the **DBE Participation Schedule** (see below) without MeVa's prior written consent. MeVa 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 (5) 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 MeVa 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 the "Sanctions for Violations" section below.

Continued Compliance

MeVa shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds sixty (60) days AND progress payments are allowed in the contract, (such as in construction contracts), the Contractor must submit with each Application for Payment (invoice) the following details for each DBE and non-DBE subcontractor:

- List of all subcontractors under contract on the project
- DBE Status of each listed subcontractor (DBE or Non-DBE)
- Contact Name and Phone # for each listed subcontractor
- Total Value of Subcontract for each listed subcontractor (value should NOT include overhead/profit of GC, only what will be paid to the subcontractor).
- Value of Work Completed during current payment request

- Value of Work Completed over life of contract
- If value for completed work equals the total value of the subcontract, provide confirmation that any retainage held will be released to the subcontractor within 30 days of payment to GC by MeVa.

This documentation will be compared to the documents submitted with this proposal to ensure that no subcontractor substitutions were made without the consent of MeVa, and that contract values match the DBE Participation Schedule.

The successful Bidder/Proposer shall permit:

- MeVa to have access to necessary records to examine information as MeVa 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/Proposer and other DBE parties entered into during the life of the Contract.
- The authorized representative(s) of MeVa, 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 accordance with 2 C.F.R. § 200.333. See the "Access to Records" federal clause in Appendix D for more details.

Sanctions for Violations

If at any time MeVa 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, MeVa 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 PARTICIPATION SCHEDULE

I hereby certify that _____
 (Name of Company)

— Is a **Certified Disadvantaged Business Enterprise (DBE)** – as defined in 49 CFR (Subtitle A) Part 26.5
OR

— Is NOT a Certified Disadvantaged Business Enterprise.

I further certify that our company shall:

— Perform 100% of the work required, including the provision of goods/materials, to fulfill the scope of services being procured under this RFP/IFB.

OR

— Utilize the following subcontractor(s) in the performance of the work required under this bid. The following is a breakdown of the contract work for our company **and** its subcontractors:

LIST ALL SUB-CONTRACTORS BEING UTILIZED ON THIS PROJECT REGARDLESS OF DBE STATUS

Company/Firm Name:	Contact Person/ Email:	Function being performed:	\$ Value of Work to be Performed	DBE Status (Y or N):
Total contract Value: \$		Total DBE(s) Value: \$		DBE Value as a % of Contract Value: %

I attest that the information above is true and accurate to the best of my knowledge and information.

 Signature of Contractor’s Authorized Representative

 Date

DISADVANTAGED BUSINESS ENTERPRISE LETTER OF INTENT

To: _____
 (Name of Prime Bidder/Proposer)

The undersigned intends to perform work in connection with this project as a DBE.

The Disadvantaged Business status of the undersigned can be confirmed on the most recent list of Certified Disadvantaged Business Enterprises published by Supplier Diversity Office of the Commonwealth of Massachusetts:

The undersigned is prepared to perform the following work in connection with the above project, (Specify in detail particular work items or parts thereof to be performed):

At the following price: _____

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

<u>Items</u>	<u>Projected Commencement Date</u>	<u>Projected Completion Date</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

The above work will not be sublet to a non-Disadvantaged Business Enterprise at any tier. The undersigned will enter into a formal agreement for the above work with you conditioned upon your execution of a contract with the MeVa.

Name of Disadvantaged Business Enterprise: _____

By: _____
 (Signature and Title of Person)

Date: _____



DISADVANTAGED BUSINESS ENTERPRISE (DBE) AFFIDAVIT

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 expired, nor has there been any change in the disadvantaged class status.

(Name of DBE Firm)

(Signature and Title of Person Making Affidavit)

Sworn to before me this _____ day of _____ 20

(Notary Public)

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

APPENDIX D

REQUIRED FTA CLAUSES

I. All FTA-Assisted Third-Party Contracts and Subcontracts

A. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

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

B. ACCESS TO RECORDS AND REPORTS

1. **Record Retention:** The Contractor will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-Contracts, leases, subcontracts, arrangements, other third-party Contracts of any type, and supporting materials related to those records.
2. **Retention Period:** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
3. **Access to Records:** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract in accordance with 2 CFR § 200.337.
4. **Access to the Sites of Performance:** The Contractor agrees to permit FTA, and its contractors, access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

C. FEDERAL CHANGES

49 CFR Part 18 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 Purchaser 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.

D. CIVIL RIGHTS AND EQUAL OPPORTUNITY

The Agency (MEVA) is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency 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 Contract, 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 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.
4. **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. § 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.
5. **Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

E. ENERGY CONSERVATION

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

F. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR §1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

G. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

Recipients and subrecipients are prohibited from obligating or expending loans grant funds to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - b. Telecommunications or video surveillance services provided by such entities or using such equipment.
 - c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

In implementing the prohibition under [Public Law 115-232](#), section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained. See Public Law 115-232, section 889 for additional information. See also 2 CFR § 200.471.

H. SAFE OPERATION OF MOTOR VEHICLES

1. Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or Agency.

2. Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

I. NOTICE TO THIRD PARTY PARTICIPANTS

Federal requirements that apply to the Recipient (MEVA) or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and Applicable changes to those federal requirements will apply to each Third Party Agreement (Contract) and parties thereto at any tier.

J. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. & §3801 et seq. And US DOT regulations "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. & §5307, the Government reserves the right to impose the penalties of 18 U.S.C. & §5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

K. TRAFFICKING IN PERSONS

The contractor agrees that it and its employees that participate in MEVA's federally funded contract, may not:

1. Engage in severe forms of trafficking in persons during the contract period of time;
2. Procure a commercial sex act during the contract period of time; or
3. Use forced labor in the performance of the contract or any sub-agreements thereunder.

II. FTA-Assisted Third-Party Contracts and Subcontracts Exceeding \$10,000

L. PROCUREMENT OF RECOVERED MATERIALS

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

1. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 - a. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - b. Meeting contract performance requirements; or
 - c. At a reasonable price.
2. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

M. TERMINATION

1. Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency'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 Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

2. 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 Agency may terminate this contract for default. Termination shall be affected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only 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 Agency 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 Agency, after setting up a new delivery or performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

3. Opportunity to Cure (General Provision)

The Agency, 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 Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency 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 Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

4. Waiver of Remedies for any Breach

In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

5. Termination for Convenience (Professional or Transit Service Contracts)

The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

6. 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 Agency may terminate this contract for default. The Agency 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 Agency.

7. 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 Agency may terminate this contract for default. The Agency 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 Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency 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 Agency.

8. Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure 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 provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency 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 Agency 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 Agency in completing the work.

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

- a. 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 Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and
- b. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.
- c. 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 Agency.

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

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency 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 Agency's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

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

If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency.

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 Agency.

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

The Agency 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 Agency 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 Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency 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 Agency and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Agency, the Contractor shall be paid its contract 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.

III. FTA-Assisted Third-Party Contracts and Subcontracts Exceeding \$25,000

N. DEBARMENT AND SUSPENSION

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of **≥ \$25,000**.

As such, the Contractor shall verify that its principals, (defined at 2 C.F.R. § 180.995), affiliates, (defined at 2 C.F.R. § 180.905), and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

1. Debarred from participation in any federally assisted Award;
2. Suspended from participation in any federally assisted Award;
3. Proposed for debarment from participation in any federally assisted Award;
4. Declared ineligible to participate in any federally assisted Award;
5. Voluntarily excluded from participation in any federally assisted Award; or
6. 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 Merrimack Valley Regional Transit Authority (MeVa). If it is later determined by MeVa that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to MeVa, 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.

O. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

1. The contractor certifies that it:
 - a. Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a

- timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- b. Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months. If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third-Party Agreement with the Third-Party Participant without FTA's written approval.
2. Flow-Down: MEVA agrees to require the contractor to flow this requirement down to participants at all lower tiers, without regard to the value of any sub-agreement.

P. NOTIFICATION TO FTA

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third-Party Agreements and must require each Third-Party Participant to include an equivalent provision in its sub-agreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

1. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
2. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
3. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

IV. FTA-Assisted Third-Party Contracts and Subcontracts Exceeding \$100,000

Q. RESTRICTIONS ON LOBBYING

1. Conditions on Use of Funds:
 - a. No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay 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 any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation,

renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- b. Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.
- c. Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

2. Certification and Disclosure:

MEVA receives federal grants from the FTA and federal subgrants from MassDOT. As such MEVA as an agency is required to file a certification, and a disclosure form (if required), with each federal grant awarded to MEVA that exceeds **\$100,000** or more. The requirement to file said certifications and disclosure forms apply to each tier below MEVA. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the Agency. This means that every contractor and subcontractor who bids on a federally funded project with MEVA must abide by these same regulations.

- a. Every contractor and subcontractor must fill out the Lobbying Certification Form located in Appendix B for every proposal/bid in excess of \$100,000.
- b. Every contractor and subcontractor must file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. An event that materially affects the accuracy of the information reported includes:
 - (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- c. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the MEVA. MEVA shall forward all disclosure forms to FTA or MassDOT.
- d. Any certification or disclosure form filed shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

R. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701- 3708), as

supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

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. 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.

Compliance with the Contract Work Hours and Safety Standards Act:

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any



subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

V. FTA-Assisted Third-Party Contracts and Subcontracts Exceeding \$150,000

S. BUY AMERICA REQUIREMENTS

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR §200.322 “Domestic preferences for procurements,” 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 FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements.

The bidder or offeror must submit to the Agency the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

1. Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- a. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- b. All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
- c. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

2. Waivers:

When necessary, MEVA may apply to FTA for a waiver from these requirements. Requests for a waiver may only be granted under the following circumstances:

- a. applying the domestic content procurement preference would be inconsistent with the public interest;
- b. the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or

- c. the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the domestic content procurement preference must be in writing. MEVA will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver described at <https://www.transit.dot.gov/regulations-and-guidance/buy-america/waivers-granted>.

3. Definitions:

“Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives⁴⁶—that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance/repair of infrastructure in the United States.

T. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts **in excess of \$150,000**:

1. Clean Air Act

- a. 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.
- b. The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

2. **Federal Water Pollution Control Act**

- a. 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.
- b. The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.”

VI. FTA-Assisted Third-Party Contracts and Subcontracts Exceeding the Exceeding Simplified Acquisition Threshold (\$250,000)

U. VIOLATION AND BREACH OF CONTRACT

All contracts in excess of the Simplified Acquisition Threshold (currently set at \$250,000) shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

1. 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 MeVa’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.

2. Performance During Dispute

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

3. 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 therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

4. Remedies

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between MeVa 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 MeVa is located.

5. 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 MeVa, 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.

VII. FTA-Assisted Third-Party Contracts and Subcontracts Involving Transport of Property or Persons

V. CARGO PREFERENCE REQUIREMENTS

The contractor agrees:

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

W. FLY AMERICA

1. **Definitions:** As used in this clause—
 - a. "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
 - b. "United States" means the 50 States, the District of Columbia, and outlying areas.
 - c. "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
2. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
3. If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
4. In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

5. **Statement of Unavailability of U.S.-Flag Air Carriers:** International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:
 - a. Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

VIII. FTA-Assisted Third-Party Contracts Involving Subcontractors

X. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

The contractor 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 Agency 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).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency 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 Agency's written consent; and that, unless the Agency'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).

It is the policy of the Agency 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.

Y. PROMPT PAYMENT

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

The following clauses will be incorporated into any contract arising from this competitive procurement:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contracts no later than thirty (30) days from the receipt of each payment received by the prime contractor from MeVa. Any delay or postponement of payment from the above referenced time frame

may occur only for good cause following written approval of MeVa. This clause applies to both DBE and non-DBE subcontracts.

The prime contractor agrees to return retainage payments to each subcontractor within 30 days after the subcontractors' work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the MeVa. This clause applies to both DBE and non-DBE subcontracts.

MeVa will monitor all payment schedules for inclusion of work performed by subcontractors. MeVa will contact, at random, subcontractors to ensure that payments for satisfactory completed work have been received. If an occurrence is found in which a subcontractor was not paid by the Prime, the prime contractor will not be reimbursed for work performed by subcontractors, unless and until the prime contractor pays the subcontractors and ensures that the subcontractors continue to be promptly paid for work performed.

If a prime contractor determines subcontractor work to be unsatisfactory, it must notify MeVa immediately, in writing, and state the reasons. Failure to comply with this requirement will be construed to be a breach of contract, which may result in the termination of this contract or such other remedy as MeVa deems appropriate.

IX. FTA-Assisted Third-Party Contracts and Subcontracts Involving Construction Activities

Z. AMERICANS WITH DISABILITIES ACT (ADA)

The contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d), which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

AA. DAVIS BACON ACT AND COPELAND ANTI-KICKBACK ACT

For all prime construction, alteration or repair contracts in excess of \$2,000 of FTA assisted funds, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act.

Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

MeVa must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance



of the wage determination. MeVa must report all suspected or reported violations to the Federal awarding agency.

The contractor shall comply with 18 U.S.C. § 874; 40 U.S.C. § 3145, and DOL regulations of 29 C.F.R. Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

1. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses above and such other clauses as the FTA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

BB. BOND REQUIREMENTS

1. Bid Guarantee:

Bidders shall furnish a bid guarantee in the form of a bid bond, or certified treasurer's or cashier's check issued by a responsible bank or trust company, made payable to the Merrimack Valley Regional Transit Authority (MeVa). Bid guarantees shall be required for construction or facilities improvement contracts over \$250,000. The bid guarantee amount shall be 5 percent (5%) of the bid price.

The bid guarantees of unsuccessful bidders will be returned to the bidders immediately upon award of bid (or rejection or expiration of bid). Bid guarantees of successful bidders will be retained until successful completion of the project.

In submitting this bid, it is understood and agreed by the bidder that MeVa reserves the right to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of ninety [90] days subsequent to the opening of bids, without the written consent of MeVa.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of their bid within ninety [90] days after the bid opening without the written consent of MeVa, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guarantee to the extent MeVa's damages occasioned by such a withdrawal, or refusal, or inability to enter into a Contract, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guarantee shall prove inadequate to fully recompense MeVa for the damages occasioned by default, then the undersigned bidder agrees to indemnify MeVa and pay over to MeVa the difference between the bid guarantee and MeVa's total damages so as to make MeVa whole.

The undersigned understands that any material alteration of any of the above or any of the material contained herein, other than that requested will render the bid unresponsive.

2. Performance Guarantee:

A Performance Guarantee in the amount of 100% of the Contract value is required by MeVa to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Contract. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to MeVa within

ten (10) business days from Contract execution. MeVa requires all Performance Bonds to be provided by a fully qualified surety company acceptable to MeVa and listed as a company currently authorized under 31 C.F.R. part 22 as possessing a Certificate of Authority as described hereunder. MeVa may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. MeVa may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

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

- a. A bank in good standing issues it. MeVa will **only** accept a Letter of Credit from a bank.
- b. It is in writing and signed by the issuing bank.
- c. It conspicuously states that it is an irrevocable, non-transferable, “standby” Letter of Credit.
- d. MeVa is identified as the Beneficiary.
- e. It is in an amount equal to 100% of the contract value. This amount must be in U.S. dollars.
- f. The effective date of the Letter of Credit is the same as the effective date of the contract.
- g. The expiration date of the Letter of Credit coincides with the term of the contract.
- h. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the contract. It must specifically reference the contract between MeVa and the Contractor the work stipulated herein.

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

3. Payment Bonds:

A Labor and Materials Payment Bond equal to the full value of the contract (**unless the contract is worth less than \$1 Million, in which case it will only be 50%**) must be furnished by the contractor to MeVa as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to MeVa and listed as a company currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

CC. EQUAL EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION CONTRACTS

The Agency hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause.

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during

employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

- a. Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
4. The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance:
 - a. Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

DD. VETERANS HIRING PREFERENCE

Veterans Employment - Recipients of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the **construction** work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

EE. SEISMIC SAFETY

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

APPENDIX E

Procurement Protest Procedures

A. GENERAL

Protests will only be accepted by MeVa from prospective bidders or proposers whose direct economic interest would be affected by the award of the contract or refusal to award a contract. MeVa will consider all such protests, whether submitted before or after the award of a contract. All protests must be in writing and conform to the following requirements:

1. Be concise and legally arranged.
2. Provide name, address and telephone numbers of the protestor.
3. Identification of the solicitation or contract number.
4. Provide a clear and detailed statement of the legal and factual grounds of the protest including copies of all relevant documents.
5. A statement as to what relief is requested.

B. PROTEST BEFORE AWARD

1. General

Protests before award must be submitted within the time frame as specified below. If the written protest is not received by the time specified the bid or evaluation process shall continue.

2. Protest Before Bid Opening/Receipt of Proposals

Protest addressing the adequacy of the IFB, RFPs, including the pre-award procedure, the Instruction to Bidders, General terms and conditions, specifications and scope of work must be filed with MeVa not less than seven (7) full working days before bid opening. Thereafter, all issues and appeals are deemed waived by all interested parties.

Upon receipt of the written protest, MeVa will determine if the date set for bid opening or proposal due date should be postponed. If the bid date is postponed, MeVa will immediately contact all parties who have been furnished a copy of the IFB or RFP that a protest has been filed and that the bid opening or receipt of proposal is postponed until a final decision is issued. Any appropriate addenda will be issued regarding a rescheduling of the bid opening or receipt of proposal. Any protest may be withdrawn at any time before MeVa has issued its decision.

3. Protest After Bid Opening/Receipt of Proposals

A protest of a decision of MeVa to award a contract must conform to section A. above and be received by MeVa within five (5) full working days of its decision. Thereafter, such issues are deemed waived by all interested parties.

In addition, when a protest against the making of an award is received and MeVa determines to withhold the award pending disposition of the protest, the bidders or proposers (whose bids or proposals might become eligible for award) shall be requested, before expiration of the time for acceptance of the bid or proposal, to extend the time for acceptance (with the consent of sureties if any) to avoid the need for re-advertising.

When a written protest against making of an award is received the award shall not be made until five (5) days after the matter is resolved. MeVa may, however, proceed to make an award if it determines that:

- a) The items to be procured are urgently requested or;
- b) Delivery or performance will be unduly delayed by failure to make the award promptly; or
- c) Failure to make a prompt award would otherwise cause undue harm to MeVa, the Commonwealth of Massachusetts or the Federal Government.

If an award is made the appropriate documents will be prepared to explain the need for the award with notice going to the protestor and other concerned parties.

C. PROTEST AFTER AWARD

Protest against an award must be filed with MeVa, within five (5) full working days immediately following the award. This protest shall conform to the requirements of section A. above. Thereafter, such issues are deemed waived by all interested parties.

Although the number of persons involved in or affected by the filing of a protest may be limited to instances where an award has been made the contractor shall be furnished with the notice of protest and related information. Also, if it appears that the award may be invalidated and a delay in receiving the supplies or service is not prejudicial to MeVa's interest, MeVa shall consider a mutual agreement with the contractor to suspend performance on a no-cost basis.

D. MEVA'S DECISION ON THE PROTEST

MeVa shall render its decision in writing within ten (10) working days from the receipt of the written protest and shall provide notice of this decision to all interested parties.

E. FTA REVIEW

According to FTA Circular 4220.1F, a protester must exhaust all administrative remedies with the grantee (MeVa) before pursuing a protest with the Federal Transit Administration (FTA). An appeal to FTA must be received by the FTA Region 1 Office within five (5) working days of the date the protester learned, or should have learned, of an adverse decision by MeVa. Reviews of protests by FTA will be limited to: (1) MeVa's failure to have or follow its protest procedures, or its failure to review a complaint or protest; or (2) violations of federal law or regulation.



APPENDIX F

Sample Agreement Between MeVa and Selected Proponent

SAMPLE CONTRACT

THIS CONTRACT made this ____ day of _____, 20____ by and between the **MERRIMACK VALLEY REGIONAL TRANSIT AUTHORITY**, a political subdivision of the Commonwealth of Massachusetts, having a usual place of business at 85 Railroad Avenue, Haverhill, Massachusetts 01835, hereinafter referred to as the “**MeVa**”, and _____, having a usual place of business at _____ hereinafter called "**CONTRACTOR.**"

WITNESSETH:

WHEREAS, MeVa requested submission of a “Proposal” in response to MeVa’s RFP G-2286 “Parking Management” to provide parking management and operations services for a period of up to 5 years, hereinafter referred to as “the Project”; and

WHEREAS, the CONTRACTOR submitted a Proposal to perform the work required to complete the Project, and MeVa has decided to award the contract therefore to the CONTRACTOR.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, MeVa and the CONTRACTOR agree as follows:

ARTICLE I

I.A. TERM OF CONTRACT

This Contract shall be in effect from _____ and shall expire on _____, unless terminated earlier pursuant to the terms herein. Two 1-year renewal options may be issued with the timeframe not to exceed _____.

I.B. COMPENSATION

The following list of rates is taken directly from the CONTRACTOR’s fee proposal negotiated in response to MEVA’s RFQ G-2312 dated March 27, 2024. A purchase order will be issued for a fixed price based on each quote received for task order requests from MEVA to the CONTRACTOR throughout the contract term.

ARTICLE II

II.A. THE WORK

The Work is described in MEVA’s RFQ G-2312 dated March 27, 2024, incorporated by reference herein. This multi-year contract will be based on task orders issued on a per project basis. The task order will contain the specific Scope of Work for each project.

ARTICLE III

III.A. PAYMENT AND REIMBURSEMENT

1. The CONTRACTOR shall invoice MeVa after completion and acceptance of work. If there are negotiated milestones noted under Article II above, then the CONTRACTOR may submit invoices after each completed milestone deliverable has been accepted by MeVa.



2. MeVa shall make payment within thirty (30) days after receipt of each invoice with required reports.

ARTICLE IV

IV.A. SUB-CONTRACTS

The CONTRACTOR may enter into subcontracts for specialized architectural or engineering disciplines. Details of each subcontract must be made available to MEVA and Prompt Payment clauses shall apply and be enforced.

ARTICLE V

V.A. INDEMNIFICATION

The CONTRACTOR shall indemnify, defend, and hold MeVa harmless from and against any and all claims, demands, liabilities, actions, causes of actions, costs and expenses, including attorney's fees, arising out of the CONTRACTOR's breach of this Contract or the negligence or misconduct of the CONTRACTOR, or the CONTRACTOR's agents, employees, or subcontractors.

V.B. LIABILITY OF MeVa

MeVa's liability hereunder shall be to make all payments when they shall become due, and MeVa shall be under no further obligation or liability. Nothing in this Contract shall be construed to render MeVa or any elected or appointed official or employee of MeVa, or their successors in office, personally liable for any obligation under this Contract.

ARTICLE VI

VI.A. INSURANCE

The CONTRACTOR shall obtain and maintain during the term of this Contract the insurance coverage in companies licensed to do business in the Commonwealth of Massachusetts, and acceptable to MeVa.

1. All policies shall identify MeVa as an additional insured (except Workers' Compensation) and shall provide that MeVa shall receive written notification at least 30 days prior to the effective date of any amendment or cancellation. Certificates evidencing all such coverages shall be provided to MeVa upon the execution of this Contract. Each such certificate shall specifically refer to this Contract and shall state that such insurance is as required by this Contract. Failure to provide or to continue in force such insurance shall be deemed a material breach of this Contract and shall be grounds for immediate termination.
2. Certificates of Insurance (COI) in the following amounts will be issued to MeVa, as additionally insured, upon notice of award and incorporated into this Contract by reference. All policies shall include a Waiver of Subrogation clause in favor of MeVa.
 - Workers' Compensation & Employers' Liability Insurance – \$1,000,000
 - Commercial Crime Liability Insurance including Employee Theft – \$100,000
 - Cyber Liability – \$1,000,000
 - Auto Liability for Personal Injury and Property Damage – \$200,000 per person and \$500,000 per occurrence for personal injury and property damage
 - Personal Property Insurance, Special Form, including business interruption coverage to cover the full replacement cost of personal property located at the Facilities.
3. No less than 60 days prior to expiration of the insurance policy date, the contractor shall give notice to MEVA of the intent to provide a new certificate. The Administrator or Project Manager shall assure a current certificate is on file at all times during the performance of the contract.

ARTICLE VII

VII.A. TERMINATION:

1. Termination for Cause: If at any time during the term of this Contract MeVa determines that the CONTRACTOR has breached the terms of this Contract by negligently or incompetently performing the work, or any part thereof, or by failing to perform the work in a timely fashion, or by failing to perform the work to the satisfaction of MeVa, or by not complying with the direction of MeVa or its agents, or by otherwise failing to perform this Contract in accordance with all of its terms and provisions, MeVa shall notify the CONTRACTOR in writing stating therein the nature of the alleged breach and directing the CONTRACTOR to cure such breach within ten (10) days. The CONTRACTOR specifically agrees that it shall indemnify and hold MeVa harmless from any loss, damage, cost, charge, expense or claim arising out of or resulting from such breach regardless of its knowledge or authorization of the actions resulting in the breach. If the CONTRACTOR fails to cure said breach within ten (10) days, MeVa may, at its election at any time after the expiration of said ten (10) days, terminate this Contract by giving written notice thereof to the CONTRACTOR specifying the effective date of the termination. Upon receipt of said notice, the CONTRACTOR shall cease to incur additional expenses in connection with this Contract. Upon the date specified in said notice, this Contract shall terminate. Such termination shall not prejudice or waive any rights or action which MeVa may have against the CONTRACTOR up to the date of such termination, and the CONTRACTOR shall be liable to MeVa for any amount which it may be required to pay in excess of the compensation provided herein in order to complete the work specified herein in a timely manner. Upon such termination, the CONTRACTOR shall be entitled to compensation for all satisfactory work completed prior to the termination date, as determined by MeVa.
2. Termination for Convenience: MeVa may terminate this Contract at any time for convenience by providing the CONTRACTOR written notice specifying therein the termination date which shall not be sooner than ten days from the issuance of said notice. Upon receipt of said notice, the CONTRACTOR shall cease to incur additional expenses in connection with this Contract. Upon such termination, the CONTRACTOR shall be entitled to compensation for all satisfactory work completed prior to the termination date, as determined by MeVa, such payment not to exceed the fair value of the services provided hereunder.

ARTICLE VIII MISCELLANEOUS PROVISIONS

VIII.A. INDEPENDENT CONTRACTOR:

The CONTRACTOR acknowledges and agrees that it is acting as an independent CONTRACTOR for all work and services rendered pursuant to this Contract, and shall not be considered an employee or agent of MeVa for any purpose.

VIII.B. COMPLIANCE WITH LAWS

The CONTRACTOR shall comply with all Federal, State and local laws, rules, regulations and orders applicable to the work provided pursuant to this Contract, such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits, and approvals required for the performance of such work.



VIII.C. SUCCESSOR AND ASSIGNS

This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives. Neither MeVa nor the CONTRACTOR shall assign or transfer any interest in the Agreement without the written consent of the other.

VIII.D. NOTICE

Any and all notices, or other communications required or permitted under this Contract, shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service, to the parties at the addresses set forth on Page 1 or furnished from time to time in writing hereafter by one party to the other party. Any such notice or correspondence shall be deemed given when so delivered by hand, if so mailed, when deposited with the U.S. Postal Service or, if sent by private overnight or other delivery service, when deposited with such delivery service.

VIII.E. SEVERABILITY

If any term or condition of this Contract or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Contract shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

VIII.F. GOVERNING LAW

This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts and the CONTRACTOR submits to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Contract.

ARTICLE IX

IX.A. REQUIRED CLAUSES OF THE FEDERAL TRANSIT ADMINISTRATION:

The following Federal clauses apply to this contract, see Appendix D.

- 1) Access To Records and Reports
- 2) Civil Rights and Equal Opportunity
- 3) Energy Conservation
- 4) Federal Changes
- 5) Incorporation Of Federal Transit Administration (FTA) Terms
- 6) No Government Obligation to Third Parties
- 7) Notice to Third Party Participants
- 8) Program Fraud and False or Fraudulent Statements and Related Acts
- 9) Prohibition On Certain Telecommunications and Video Surveillance Services or Equipment
- 10) Safe Operation of Motor Vehicles
- 11) Trafficking in Persons
- 12) Procurement Of Recovered Materials
- 13) Termination
 - a. Termination for Convenience (General Provision)
 - b. Termination for Default [Breach or Cause] (General Provision)
 - c. Opportunity to Cure (General Provision)
 - d. Waiver of Remedies for any Breach
 - e. Termination for Convenience or Default (Architect and Engineering)
- 14) Debarment And Suspension
- 15) Federal Tax Liability & Recent Felony Convictions

- 16) Notification To FTA
- 17) Restrictions on Lobbying
- 18) Clean Air Act and Federal Water Pollution Control Act
- 19) Violation And Breach of Contract
- 20) Disadvantaged Business Enterprise (DBE)
- 21) Prompt Payment
- 22) Americans With Disabilities Act (ADA)
- 23) Seismic Safety

ENTIRE AGREEMENT

This Contract, including all documents incorporated herein by reference, constitutes the entire integrated contract between the parties with respect to the matters described. This Contract supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto:

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day and year first above written.

MERRIMACK VALLEY REGIONAL TRANSIT AUTHORITY

By: _____
Noah S. Berger, Administrator

Date: _____

(CONTRACTOR NAME)

By: _____
SIGNATURE

PRINT NAME

Title: _____

Date: _____