



MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

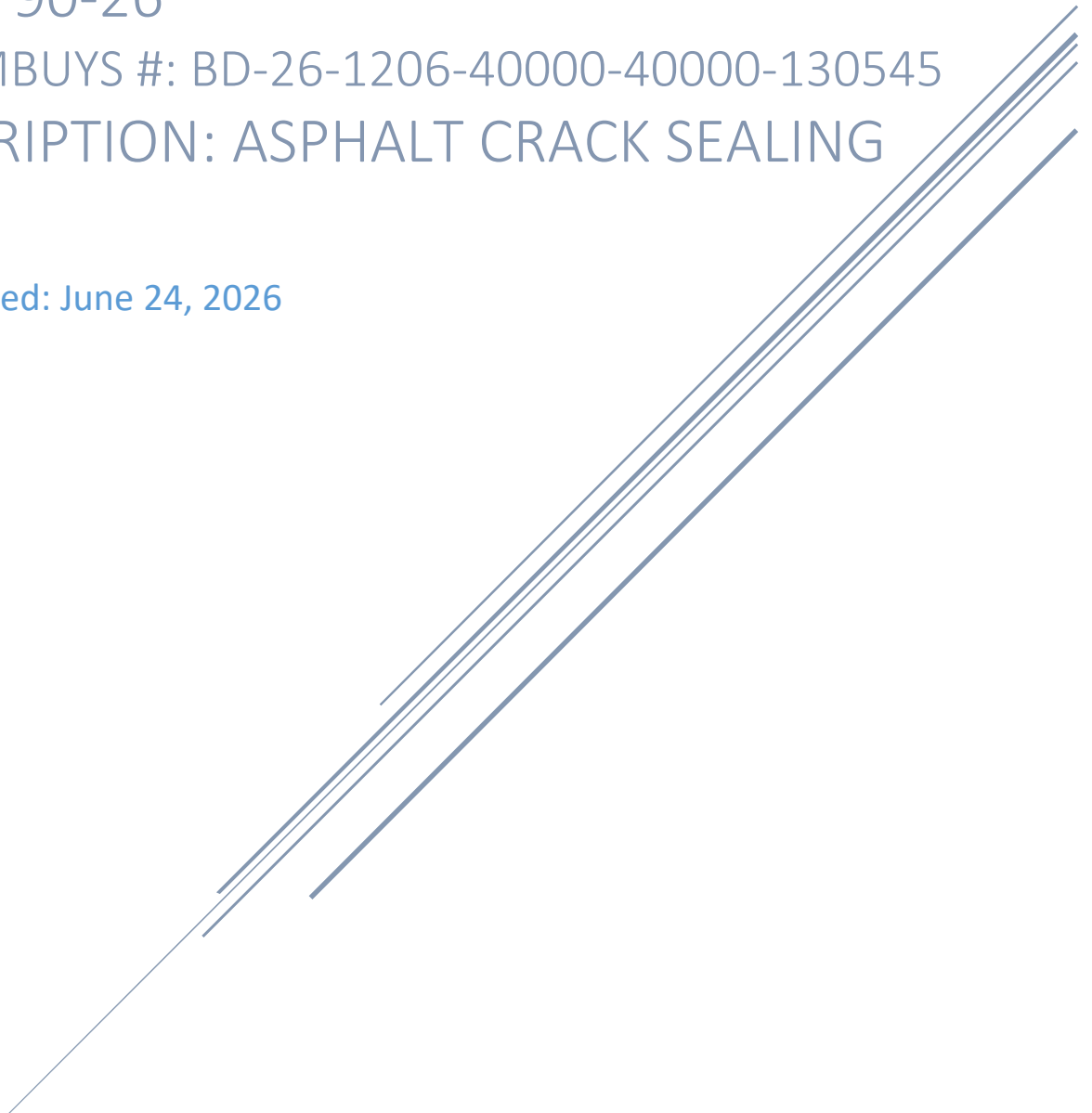
REQUEST FOR PROPOSALS (RFP)

RFP#: 90-26

COMMBUYS #: BD-26-1206-40000-40000-130545

DESCRIPTION: ASPHALT CRACK SEALING

Date Issued: June 24, 2026





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Attn: Bidder/s
Request for Proposals (RFP) # **90-26**
RFP Description: **Asphalt Crack Sealing**

Dear Madam/Sir,

The Massachusetts Bay Transportation Authority (“MBTA” or “Authority”), a corporate and a political subdivision of the Commonwealth of Massachusetts, existing pursuant to Mass. Gen. Laws, ch 161A (as amended) invites Bidders to participate in the competitive bid for Asphalt Crack Sealing. The Scope of Work is outlined below in Section 2. The MBTA may at its own discretion award the contracts (s) to one or multiple Bidders. All formal communication with the MBTA during the bidding period shall be only through the designated point of contact.

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

Katie Kroeger
Massachusetts Bay Transportation Authority
10 Park Plaza, Room 2810
Boston, MA 02116
Email: Kkroeger@mbta.com

The RFP shall be launched through the COMMBUYS portal. The RFP proposals must be submitted through COMMBUYS no later than Wednesday July 29, 2026, by 2:00PM, in full compliance with this RFP including but not limited to Section A, General Instructions to Bidders. This RFP shall remain in force until the execution of the Contract, or until modified or cancelled by the MBTA.

Respectfully,

Katie Kroeger

Massachusetts Bay Transportation Authority
RFP # **90-26**



1. INTRODUCTION

1.1 Description of Procurement

The Massachusetts Bay Transportation Authority (“MBTA” or “Authority”) seeks to have all labor and equipment necessary to perform all operations in connection with the cleaning and sealing of construction and random cracks in bituminous concrete pavements, including vegetation removal and sterilization of cracks, where necessary.

1.2 Components of the Request for Proposal

The Request for Proposal (RFP) is comprised of the following documents:

- RFP 90-26, and Form Enclosures including:
 - Enclosure 1 – Bid Cover Letter
 - Form A – Authorized Signatory
 - Form B – Pre-Award Bidder Evaluation Data Form
- Attachments
 - Exhibit A – MBTA Minimum Insurance Requirements
 - Exhibit B – Prevailing Wage Data
 - Form C – Bidder Technical Response
 - Form D – Bidder Price Response

2. SCOPE OF WORK

The Scope of Work is Appendix A in COMMBUYS.

3. BIDDERS INSTRUCTIONS AND PROCUREMENT PROCESS

3.1 Procurement Method

This procurement is conducted pursuant to applicable state and federal laws including, but not limited to, Massachusetts General Laws c. 30 section 39M (public works contracts for construction, alteration, remodeling or repair).

- 3.1.1 As applicable Trade Names and Alternatives – Or Equal**, an item shall be considered equal to the item so named or described if, in the opinion of the MBTA: (1) it is at least equal in quality, durability, appearance, strength and design, (2) it will perform at least equally the function imposed by the general design for the public work being contracted for or the material being purchased, and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the specifications.

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



This RFP will be launched and managed via COMMBUYS. Instructions for log-in and use of COMMBUYS are described in reference material on the website and at <http://www.mass.gov/anf/docs/osd/forms/instructions-for-vendors-responding-to-bids.docx>

Bidders may also contact the COMMBUYS Helpdesk at COMMBUYS@state.ma.us or the COMMBUYS Helpline at 1-888-MA-STATE. The Helpline is staffed from 8:00 a.m. to 5:00 p.m. Monday through Friday (Eastern Time), except on federal, state, and Suffolk county holidays.

3.1.2 MBTA DESIGNATED REPRESENTATIVE

Unless specifically stated otherwise in this RFP, Bidder must submit changes to Bidder’s designated representative and any other communications in writing to the MBTA’s Designated Representative via COMMBUYS. The MBTA’s Designated Representative is Katie Kroeger kkroeger@mbta.com.

3.1.3 IDENTIFICATION OF BIDDER DESIGNATED REPRESENTATIVE

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

3.2 Prequalification

Prequalification is not required for this procurement.

3.3 RFP Calendar and Delivery Instructions

Bidder is required to prepare and submit all required documents MBTA electronically via COMMBUYS.

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

TABLE 2-1: RFP CALENDAR		
Procurement Activity	Date	Time
RFP issued	6/24/2026	C.O.B.
Pre-bid conference (email kkroeger@mbta.com for link to attend virtual meeting)	7/1/2026	2:00 p.m.
Deadline for submission of Proposer questions on COMMBUYS	7/13/2026	2:00 p.m.
Official Answers for Bid Q&A published by MBTA on COMMBUYS	7/20/2025	2:00 p.m.
Response Due Date on COMMBUYS	7/29/2026	2:00 p.m.
Virtual Public Opening (see Section 3.11)	7/29/2026	2:30 p.m.
Contract Execution (estimated)	8/14/2026	
Service Start Date (estimated)	9/1/2026	



3.4 Pre-Bid Conference

The MBTA reserves the right to hold one or more Pre-Bid Conferences with all Bidders at any time prior to the Response Date. Pre-Bid Conferences may be held either in person or by telephonic or electronic means. If held telephonically or electronically, the Pre-Bid Conference will permit interactive communication between all Bidders and the MBTA. The MBTA will provide written notice of any Pre-Bid Conference via COMMBUYS. If a Pre-Bid Conference is conducted by telephonic or electronic means, the notice will inform Bidders of the manner of the meeting.

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

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

3.5 Dissemination of Confidential Information

Not Applicable

3.6 Examination of RFP

Each Bidder shall be solely responsible for examining, with appropriate care and diligence, the RFP, including RIDs and any addenda and material made available to Bidders by the MBTA, and for informing itself with respect to any and all conditions that may in any way affect the amount or nature of its Response, or the performance of the Contractor's obligations under the Contract with the MBTA. Failure of the Bidder to so examine and inform itself shall be at its sole risk, and the MBTA will provide no relief for any error or omission.

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

3.7 Rules of Contact

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

The specific rules of contact are as follows:

- i. No Bidder, or any of its team members, may communicate with another Bidder or its team members with regard to this RFP or either team's Response, except that subcontractors that are shared between two or more Bidder teams may communicate with their respective team members so long as those Bidders establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams. This prohibition does not apply to public discussions regarding the RFP at any MBTA sponsored Bidders' conferences.
- ii. No Bidder or representative thereof shall have any ex parte communications regarding the RFP, the Contract, or the procurement described herein with any member of the MBTA's Board of



Directors, the Massachusetts Department of Transportation (“MassDOT”) Board of Directors, or with any MassDOT or MBTA staff, advisors, contractors, or consultants involved with the procurement, except for communications expressly permitted by the RFP or except as approved in advance at the MBTA’s Designated Representative’s sole discretion. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP, Contract, or procurement or from participation in public meetings of the MBTA or MassDOT Boards of Directors or any public or Bidder workshop related to this RFP.

- iii. The Bidders shall not contact employees, representatives, regarding the Contract, or the procurement.
- iv. Any communications determined by the MBTA, in its sole discretion, to be improper may result in disqualification.
- v. Any official information regarding this RFP will be disseminated from the MBTA’s Designated Representative on COMMBUYS.
- vi. The MBTA will not be responsible for any oral exchange or any other information or exchange that occurs outside the official process specified herein.

3.8 Clarifications of Specifications, Questions and Answers

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

Questions and clarification requests shall be minimized or aggregated to the extent possible. All questions and clarification requests shall be made by Bidder through the “Bid Q&A” tab in COMMBUYS. Such comments and questions may be submitted at any time prior to the applicable date specified in Section 3.3 or such later date as may be specified in any addendum and shall: (i) identify the document; (ii) identify the relevant section number and page number) or, if it is a general question, indicate so; and (iii) not identify the Bidder in the body of the question or contain proprietary or confidential information. Questions submitted in any other format or method than those described above will not be considered.

Responses to requests for clarification or questions will be provided in writing and issued by the MBTA’s Designated Representative via COMMBUYS. In addition, the MBTA reserves the right to, in its sole discretion, not answer all questions submitted by Bidders.

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

3.9 RFP Addendum

The MBTA reserves the right to issue addenda to the RFP after initial publication.

The MBTA will not be bound by, and Bidders should not rely on, any oral communications regarding the RFP. Use of any information gathered or received from other agencies or entities shall be at the Bidder’s own risk. Only information verified in writing by the MBTA will be considered reliable.

It is each Bidder’s responsibility to check COMMBUYS for any addenda and any Bid Q&A records related to this RFP. The MBTA and the Commonwealth accept no responsibility and will provide no accommodation to Bidders who submit their Response based on an out-of-date RFP or on information received from a source other than COMMBUYS.



The Bidder shall acknowledge in its Technical Proposal Cover Letter (*see* Enclosure 1) receipt of all addenda and question and answer responses. Failure to acknowledge such receipt may cause the Response to be deemed non-responsive and be rejected.

Should the MBTA make changes to any specification, stipulation, requirement, or procedure, notification will be made to all Bidders in the form of written Addenda. No officer, agent, or employee of the MBTA is authorized to amend any provision contained in this solicitation, including the specifications, unless such amendment is issued as an Addendum and sent to all Bidders. If this solicitation is modified by an amendment, then all terms and conditions that are not modified remain unchanged.

3.10 Due Date

Bids are due electronically through [COMMBUYS](#) no later than the date and time listed in Table 1 above for the work described herein. Bidder is required to prepare and submit all required documents requested in this IFB to MBTA electronically via [COMMBUYS](#), including all Bid forms contained in this package. Bidders shall complete the **Enclosure 1 – Bid Cover Letter** and complete the check boxes to indicate the bid documents that constitute their bid.

Note: Bid packages that do not follow instructions above may be disqualified.

3.11 Virtual Public Bid Opening

Bids will be publicly opened for this procurement via Microsoft Teams.

Date: Wednesday July 29, 2026

Time: 2:30 p.m.

[Join the meeting now](#)

Meeting ID: 288 068 910 384 1

Passcode: nZ62LA2E

3.12

MBTA Standard Contract and Terms & Conditions

The MBTA does not encourage attempts to negotiate the Section 9.0 Massachusetts Bay Transportation Authority Standard Contract Terms & Conditions. Many of these provisions are required by law; others are longstanding MBTA policy / practice. Accordingly, Bidders / proposers should only redline or object to provisions that they find absolutely unacceptable. Any rejection or modification of these provisions may disqualify a Bid / proposal as being non-responsive or non-compliant

3.13 Confidentiality / Public Information Act Disclosure Requests

3.13.1 Disclosure Waiver

Each Bidder, by submitting a Response to the MBTA in response to the RFP, consents to the disclosures described in this RFP, including this Section and all other disclosures required by law, and expressly waives any right to contest, impede, prevent, or delay such disclosure, or to initiate any proceeding that may have the effect of impeding, preventing, or delaying such disclosure, under Mass. Gen. Laws, ch. 66 (the Massachusetts Public Records Law or “Public Records Law”) or any other law relating to the confidentiality



or disclosure of information. Under no circumstances will the MBTA be responsible or liable to a Bidder or any other party as a result of disclosing any such materials. Each Bidder hereby further agrees to assist the MBTA in complying with these disclosure requirements.

3.13.2 Public Disclosure of Response Documents

After execution of the Contract, or in the event that the procurement is cancelled by the MBTA, the MBTA shall have the right to publicly disclose any and all portions of all the Responses. The MBTA will not disclose material deemed confidential by the MBTA in accordance with Section 3.13.3, unless otherwise required by law

3.13.3 Disclosure Process for Requests Under the Public Records Law

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

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

If the MBTA receives a request for public disclosure of all or any portion of a Response or its related information that is designated as “trade secret - proprietary,” the MBTA will endeavor to use reasonable efforts to notify the applicable Bidder of the request. The Bidder can assert, in writing and at its sole expense, a claimed exception under the Public Records Law or other applicable law, within the time period specified in the notice issued by the MBTA and allowed under the Public Records Law. The Bidder can choose to defend any action seeking release of the records it believes to be confidential information. The Bidder shall indemnify, defend, and hold harmless the MBTA and its agents and employees from any judgments awarded against the MBTA and its agents and employees in favor of the party requesting the records, including any and all costs connected with that defense. This indemnification survives the MBTA’s cancellation or termination of this procurement or award and subsequent execution of a Contract. In submitting a Response, the Bidder agrees that this indemnification survives as long as the trade secret, proprietary information is in the possession of the MBTA.

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

3.14 Business Conduct

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

Bidder shall not directly or indirectly, in relation to this RFP, give, promise, attempt to give, or approve or



authorize the giving of anything of value, including by transferring all or part of the remuneration payable under any Contract, to:

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

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

3.15 Collusion

The Bidder understands that any Bid submitted to the MBTA is made without collusion with any other Bidder submitting a Bid on the same commodity / service and is in all respects fair and without fraud.

3.16 Prices

Each Bid must contain the unit price(s) / rate(s) or lump sum price, extended price(s), and the grand total of the Bid. Bidders shall submit their pricing using **Form D: Bidder Pricing Response**. The unit price / rate shall prevail in case of an error in price extension. Prices submitted shall be valid throughout the Acceptance Period.

3.17 Acceptance Period

The Authority requires a minimum Acceptance Period of at least one hundred and twenty (120) calendar days. In case the MBTA requires an extension, the MBTA will notify all Bidders accordingly. "Acceptance Period" for purposes of this solicitation means the number of calendar days available to the MBTA for awarding a contract based on the Due Date specified in this solicitation for receipt of Bids.

3.18 Eligible Entities

Any contract resulting from this Bid will be open for use by all MassDOT Divisions.

3.19 Pre-Contractual Expenses

The MBTA shall not be liable for any pre-contractual expenses incurred by the Bidder in the preparation of its proposal. The Bidder shall not include any such expenses as part of its proposal. Pre-contractual expenses are defined as expenses incurred by the Bidder including but not limited to preparing its Bid in response to this solicitation, submitting its Bid to the MBTA, negotiating with the MBTA any matter related to this Bid, inspection, testing, shipping, and return shipping of proposed goods samples, or any other expenses incurred by the Bidder prior to date of award, if any, of the Agreement.

3.20 Tax Exemption

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

The Bidder alone shall be responsible for payment of all federal, state and local taxes of all types and kinds applicable to such fees incurred under this Agreement.



3.21 Insurance

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

4. SUBMISSION OF RESPONSE

4.1 Response Submissions

Bids will be opened in COMMBUYS on the date and time listed in Section 3.3, for the work described herein at the address below. An initial bid open summary posted in COMMBUYS.

Bidders are required to submit a Bid including all Bid forms contained in this package. Do not remove pages. Bidders shall complete the Enclosure 1 – Bid Cover Letter and complete the check boxes to indicate the bid documents that constitute their bid. The Bid Cover Letter placed on the top of all bid documents when submitted to the MBTA. **Scanned copy of bid deposit bond included in response.**

Bid Deposit mailed (if a check):

Attention: MBTA Procurement & Logistics, Katie Kroeger
RFP #90-26 Asphalt Crack Sealing
Open Date: July 29, 2026, 2:30 p.m.

Note: Bid packages that are received that do not follow instructions above may be disqualified. Please do not write anything additional on the package.

Each Response shall be submitted with the specific components listed in Enclosure 1 Bid Cover Letter.

If a Bidder is a team, whether or not legally formed, Enclosure 1 Bid Cover Letter shall be signed by all parties to the Bidder so that the Response is legally binding upon each member of the Bidder.

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

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

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

4.2 Power of Attorney

Bidder shall complete Form A: Authorized Signatory or may enclose a power of attorney in its own form, duly signed by a legally authorized officer of the Bidder authorizing the Authorized Signatories to sign the Response and bind the Bidder to the Response.



4.3 Acceptance of Response

The Response constitutes a binding offer by the Bidder to perform the Scope of Work on the terms of the Response, and the MBTA shall have the right to accept or reject such offer and/or any conditions proposed in full or in part. If the Response is accepted, the Bidder shall conclude the Contract with the MBTA, based on the RFP, any addenda, the Response and any agreed amendments thereto. Until the formal Contract is signed, Bidder has no authority to proceed with the Scope of Work or to incur any costs for which MBTA may be held liable. MBTA shall have no obligations towards Bidder until a formal contract has been entered into.

4.4 Validity of Response

The Response is irrevocable, and shall remain valid and open for acceptance, for a period of one hundred and eighty (180) days after the Response due date. The MBTA reserves the right to extend the validity period and notify Bidders accordingly.

4.5 Incomplete Response

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

5. MBTA POLICIES

5.1 SAFETY

- A. The Contractor shall conduct a pre-construction kick off safety meeting on site in coordination with the MBTA to discuss contract specific hazards.
- B. The Contractor and any subcontractor shall not require any person employed in performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health or safety, as determined under construction safety and health standards
- C. The Authority may stop any work that it considers to be unsafe.
- D. The Contactor shall complete daily safety inspections of the job site and contiguous public areas and take any corrective actions to eliminate unsafe conditions. Inspections must be documented and made available to the MBTA upon request for the duration of the project.
- E. The Contractor shall take all reasonable precautions in the performance of the work to protect the safety and health of its employees and members of the public and shall comply with all applicable MBTA, Local, State and Federal safety and health regulations and associated reporting requirements.
- F. The Contractor shall be responsible for all its lower-tier sub-contractors and vendor's compliance.
- G. Contractor management shall make a commitment for accident prevention and fire prevention. Safety shall take precedence over schedule and production. Enforcement action is mandatory.
- H. The Authority will not compensate the Contractor for delays or denials to work when the Contractor is in violation of regulations listed in this contract
- I. All contractor/subcontractor equipment (including hi-rail) operators must be trained, certified, and properly licensed for each specific piece of equipment they will operate.
- J. If the contractor/subcontractor equipment is involved in a derailment, near miss, or incident which caused injury or exposed personnel to injury and/or caused damage to Authority property, that equipment is subject to the Authority's Impound Policy/Procedure.
- K. Equipment shall not be placed or operated within fouling distance (15' from the centerline) of track without first obtaining the permission of the Authority.



5.2 Personal Protection Equipment (PPE)

- A. Obtain and comply with the latest revision of the MBTA's requirements for personal protective equipment as outlined in the current ROW Safety policies and summarized at <https://www.mbta.com/engineering/safety-resources>
- B. All personnel working on the project site, within the MBTA construction project limits are required to wear an MBTA approved high visibility reflective safety garment, hard hat, safety glasses, and protective footwear at all times.

All Contractor personnel working in the MBTA ROW will require the use of MBTA flaggers in compliance with all requirements set forth by the MBTA ROW Rulebook.

5.3 Protection of the Public

- A. All necessary precautions to prevent injury to the public or damage to property of others shall be taken. The public is defined as all persons not employed by or under contract or subcontract to the MBTA. Installation of temporary barriers and/or fencing designated to protect the public shall be reviewed and approved by the MBTA.
- B. Work shall not be performed in any area occupied by the public unless specifically permitted by the contract or in writing by the MBTA.

5.4 Small-, Minority-, and Women-owned Businesses

It is the policy of the Commonwealth and the MBTA to ensure non-discrimination in the procurement of goods and services. It is the MBTA's intention to create a level playing field on which all contractors and subcontractors can compete fairly for contracts. The MBTA promotes equity of opportunity in state contracting; and to that end; encourages full participation of certified small, minority, women, and other businesses defined by the Commonwealth's Supplier Diversity office. The MBTA further recognizes the importance of meaningful partnerships involving subcontracting with certified small-, minority-, and women-owned businesses.

6. SELECTION PROCESS AND EVALUATION

6.1 Response Opening and Confidentiality

All information received from each Bidder will be treated as confidential information and will not be distributed prior to Contract execution, other than for the purpose of evaluation of the Response.

6.2 Responsiveness Review and Basis of Award

Award will be made to the lowest priced responsive Bid and eligible Bidder. The MBTA reserves the right, in its sole discretion, to determine if a Bid is lowest responsible and eligible bidder. In determining whether a Bidder has the ability to perform successfully under the terms and conditions of the proposed procurement, the MBTA will consider such matters as the Bidder's integrity, compliance with public policy (e.g., EEO record, debarment status, etc.), record of past performance, specific minimum requirements detailed in the RFP (if any), and financial and technical resources. Bidder is required to complete Form A: Pre-Award Bidder Evaluation Data Form.

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



6.3 Scope of Proposal

Pursuant to this Request for Proposals (“RFP”), Bidders and Bids are required to comply with the terms and conditions stated herein in order to be deemed responsive and responsible. If a Bid does not meet all of the requirements listed in the solicitation, the Bidder’s proposal may be disqualified. Failure by the Bidder to examine all information pertaining to this solicitation or participate in any scheduled on-site visits will be at the Bidder’s risk.

6.4 Rejection of Bid

The MBTA reserves the right to reject any and all Bids, in whole or in part, if such action is determined to be in the best interests of the Authority. Unless all Bids are rejected, award shall be made to the lowest priced responsive Bid and responsible Bidder.

6.5 Successful Bidder

The successful Bidder will be posted on COMMBUYS. All unsuccessful Bidders shall immediately return all confidential information to the MBTA.

6.6 MBTA Reserved

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

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



- l) Appoint an Evaluation Team to evaluate Responses, make recommendations to the MBTA and MassDOT Boards of Directors, and seek the assistance of MBTA, MassDOT, and consultant technical experts in Response evaluations.
- m) Require confirmation or clarification of information furnished by a Bidder, require revised or additional information from a Bidder concerning its Response, and require additional information to clarify the Response submitted in response to this RFP.
- n) Conduct presentations with Bidders, identify a short-list of Bidders, and conduct on-site visits at Bidder facilities.
- o) Declare a competitive range, conduct discussions, and request Response revisions and best and final offers.
- p) Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFP.
- q) Add or delete Bidder responsibilities from the information contained in this RFP.
- r) Waive deficiencies in a Response, accept and review a non-conforming Response, or permit clarifications, revisions, or supplements to a Response.
- s) Negotiate with a Bidder without being bound by any provision in its Response, or choose to award and/or execute the Contract without negotiations.
- t) Disqualify any Bidder that changes its submittal without MBTA approval.
- u) Disqualify any Bidder under this RFP for violating any rules or requirements of the procurement set forth in this RFP or in any other communication from MBTA.
- v) Delay issuance of notice to proceed after execution of the Contract.
- w) Conduct all or any portion of the Scope of Work itself.
- x) Exercise any other right reserved or afforded to the MBTA under this RFP.

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

In no event shall the MBTA be bound by, or liable for, any obligations with respect to the work to be performed under the Contract until such time (if at all) as the Contract, in form and substance satisfactory to the MBTA, has been executed and authorized by the MBTA and, then, only to the extent set forth therein; provided, however, that the foregoing disclaimer in this sentence shall not apply to the obligations of the MBTA to the Bidders during the procurement process, which obligations are expressly set forth in this RFP. In submitting a Response to the RFP, each Bidder is specifically acknowledging these disclaimers.

6.7 Appeal / Protest Procedures

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

7. CONTRACT STRUCTURE

The contract ("Contract") between the MBTA and the winning Bidder shall be formed by the following sections ("Sections") of RFP #90-26 in order of precedence.



- A. Any change orders or amendments, the most recent having precedence
- B. Memorandum of Contract
- C. Standard Contract and Terms & Conditions
- D. Scope of Work
- E. Contractor Proposal
- F. Insurance Requirements
- G. Contractor Fee for Service; Pricing & Invoicing



Enclosure 1 – Bid Cover Letter

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

Instructions: Bidders shall complete the Bid Cover Letter below with their company name, total bid amount, and completed check boxes to indicate the bid documents that constitute their bid. **The Bid Cover Letter should be placed on the top of all bid documents when submitted to the MBTA.**

RFP #:	90-26
Project Name:	Asphalt Crack Sealing
Bidder (Company Name):	
Total Bid Amount:	

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

Forms	Check to Indicate Submitted Bid Documents
Form A: Authorized Signatory	<input type="checkbox"/>
Form B: Pre-Award Bidder Evaluation Form	<input type="checkbox"/>
Form C: Bidder Technical Response	<input type="checkbox"/>
Form D: Bidder Price Response	
Signed Section 9.4 Massachusetts Bay Transportation Authority Standard Terms and Conditions	<input type="checkbox"/>
Bond Requirements Bid Bond or Deposit: 5% Payment Bond: 50%, Submit letter from Surety that bonding is obtainable Performance Bond: 50%, Submit letter from Surety that bonding is obtainable	<input type="checkbox"/>
Proof of Insurance	<input type="checkbox"/>

The undersigned, identified as Bidder, declares that Bidder has carefully reviewed and examined the



contents of this Request for Proposal and all attached documents.

After review of all RFP and RFP attachments and attesting to understanding and acceptance of same, the undersigned Bidder proposes to furnish all necessary labor, materials, equipment, machinery and tools required to complete the Work as described and specified in the Contract Documents.

This proposal includes a Bid Deposit in the form of: (1) a bid bond or (2) a certified check on, or a treasurer's or cashier's check issued by, a responsible bank or trust company, payable to Massachusetts Bay Transportation Authority, in the amount of 5% of the Total Amount of Bid identified herein.

In submitting this Bid, Bidder represents that:

1. Bidder has examined copies of all the Contract Documents, including any Addenda thereto.
2. Bidder has examined the legal requirements (federal, stated, and local laws, ordinances, rules, and regulations) and the conditions affecting cost, progress, or performance of the Work, and has made such independent investigations as Bidder deems necessary to complete this Bid and carry out the Work in accordance therewith.

The undersigned certifies under penalties of perjury that this bid 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 undersigned further agrees to perform the Work in its entirety in accordance with the Contract Documents within the prescribed time, and to the total and complete satisfaction of the Massachusetts Bay Transportation Authority and in accordance with pricing response submitted.

Bidder (company name):

Authorized Representative Name:

(BLOCK LETTERS)

Authorized Representative's Signature:

Title:

Date:



Form A: Authorized Signatory

Vote of Corporation, Authorized Signatory

At a meeting of the Board of Directors of _____, held on the _____ day of _____, 20____, at which all the Directors were present or waived notice, it was VOTED, that, _____, who is the duly elected _____ of this company be and hereby is authorized to execute contracts, bonds and other instruments in the name of and behalf of said company and affix its corporate seal thereto; and such execution by said _____ of any contract or other instrument or obligation in this company’s name and on its behalf by such _____ of the company under seal, shall be valid and binding upon this company.

[Name of Company]

[Name of Officer]

[Title of Officer]

[Name of Officer]

[Title of Officer]

A True Copy Attest:

Clerk:

[Signature]

[Print Name and Title]

[Business Address]

[Date]

I, _____, hereby certify that I am the Clerk of _____ and that _____ is duly elected _____ of said company, and that the above vote has not been amended or rescinded and remains in full force and effect as of this date.

[Name of Clerk]

[Name of Company]

[Name of Officer]

[Title of Officer]

Clerk [Corporate Seal]



Form B: Pre-Award Bidder Evaluation Data Form

Pre-Award Bidder Evaluation Data			
Name of Firm:			
Federal Identification Number:			
Legal Address:			
Contact Name:			
Telephone Number:			
Email:			
Please select one: <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Joint Venture <input type="checkbox"/> LLC			
Date Organized:		State Incorporated:	
Names of Officers or Partners:			
Please provide details of any litigation, suits, or court action taken or pending against Bidder below:			
Please provide the following information that demonstrates that the Bidder together with its selected Affiliates and or Subcontractors has the required capabilities to successfully execute the Work. Please submit as attachments the following requested documents:			Check Attachment
Audited financial statements for the last 3 financial years			<input type="checkbox"/>
Attach, if applicable, a list of similar current contracts that demonstrates your technical proficiency, each with contract value amount, name of contracting party, type of work completed, and percentage of work complete to date.			<input type="checkbox"/>
Attach, if applicable, a list of all principal subcontractors and the percentage and nature and value of work each will perform on this project. Principal items of work shall include, but not be limited to, those listed in the solicitation.			<input type="checkbox"/>

Please provide answers to the following questions:	Check
-----------------------------------------------------------	--------------



	Answer
Do you have any outstanding indebtedness or unsecured loans or debts or trading losses not reported within the financial reports?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Do you have any contracts over the last two years that were assessed liquidated damages or termination for non-performance?	Yes <input type="checkbox"/> No <input type="checkbox"/>

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



Form D: Bidder Price Response

Bidders are required to quote firm fixed price(s) / rate(s) or lump sums. The quoted prices shall be inclusive of ancillary charges including but not limited to prevailing wages, tooling, equipment, transportation costs, customs, duty charges, and other associated charges. Bidders shall quote only on goods and services in strict accordance with the specifications / requirements.



8. MBTA STANDARD CONTRACT AND TERMS AND CONDITIONS INSTRUCTIONS FOR VENDORS

8.1 MBTA Standard Contract Instructions (Section 9)

Bidders Do Not sign the following page (Section 9 Massachusetts Bay Transportation Authority Standard Contract) upon submission of their bid. When the MBTA plans to award contract, the MBTA buyer will fill out Section 9 Massachusetts Bay Transportation Authority Standard Contract and send it to the successful bidder for signature.

8.2 MBTA Standard Terms & Conditions Instructions (Sections 9.1 – 9.4)

Bidder shall review and sign the signature block at the end of Sections 9.1 – 9.4 MBTA Standard Terms and Conditions to submit with their bid.

Each bidder must review and sign Massachusetts Bay Transportation Authority Standard Terms and Conditions and submit the signed Section 9.4 with their bid for the bid to be responsive and complete.

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



9. Massachusetts Bay Transportation Authority Standard Contract

CONTRACTOR LEGAL NAME: (and d/b/a):	Massachusetts Bay Transportation Authority (MBTA)
Legal Address: (W-9, W-4,T&C):	10 Park Plaza Boston, MA 02116
Contract Administrator/Manager:	Billing Address : invoices@mbta.com
E-Mail:	Contract Administrator/Manager: name
Phone:	Email: name@MBTA.COM
Fax:	Phone: 617-222-xxxx
	RFI/RFP/IFB/Procurement or Other ID Number: ##

NEW CONTRACT	CONTRACT AMENDMENT
PROCUREMENT OR EXCEPTION TYPE: (Check one option only)	Enter Current Contract End Date <i>Prior</i> to Amendment: _____, 20__.
<input type="checkbox"/> Statewide Contract (OSD or an OSD-designated Department)	Enter Amendment Amount: \$____. (or "no change")
<input type="checkbox"/> Collective Purchase (Attach OSD approval, scope, budget)	AMENDMENT TYPE: (Check one option only. Attach details of Amendment changes.)
<input checked="" type="checkbox"/> MBTA Procurement Attach RFR/RFP/IFB and Response or other procurement supporting documentation)	<input type="checkbox"/> Amendment to Scope or Budget (Attach updated scope and budget)
<input type="checkbox"/> Emergency Contract (Attach justification for emergency, scope, budget)	<input type="checkbox"/> Interim Contract (Attach justification for Interim Contract and updated scope/budget)
<input type="checkbox"/> Contract Employee (Attach <u>Employment Status Form</u> , scope, budget)	<input type="checkbox"/> Contract Employee (Attach any updates to scope or budget)
<input type="checkbox"/> Legislative/Legal or Other: (Attach authorizing language/justification, scope and budget)	<input type="checkbox"/> Legislative/Legal or Other: (Attach authorizing language/justification and updated scope and budget)

The MBTA Terms and Conditions (T&C) have been executed, and are incorporated by reference into this Contract.

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

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

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

PROMPT PAYMENT DISCOUNTS (PPD): MBTA payments are issued through EFT 30 days from invoice receipt. Contractors requesting **accelerated** payments must identify a PPD as follows: Payment issued within 10 days ___% PPD; Payment issued within 15 days ___% PPD; Payment issued within 20 days ___% PPD.

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

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

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

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

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

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

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

AUTHORIZING SIGNATURE FOR THE CONTRACTOR:

X: _____ Date: _____
(Signature and Date Must Be Handwritten At Time of Signature or utilize an MBTA approved electronic signature)

Print Name: _____ Print
Title: _____

AUTHORIZING SIGNATURE FOR THE MBTA:

X: _____ Date _____
(Signature and Date Must Be Handwritten At Time of Signature or utilize an MBTA approved electronic signature)

Print Name: _____
Print Title: _____



9.1 STANDARD TERMS AND CONDITIONS

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

9.1.1 Contract Effective Start Date

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

9.1.2 Payments and Compensation

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

9.1.3 Contractor Payment Mechanism

All Contractors will be paid using the MBTA invoicing system and Contractor will submit its invoice with all supporting documentation as prescribed in a Contract. The MBTA shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection, provided that payment periods listed in a Contract of less than thirty (30) days from the date of receipt of an invoice shall be effective only to enable the MBTA to take advantage of early payment incentives and shall not subject any payment made within the thirty (30) day period to a penalty.

9.1.4 Payments to Subcontractors. M.G.L. c. 30, Sec. 39F

(1) Every contract awarded pursuant to sections forty-four A to L, inclusive, of chapter one hundred and forty-nine shall contain the following subparagraphs (a) through (i) and every contract awarded pursuant to section thirty-nine M of chapter thirty shall contain the following subparagraphs (a) through (h) and in each case those subparagraphs shall be binding between the general contractor and each subcontractor.

(a) Forthwith after the general contractor receives payment on account of a periodic estimate, the general contractor shall pay to each subcontractor the amount paid for the labor performed and the materials furnished by that subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general contractor.

(b) Not later than the sixty-fifth day after each subcontractor substantially completes his work in accordance with the plans and specifications, the entire balance due under the subcontract less amounts retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, shall be due the subcontractor; and the awarding authority shall pay that amount to the general contractor. The general contractor shall forthwith pay to the subcontractor the full amount received from the awarding authority less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general contractor.



(c) Each payment made by the awarding authority to the general contractor pursuant to subparagraphs (a) and (b) of this paragraph for the labor performed and the materials furnished by a subcontractor shall be made to the general contractor for the account of that subcontractor; and the awarding authority shall take reasonable steps to compel the general contractor to make each such payment to each such subcontractor. If the awarding authority has received a demand for direct payment from a subcontractor for any amount which has already been included in a payment to the general contractor or which is to be included in a payment to the general contractor for payment to the subcontractor as provided in subparagraphs (a) and (b), the awarding authority shall act upon the demand as provided in this section.

(d) If, within seventy days after the subcontractor has substantially completed the subcontract work, the subcontractor has not received from the general contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of that balance from the awarding authority. The demand shall be by a sworn statement delivered to or sent by certified mail to the awarding authority, and a copy shall be delivered to or sent by certified mail to the general contractor at the same time. The demand shall contain a detailed breakdown of the balance due under the subcontract and also a statement of the status of completion of the subcontract work. Any demand made after substantial completion of the subcontract work shall be valid even if delivered or mailed prior to the seventieth day after the subcontractor has substantially completed the subcontract work. Within ten days after the subcontractor has delivered or so mailed the demand to the awarding authority and delivered or so mailed a copy to the general contractor, the general contractor may reply to the demand. The reply shall be by a sworn statement delivered to or sent by certified mail to the awarding authority and a copy shall be delivered to or sent by certified mail to the subcontractor at the same time. The reply shall contain a detailed breakdown of the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor and of the amount due for each claim made by the general contractor against the subcontractor.

(e) Within fifteen days after receipt of the demand by the awarding authority, but in no event prior to the seventieth day after substantial completion of the subcontract work, the awarding authority shall make direct payment to the subcontractor of the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount (i) retained by the awarding authority as the estimated cost of completing the incomplete or unsatisfactory items of work, (ii) specified in any court proceedings barring such payment, or (iii) disputed by the general contractor in the sworn reply; provided, that the awarding authority shall not deduct from a direct payment any amount as provided in part (iii) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by subparagraph (d). The awarding authority shall make further direct payments to the subcontractor forthwith after the removal of the basis for deductions from direct payments made as provided in parts (i) and (ii) of this subparagraph.

(f) The awarding authority shall forthwith deposit the amount deducted from a direct payment as provided in part (iii) of subparagraph (e) in an interest-bearing joint account in the names of the general contractor and the subcontractor in a bank in Massachusetts selected by the awarding authority or agreed upon by the general contractor and the subcontractor and shall notify the general contractor and the subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in an agreement between the general contractor and the subcontractor or as determined by decree of a court of competent jurisdiction.

(g) All direct payments and all deductions from demands for direct payments deposited in an interest-bearing account or accounts in a bank pursuant to subparagraph (f) shall be made out of amounts payable to the general contractor at the time of receipt of a demand for direct payment from a subcontractor and



out of amounts which later become payable to the general contractor and in the order of receipt of such demands from subcontractors. All direct payments shall discharge the obligation of the awarding authority to the general contractor to the extent of such payment.

(h) The awarding authority shall deduct from payments to a general contractor amounts which, together with the deposits in interest-bearing accounts pursuant to subparagraph (f), are sufficient to satisfy all unpaid balances of demands for direct payment received from subcontractors. All such amounts shall be earmarked for such direct payments, and the subcontractors shall have a right in such deductions prior to any claims against such amounts by creditors of the general contractor.

9.1.5 Contract Termination or Suspension

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

9.1.6 Written Notice

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

9.1.7 Time for Decision by Awarding Authority on Interpretation of Specifications, Approval of Equipment.

In accordance with M.G.L. c. 30, sec. 39P, the MBTA, any official, its architect or engineer shall make decisions on interpretation of the specifications, approval of equipment, material or any other approval, or progress of the work, promptly and, in any event, no later than thirty days after the written submission for decision; but if such decision requires extended investigation and study, the awarding authority, the official, architect or engineer shall, within thirty days after the receipt of the submission, give the party making the submission written notice of the reasons why the decision cannot be made within the thirty day period and the date by which the decision will be made.

9.1.8 Record-keeping and Retention, Inspection of Records

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



9.1.9 Assignment

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

9.1.10 Subcontracting By Contractor

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

9.1.11 Affirmative Action, Non-Discrimination in Hiring and Employment

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

9.1.12 Indemnification

The Contractor shall release, defend (at the MBA's option), indemnify and hold harmless the MBTA, its agents, officers and employees (collectively the "indemnified parties") against any and all claims, demands, liabilities, judgments, penalties, costs, expenses (including attorneys' fees and experts' fees), and damages ("Claims") based on or arising out of any actual or alleged loss or injury (including death) to persons or damage to real or tangible property, or patent or copyright infringement, that are caused or alleged to be caused, in whole or in part, by, or arising out of the acts or omissions of the Contractor, its agents, servants, employees or subcontractors. The MBTA agrees to notify the Contractor in writing within a reasonable period of time of the assertion of any Claim for which the Contractor has agreed to indemnify the MBTA pursuant to this section. The MBTA shall not be liable for any costs incurred by the Contractor arising under this section. If the MBTA incurs any cost or fees for attorneys or experts, or any other costs or expense, to enforce its right to indemnification or defense under this section, the Contractor shall fully reimburse the MBTA for such costs, fees and expense.

9.1.13 Waivers

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

9.1.14 Risk of Loss

The Contractor shall bear the risk of loss for any Contractor materials used for a Contract and for all



deliverables, MBTA personal or other data which is in the possession of the Contractor or used by the Contractor in the performance of a Contract until possession, ownership and full legal title to the deliverables are transferred to and accepted by the MBTA.

9.1.15 Forum, Choice of Law and Mediation

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

9.1.16 Interpretation, Severability, Conflicts with Law, Integration

Any amendment or attachment to any Contract which contains conflicting language or has the effect of a deleting, replacing or modifying any printed language of these MBTA Terms and Conditions, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law. All amendments must be executed by the parties in accordance with Section 9.0 of these MBTA Terms and Conditions (*Section 9, pages 37-86*). The printed language of the Standard Contract Form (*Section 9.0, page 37*), which incorporates by reference these MBTA Terms and Conditions, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: any applicable federal provisions, any supplemental provisions, any negotiated terms and conditions allowable pursuant to law or regulation; the printed language of the MBTA Terms and Conditions; the Standard Contract; the MBTA's Request for Response/Proposal/Bid (RFR/RFP/IFB) solicitation document; and the Contractor's Response to the RFR/RFP/IFB solicitation, excluding any language stricken by the MBTA as unacceptable.

9.1.17 Insurance to be Carried by the Contractor

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

9.1.18 Contractor Certifications and Legal References

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

9.1.18.1 MBTA and Contractor Ownership Rights

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

9.1.18.2 Qualifications

The Contractor certifies it is qualified and shall at all times remain qualified to perform this Contract; that performance shall be timely and meet or exceed industry standards for the performance required, including obtaining requisite licenses, registrations, permits, resources for performance, and sufficient professional,



liability; and other appropriate insurance to cover the performance. If the Contractor is a business, the Contractor certifies that it is listed under the Secretary of State's website as licensed to do business in Massachusetts, as required by law.

M.G.L. c. 30, sec. 39L, states: "The commonwealth and every county, city, town, district, board, commission or other public body which, as the awarding authority, requests proposals, bids or sub-bids for any work in the construction, reconstruction, alteration, remodeling, repair or demolition of any public building or other public works (1) shall not enter into a contract for the work with, and shall not approve as a subcontractor furnishing labor and materials for a part of the work, a foreign corporation which has not filed with the awarding authority a certificate of the state secretary stating that the corporation has complied with requirements of section 15.03 of subdivision A of Part 15 of chapter 156D and the date of compliance, and further has filed all annual reports required by section 16.22 of subdivision B of Part 16 of said chapter 156D, and (2) shall report to the state secretary and to the department of corporations and taxation any foreign corporation performing work under such contract or subcontract, and any person, other than a corporation, performing work under such contract or subcontract, and residing or having a principal place of business outside the commonwealth."

9.1.18.3 Business Ethics and Fraud, Waste and Abuse Prevention

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

9.1.18.4 Collusion

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

9.1.18.5 Public Records and Access

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

9.1.18.6 Debarment

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

9.1.18.7 Applicable Laws

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



9.1.18.8 Tax Law Compliance

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

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

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

9.1.18.10 Federal Anti-Lobbying and Other Federal Requirements

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

9.1.18.11 Protection of Commonwealth Data, Personal Data and Information

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

For all Contracts involving the Contractor's access to personal information, as defined in G.L. c. 93H, and personal data, as defined in G.L. c. 66A, or access to MBTA or Commonwealth systems containing such



information or data, Contractor certifies under the pains and penalties of perjury that the Contractor (1) has read M.G.L. c. 93H and c. 66A and agrees to protect any and all personal information and personal data; and (2) has reviewed all of the Enterprise Information Security Policies and Standards published by the Executive Office for Technology Services and Security (TSS), or stricter standards prescribed by the MBTA. Notwithstanding any contractual provision to the contrary, in connection with the Contractor's performance under this Contract, for all public authorities, executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the Contractor shall: (1) obtain a copy, review, and comply with any pertinent security guidelines, standards, and policies; (2) comply with all Enterprise Information Security Policies and Standards published by the Executive Office for Security Services and Technology (TSS), or a comparable set of policies and standards ("Information Security Policy") as prescribed by the MBTA; (3) communicate and enforce such security guidelines, standards, policies and the applicable Information Security Policy among all employees (whether such employees are direct or contracted) and subcontractors; (4) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information and data to which the Contractor is given access by the MBTA from the unauthorized access, destruction, use, modification, disclosure or loss; (5) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or subcontractors during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract; (6) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information or personal data (collectively referred to as the "unauthorized use"): (a) immediately notify the MBTA if the Contractor becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for the MBTA to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for the MBTA and the Contractor to fulfill any notification requirements. Breach of these terms may be regarded as a material breach of this Contract, such that the Commonwealth and MBTA may exercise any and all contractual rights and remedies, including without limitation indemnification under Section 9.1.10 of MBTA's [Terms and Conditions](#), withholding of payments, Contract suspension, or termination. In addition, the Contractor may be subject to applicable statutory or regulatory penalties, including and without limitation, those imposed pursuant to G.L. c. 93H and under [G.L. c. 214, § 3B](#) for violations under M.G.L. c. 66A.

9.1.18.12 Corporate and Business Filings and Reports

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

9.1.18.13 Employer Requirements

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

9.1.18.14 Federal And State Laws And Regulations Prohibiting Discrimination

Contractors certify compliance with applicable state and federal anti-discrimination laws including but not



limited to the Federal Equal Employment Opportunity (EEO) Laws the Americans with Disabilities Act,; 42 U.S.C Sec. 12,101, et seq., the Rehabilitation Act, 29 USC c. 16 s. 794; 29 USC c. 16. s. 701; 29 USC c. 14, 623; the 42 USC c. 45; (Federal Fair Housing Act); G. L. c. 151B (Unlawful Discrimination); G.L. c. 151E (Business Discrimination); the Public Accommodations Law G.L. c. 272, s. 92A; G.L. c. 272, s. 98 and 98A, Massachusetts Constitution Article CXIV and G.L. c. 93, s. 103; 47 USC c. 5, sc. II, Part II, s. 255 (Telecommunication Act; Chapter 149, Section 105D, G.L. c. 151C, G.L. c. 272, Section 92A, Section 98 and Section 98A, and G.L. c. 111, Section 199A, and Massachusetts Disability-Based Non-Discrimination Standards For Executive Branch Entities, and related Standards and Guidance, authorized under Massachusetts Executive Order or any disability-based protection arising from state or federal law or precedent. See also MCAD and MCAD links and Resources.

9.1.18.15 Right-to-Know Law

As applicable, the Contractor shall also submit proof of compliance with the Massachusetts Right-to-Know law MGL c 111F, Massachusetts hazard communication standards 105 CMR 670 and 454 CMR 21.00, and federal OSHA Hazard Communication Standard 29 CFR 1920.1200, which include but are not limited to requirements for communication of chemical hazards, safety data sheet (SDS) access, personal protective equipment, chemical labeling, management and storage, and employee training.

9.1.18.16 Small Business Purchasing Program (SBPP)

A Contractor may be eligible to participate in the SBPP, created pursuant to Executive Order 523, if qualified through the SBPP COMMBUYS subscription process at: www.commbuys.com and with acceptance of the terms of the SBPP participation agreement.

9.1.18.17 Other Damages

The term “other damages” shall include, but shall not be limited to, the reasonable costs the MBTA incurs to repair, return, replace or seek cover (purchase of comparable substitute commodities and services) under a Contract. “Other damages” shall not include damages to the MBTA as a result of third party claims, provided, however, that the foregoing in no way limits the MBTA’s right of recovery for personal injury or property damages or patent and copyright infringement under *Section 9.1.10* nor the MBTA’s ability to join the contractor as a third party defendant. Further, the term “other damages” shall not include, and in no event shall the contractor be liable for, damages for the MBTA’s use of contractor provided products or services, loss of MBTA records, or data (or other intangible property), loss of use of equipment, lost revenue, lost savings or lost profits of the MBTA. In no event shall “other damages” exceed the greater of \$100,000, or two times the value of the product or service (as defined in the Contract scope of work) that is the subject of the claim. *Section 9.1.10* sets forth the contractor’s entire liability under a Contract. Nothing in this section shall limit the MBTA’s ability to negotiate higher limitations of liability in a particular Contract, provided that any such limitation must specifically reference *Section 9.1.10* of the MBTA Terms and Conditions. In the event the limitation of liability conflicts with accounting standards which mandate that there can be no cap of damages, the limitation shall be considered waived for that audit engagement.

9.1.18.18 Northern Ireland Certification

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



armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.

9.1.18.19 Pandemic, Disaster or Emergency Performance

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

9.1.18.20 Subcontractor Performance

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

9.1.19 Executive Orders

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

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

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

9.1.19.2 Executive Order 130. Anti-Boycott

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

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

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



9.1.19.4 Executive Order 444, Disclosure of Family Relationships with Other State Employees

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

9.1.19.5 Executive Order 599

Executive Order 599. Reaffirming Programs to Ensure Diversity, Equity, and Inclusion for Diverse and Small Massachusetts Businesses in State Procurement and Contracting. All procurements and purchases of goods and services shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. The Contractor and any subcontractors may not engage in discriminatory employment practices. The Contractor certifies compliance with applicable federal and state laws, rules, and regulations governing fair labor and employment practices. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.

9.1.19.6 Laws and Regulations Prohibiting Discrimination and Human Trafficking.

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

9.2 SUPPLEMENTAL PROVISIONS FOR CONTRACTS FOR CONSTRUCTION, ALTERATION, REMODELING OR REPAIR

9.2.1 Applicability

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

9.2.2 Force Majeure

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



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

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

9.2.3 Contract Termination for Convenience

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

9.2.4 Contract Termination for Cause

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

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

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

9.2.5 Right-of-Way Safety Requirements

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



recertifications, from the MBTA before commencing work.

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

Additionally, the Contractor shall:

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

9.2.6 Liquidated Damages

There are no Liquidated Damages required for this contract.

9.2.7 Security Requirements

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

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

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

2. Conduct for all current and future employees performing work under this Contract, a legally available criminal background check, including a Criminal Offender Record Information (CORI) background check with the Massachusetts Criminal History Systems Board and a driver's history check with the Massachusetts registry of Motor vehicles (if applicable). The CORI check shall include a Level II Sex Offenders Registry check. To the extent not already available to the Contractor, the Contractor shall apply for and make best efforts to obtain CORI access. The Contractor shall provide written documentation to the Authority that demonstrates the Contractor's compliance with the aforementioned requirements. Furthermore, the Contractor shall conduct these



background and driver history checks at least once every two (2) years, or as otherwise specified by the MBTA. Any employee of the Contractor's with a history that includes a felony conviction, any conviction for theft, or who appears otherwise unsuitable to perform the work that is the subject of this solicitation throughout the Term of this Agreement or any extensions thereof, shall not be assigned by the Contractor to perform work under this Agreement.

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

3. Distribute an MBTA-issued photograph Contractor identification badge to all Contractor employees, subcontractors, and agents who work on MBTA property. The contractor shall provide a current (less than 1 year old) photograph to the MBTA, along with the required completed badge issuance paperwork prior to being issued the badges. The following information shall be listed on the back of the contractor identification badges: training certifications, safety training, and other related security training required by the MBTA. No employee, subcontractor or agent of the Contractor will be allowed on MBTA property without clearly displaying the MBTA-issued identification badge on their person.
4. Insure that Contractor's employees, subcontractors, and agents:
 - a) Are not allowed on MBTA property except as required for stated work;
 - b) Are not allowed on MBTA property before and after service hours unless explicitly, contractually required to be there; and
 - c) Are forbidden from carrying firearms on MBTA property.
5. Provide to the MBTA, upon its request, any documents that pertain to:
 - a) Contractor employee, subcontractor or agent conduct on MBTA property;
 - b) Security training; and
 - c) Monitoring/auditing of Contractor employees or agents while on MBTA property.
6. If, at any time during the term of this Agreement, and also during any and all extensions thereof, the MBTA establishes new or revised security policies and procedures as they relate to the Contractor's performance under this Agreement, the Contractor shall comply with such policies and procedures as deemed reasonable by the MBTA and the Contractor.

9.2.8 Bonding Requirements

9.2.8.1 Bid Bond

Bid Bond or Bid Deposit: 5%. Contractor's bid shall be accompanied by a bid deposit in the form of a bid bond, or cash, or a certified check on, or a treasurer's or cashier's check issued by, a responsible bank or trust company, payable to the Massachusetts Bay Transportation Authority for five per cent of the value of the bid.

9.2.8.2 Labor and Material Payment Bond

Concurrently with its execution of the Contract, Contractor shall provide the MBTA and with a Labor and Material Payment Bond in the amount of 50% of the Price (the "Payment Bond"). The Payment Bond shall be released upon the later to occur of one year after Final Acceptance or satisfactory evidence that all Persons performing the Work have been fully paid.



9.2.8.3 Performance Bond

Concurrently with its execution of the Contract, Contractor shall provide the MBTA with a performance bond, including a bond for liens, in the amount of 50% of the Price (the “Performance Bond”). The Performance Bond shall be released after expiration of Contractor’s Warranties following the Final Acceptance Date. Provided that all conditions to Final Acceptance have occurred, Contractor shall have the right to replace the Performance Bond with a replacement Performance Bond in an amount and in a form satisfactory to MBTA in its sole discretion, provided that (a) the replacement bond shall not be required to exceed 20% of the Price; and (b) Contractor is not then in default under the Contract.

9.2.8.4 Surety Financial Requirements

Any bond provided in accordance with this Contract shall be issued by a Surety that is listed on the United States Treasury approved surety list, or as otherwise approved by MBTA in its sole discretion.

9.2.8.5 Performance by Surety or Guarantor

Performance by a Surety or a Guarantor of any of the obligations of Contractor shall not relieve Contractor of any of its obligations hereunder.

9.2.9 Labor Harmony, OSHA Training Certification

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

9.2.10 Responsibility for Employees and Subcontractors

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

9.2.11 Subcontracts

Each instrument evidencing any agreement of Contractor with any Subcontractor shall provide, in terms and in form and substance satisfactory to MBTA, that (a) the rights of Contractor under such instrument are assigned to MBTA contingent only upon written request from MBTA or its successors or assigns following default by Contractor or termination or expiration of this Contract; and (b) all warranties (express and implied) of such Subcontract shall inure to the benefit of the MBTA.

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

9.2.12 Prevailing Wage

- A. The state Prevailing Minimum Wage Law, M.G.L. Chapter 149, Section 26, et. seq. (hereinafter, the “Mass. Prevailing Wage Law” is herein incorporated by reference. The Contractor acknowledges familiarity with and agrees to comply with all the relevant provisions of said Mass. Prevailing Minimum Wage Law, including but not limited to the following:



1. To pay the applicable prevailing wage;
 2. To provide payroll records on a weekly basis;
 3. To review such payroll records and certify their contents as compliant with the law and the provisions of this Contract;
 4. To make available any and all documents necessary to an investigation of the Contractor's compliance with this provision, the Contract and the law; and
 5. Any additional requirements necessary to ensure conformance with state or federal provisions, the provisions of the Contract and any other provisions required by other appropriate authorities, as directed by the Owner or its authorized agent, including but not limited to submission and certification of a weekly list of transporters of gravel or fill working on the Contract.
- B. In addition to any other remedies that may be available at law, the Owner may increase retainage or withhold, or cause to be withheld, from any monies payable under any contract between Contractor and the Owner, such sums as may be necessary to satisfy any liability, or reasonably anticipated liabilities of the Contractor, or of any of the Contractor's subcontractors, suppliers or vendors, of any tier, for unpaid wages, liquidated damages, potential fines and penalties, legal fees and any other potential costs incurred by the Owner or its agents, related to a determination of non-compliance with or enforcement of the Mass. Prevailing Minimum Wage Law, the Davis-Bacon Act, or any other such State or Federal labor or wage provisions, or other applicable provisions of this Contract. Such withholding may be adjusted accordingly once the actual amount of such liability under applicable indemnifications and liability provisions is determined and/or satisfied.

9.2.13 Testing, Completion and Acceptance

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

- (a) Upon substantial completion of the work required by a contract with the commonwealth, or any agency or political subdivision thereof, for the construction, reconstruction, alteration, remodeling, repair or improvement of public ways, including bridges and other highway structures, sewers and, water mains, airports and other public works, the contractor shall present in writing to the awarding authority its certification that the work has been substantially completed. Within twenty-one days thereafter, the awarding authority shall present to the contractor either a written declaration that the work has been substantially completed or an itemized list of incomplete or unsatisfactory work items required by the contract sufficient to demonstrate that the work has not been substantially completed. The awarding authority may include with such list a notice setting forth a reasonable time, which shall not in any event be prior to the contract completion date, within which the contractor must achieve substantial completion of the work. In the event that the awarding authority fails to respond, by presentation of a written declaration or itemized list as aforesaid, to the contractor's certification within the twenty-one day period, the contractor's certification shall take effect as the awarding authority's declaration that the work has been substantially completed.
- (b) Within sixty-five days after the effective date of a declaration of a substantial completion, the awarding authority shall prepare and forthwith send to the contractor for acceptance a substantial completion estimate for the quantity and price of the work done and all but one per cent retainage, if held by the awarding authority, on that work, including the quantity, price and all but one per cent retainage, if held by the awarding authority, for the undisputed part of each work item and extra



work item in dispute but excluding the disputed part thereof, less the estimated cost of completing all incomplete and unsatisfactory work items and less the total periodic payments made to date for the work. The awarding authority also shall deduct from the substantial completion estimate an amount equal to the sum of all demands for direct payment filed by subcontractors and not yet paid to subcontractors or deposited in joint accounts pursuant to section thirty-nine F, but no contract subject to said section thirty-nine F shall contain any other provision authorizing the awarding authority to deduct any amount by virtue of claims asserted against the contract by subcontractors, material suppliers or others.

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



certification by the contractor that he is the lawful owner and that the materials are free from all encumbrances. The awarding authority shall include with each such payment interest on the amount due pursuant to such periodic estimate at the rate herein above provided from the due date. In the case of periodic payments, the contracting authority may deduct from its payment a retention based on its estimate of the fair value of its claims against the contractor, a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of section thirty-nine F, and a retention to secure satisfactory performance of the contractual work not exceeding five per cent of the approved amount of any periodic payment, and the same right to retention shall apply to bonded subcontractors entitled to direct payment under section thirty-nine F of chapter thirty; provided, that a five per cent value of all items that are planted in the ground shall be deducted from the periodic payments until final acceptance.

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

9.2.13.2 Final Acceptance

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

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



delivered to Contractor notice of Final Acceptance to the effect of the foregoing;
and

- f. all conditions under the Contract Documents have been met.

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

9.2.14 Indemnifications by Contractor

Contractor shall release, defend, indemnify and hold harmless the MBTA and its officers, agents and employees (collectively referred to in this Section 23 as the “Indemnified Parties”) from and against any and all claims, demands, liabilities, judgments, penalties, costs, expenses and damages, including personal injury, property damages and natural resource damages, and including attorney and expert consultant fees and costs incurred in connection with the enforcement of this indemnity, arising out of, relating to or resulting from the following:

- a. the breach or alleged breach of the Contract Documents by Contractor, its employees, agents, officers or Subcontractors or any other Persons performing any of the Work, for whom Contractor may be contractually or legally responsible;
- b. the failure or alleged failure by Contractor or its employees, agents, officers or Subcontractors or any other Persons for whom Contractor may be contractually or legally responsible, to comply with any applicable Laws, including Environmental Laws, in performing the Work;
- c. any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in performance of the Work or undertaking any other activities under the Contract Documents, or arising out of any use in connection with the Project or methods, processes, designs, information, or other items furnished or communicated to the MBTA or another Indemnified Party pursuant to the Contract Documents, provided that this indemnity shall not apply to any infringement resulting from MBTA’s or the MBTA’s failure to comply with specific written instructions regarding use provided to the MBTA by Contractor;
- d. the alleged negligent act or omission or willful misconduct of Contractor, its employees, agents, officers or Subcontractors or any other Persons performing any of the Work, for whom Contractor may be contractually or legally responsible;
- e. any and all stop notices and/or Liens filed in connection with the Work, including all expenses and attorneys’ fees incurred in discharging any stop notice or Lien, provided that there is no default in payments owing to Contractor with respect to such Work;



- f. (i) any release(s) of oil and hazardous materials attributable to the negligence, willful misconduct, or breach of contract by Contractor or any of its officers, employees, agents, Subcontractors, visitors, or any other persons for whom Contractor is responsible; or (ii) the release of any oil and hazardous materials caused to be present on the Site or elsewhere by Contractor or any of its officers, employees, agents, Subcontractors, visitors, or any other persons for whom Contractor is responsible regardless of whether those are the persons who actually caused the release and regardless of the cause for the release;
- g. the claim or assertion by any contractor of inconvenience, disruption, delay or loss caused by interference by Contractor (or its employees, agents, officers or Subcontractors or any other Persons for whom Contractor may be contractually or legally responsible) with or hindering the progress or completion of work being performed by other contractors relating to the Project or Facility, or failure of Contractor or its employees, agents, officers or Subcontractors or any other Persons for whom Contractor may be responsible to cooperate reasonably with other contractors in accordance with the requirements of the Contract Documents; or
- h. any claim, demand or cause of action brought against the MBTA in connection with the Work, resulting from any action of Contractor or failure of Contractor to comply with the requirements of the Contract Documents.

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

9.2.14.1 Restrictions

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



9.2.14.2 Employee Claims

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

9.2.15 Reporting Requirements

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

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

9.2.16 Maintenance of, Access to and Audit of Records

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

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

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



9.2.17 Retention of Records

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

9.2.17.1 Public Records Act

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

9.2.18 Warranty Period

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



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

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

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

9.2.18.1 Remedy

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

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

9.2.18.2 Warranty Costs

All costs of correcting Work that violates the warranty provisions contained herein, including additional testing and inspections, shall be deemed to be included in the Price. Contractor shall reimburse the MBTA or pay the MBTA's expenses made necessary thereby within ten (10) Days



after Contractor's receipt of invoices therefor. Any dispute relating to this section shall be subject to any Dispute Resolution provisions contained in the Contract Documents, provided that Contractor shall proceed as directed by the MBTA pending resolution of the dispute.

9.2.18.3 Applicability of Warranties to Re-Done Work

Contractor's warranties shall apply to all Work redone pursuant to the terms of this Section 7.2. Contractor's warranty for re-done elements of the Work shall extend beyond the original warranty period, if necessary, to provide at least a one-year warranty period following acceptance of the re-done Work, but not to exceed one year more than the original length of warranty for the respective element of the Work after the date that Final Acceptance is achieved.

9.2.18.4 No Limitation on Liability

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

9.2.18.5 Damages for Breach of Warranty

If Contractor fails or refuses to provide the warranty remedies described in this Section 9.2.6, notwithstanding a valid request by the MBTA, Contractor shall be liable to the MBTA for the cost of performance of the warranty work by others, throughout the warranty periods provided in this Contract and any extension thereof.

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

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



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



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



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

9.2.20 Suspension, Delay, or Interruption or Failure to Act by Awarding Authority; Adjustment in Contract Price; Submission of Claims (M.G.L. c. 30, section 39O)

Section 39O. Every contract subject to the provisions of section thirty-nine M of this chapter or subject to section forty-four A of chapter one hundred forty-nine shall contain the following provisions (a) and (b) in their entirety and, in the event a suspension, delay, interruption or failure to act fothe awarding authority increases the cost of performance to any subcontractor, that subcontractor shall have the same rights against the general contractor for payment for an increase in the cost of his performance as provisions (a) and (b) give the general contractor against the awarding authority, but nothing in provisions (a) and (b) shall in any way change, modify or alter any other rights which the general contractor or the subcontractor may have against each other.

- a. The awarding authority may order the general contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the awarding authority; provided however, that if there is a suspension, delay or interruption for fifteen days or more or due to a failure of the awarding authority to act within the time specified in this contract, the awarding authority shall make an adjustment in the contract price for any increase in the cost of performance of this contract but shall not include any profit to the general contractor on such increase; and provided further, that the awarding authority shall not make any adjustment in the contract price under this provision for any suspension, delay, interruption or failure to act to the extent that such is due to any cause for which this contract provides for an equitable adjustment of the contract price under any other contract provisions.
- b. The general contractor must submit the amount of a claim under provision (a) to the awarding authority in writing as soon as practicable after the end of the suspension, delay, interruption or failure to act and, in any event, not later than the date of final



payment under this contract and, except for costs due to a suspension order, the awarding authority shall not approve any costs in the claim incurred more than twenty days before the general contractor notified the awarding authority in writing of the act or failure to act involved in the claim.

9.2.21 Differing Site Conditions

9.2.21.1 In accordance with M.G.L. c. 30, section 39N, as amended, the following paragraph is included in its entirety:

If, during the progress of the Work, the Contractor or the awarding authority discovers that the actual subsurface or latent physical conditions encountered at the site differ substantially or materially from those shown on the plans or indicated in the Contract Documents either the contractor or the contracting authority may request an equitable adjustment in the contract price of the contract applying to work affected by the differing site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a contractor, or upon its own initiative, the contracting authority shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the contract documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and contract documents and are of such a nature as to cause an increase or decrease in the cost of performance of the work or a change in the construction methods required for the performance of the work which results in an increase or decrease in the cost of the work, the contracting authority shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly.

9.2.21.2 For purposes of Subsection 9.2.15 above, the terms “awarding authority” and “contracting authority” shall refer to the MBTA.

9.2.21.3 Any claim for additional compensation by Contractor pursuant to this Section shall be made in accordance with Article 14 and shall not be allowed unless Contractor has first given the notice required by this Contract.

9.2.21.4 In the event that Owner and Contractor are unable to reach an agreement concerning an alleged differing site condition, Contractor will be required to keep an accurate and detailed record which will indicate the actual cost of the Work performed as a result to the alleged differing site condition.

9.2.21.5 Failure to keep such a record shall be a bar to any recovery by reason of such alleged differing site conditions. Owner shall be given the opportunity to supervise and check the keeping of such records.

9.2.22 Extension Due to Delays

9.2.22.1 The right of Contractor to proceed shall not be terminated nor



Contractor charged with liquidated or actual damages because of any delays to the completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor, including, but not restricted to the following: acts of God; acts of Owner; acts of another Contractor in the performance of a contract with owner; floods, fires, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather; and delays of Subcontractors or suppliers due to such causes.

9.2.22.2 Any delay in receipt of materials on the site, caused by other than one of the specifically mentioned occurrences above, does not of itself justify a time extension.

9.2.23 Essence of Contract

9.2.23.1 All time limits stated in the Contract Documents are of the essence to the Contract.

9.2.24 Reasonable Completion Time

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

9.2.25 Delay in Completion of the Work

9.2.25.1 In the event that Contractor does not proceed with the Work within the time frame stipulated in the Contract Documents or otherwise fails to perform the other work specified in the Contract Documents in reasonable accordance with the Project Schedule, so as to complete the Work on or before the time for Final Completion, the MBTA may terminate the Contract, and seek to complete the Work pursuant to the provisions of and with funding provided by Contractor's Performance Bond.

9.2.25.2 Whether or not Contractor's right to proceed with the Work is terminated, Contractor shall be liable for damages resulting from Contractor's refusal or failure to complete the Work within the specified time.

9.2.26 Warranty and Guaranty

9.2.26.1 Contractor warrants and guarantees to the MBTA that all Work will be in accordance with the Contract Documents and will not be defective.

9.2.26.2 Prompt notice of all defects shall be given to Contractor. All defective work, whether or not in place, may be rejected corrected or accepted as provided for in this Article.

9.2.27 Access to Work

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



conditions for such access.

9.2.28 Tests and Inspections

9.2.28.1 Contractor shall give the MBTA timely notice of readiness of the Work for all required inspections.

9.2.29 Retainage

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

9.2.30 Contractor's Continuing Obligation

9.2.30.1 Contractor's obligation to perform and complete the Work and pay all laborers, sub-contractors, and material in accordance with the Contract Documents shall be absolute.

9.2.30.2 Neither any progress or final payment by the MBTA, nor the issuance of a Certificate of Substantial Completion, nor any use or occupancy of the Work or any part thereof by Owner, nor any act of acceptance by Owner nor any failure to do so, nor any correction of defective Work by Owner will constitute an acceptance of Work not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents.

9.2.31 Waiver of Claims by Contractor

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

9.2.32 No Waiver of Legal Rights

9.2.32.1 The MBTA shall not be precluded or be estopped by any payment, measurement, estimate, or certificate made either before or after the completion an acceptance of the Work and payment therefore, from showing the true amount and character of the Work performed and materials furnished by Contractor, nor from showing that any payment, measurement, estimate or certificate is untrue or is incorrectly made, or that the Work or materials are defective.

9.2.32.2 The MBTA shall not be precluded or be stopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from Contractor such damages as it may sustain by reason of Contractor's failure to comply with requirements of the Contract Documents.



9.2.32.3 Neither acceptance by the MBTA, or any representative of the MBTA, nor any payment for or acceptance of the whole or any part of the Work, nor any extension of the Contract time, nor any possession taken by the MBTA, shall operate as a waiver of any portion of the Contract or of the power herein reserved, or of any right to damages.

9.2.32.4 A waiver by the MBTA of any breach of the Contract shall not be held to be a waiver of any other subsequent breach.

9.2.33 Suspension of Work – Default and Termination

9.2.33.1 Owner May Suspend Work

1. General – see sections 9.2.14 and 9.2.15
2. The MBTA may, at any time, suspend the Work or any portion thereof by written notice to Contractor. If the Work is suspended without cause Contractor shall be allowed an increase in the Contract Amount or an extension of the Contract Time, or both, directly attributable to any suspension if Contractor makes an approved claim therefore as provided in Article 14. Any action by the MBTA to allow an increase in the Contract amount or to allow an extension of the contract time may only be done with the prior written authorization of the MBTA. The MBTA shall not be liable to Contractor for any additions to the Contract Amount or extensions in the Contract Time that it has not approved in writing in advance.
3. However, no adjustment shall be made under this clause for a suspension, delay, or interruption to the extent that suspension is due to the fault or negligence of the Contractor, or that suspension is necessary for Contract compliance, or that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or Acts of God (which shall be deemed to include severe weather conditions precluding prosecution of the Work).
4. In case of suspension of Work, Contractor shall be responsible for preventing damage to or loss of any of the Work already performed and of all materials whether stored on or off the site or approved remote storage sites.

9.2.33.2 Default of Contractor

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



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

9.2.33.3 Rights or Remedies

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



[Signatures on following page]



9.3 TERMS & CONDITIONS SIGNATURE

IN WITNESS WHEREOF, the Contractor certifies under the pains and penalties of perjury that it shall comply with these MBTA Terms and Conditions under Sections 9.1 – 9.4 for any applicable Contract executed with the MBTA as certified by their authorized signatory below:

Contractor Authorized Signatory: _____

Print Name: _____
(BLOCK LETTERS)

Title: _____

Date: _____



10. Exhibits

10.1 INSURANCE REQUIREMENTS

An attachment in COMMBUYS.

10.2 PREVAILING WAGE DATA

An attachment in COMMBUYS.