

REQUEST FOR PROPOSAL

FOR

PROJECT MANAGEMENT SERVICES

**SITE ASSESSMENT, PRELIMINARY DESIGN, PRELIMINARY ENGINEERING, FINAL DESIGN,
FINAL ENGINEERING AND CONSTRUCTION OF A BUS TERMINAL IN FALL RIVER,
MASSACHUSETTS**

**Southeastern Regional Transit Authority
(SRTA)**

SRTA 2009-004

Date Issued: July 6, 2009

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I. INTRODUCTION

A. BACKGROUND

The Southeastern Regional Transit Authority (hereinafter set forth as SRTA) requires the services of a Project Manager/Project Management Firm (hereinafter referred to as Project Management Firm) to provide assistance on the project described below in accordance with the requirements of MGL Chapter 149, Section 44A ½ (See Appendix).

Site Assessment, Preliminary Design, Preliminary Engineering, Final Design, Final Engineering and Construction of a Bus Terminal in Fall River, MA

a. Description

The Authority's original Bus Terminal had previously been located at 121 South Second Street, Fall River, MA. In 2007, the Commonwealth took said property by eminent domain in order to construct a new Trial Court. The new Terminal at this time is intended to be a single story building. SRTA provides public transportation within the cities of Fall River and New Bedford and the towns of Dartmouth, Fairhaven, Mattapoisett, Westport, Swansea, Somerset and Acushnet. The present fixed route transportation services consists of 25 routes serviced by a fleet of 66 transit buses which travel approximately 1.2 million revenue miles per year. Service is provided six days per week and carries approximately 1.6 million passengers annually. The fixed route service operates on a fixed schedule with buses in Fall River being at the Fall River Terminal every 30-60 minutes. The Terminal also accommodates the over the road buses as Peter Pan and Bloom and which also pick up passengers at the Fall River Terminal on a fixed schedule. The site is in the process of being chosen and a parcel is in the initial appraisal process. The Bus Terminal structure will be a minimum of 2,400 square feet and the parcel will be designed to accommodate parking and the ingress and egress of SRTA's fixed route buses per SRTA's fixed route schedule and also the over the road buses. The Terminal will be designed so as to allow for the safe boarding and departing of passengers and the arrival and departing of the fixed route transit fleet in an orderly manner and said design shall further allow all said buses including the over the road buses to be boarded with the boundaries of said Terminal. At a minimum the Terminal will house a passenger waiting area, office, mechanical room, Men's and Ladies restrooms, a unisex restroom for use by drivers, and a ticket counter/booth for the sale of both SRTA tickets and over the road buses. The Terminal may contain other features such as a newsstand, donut shop/sandwich shop or other leasable retail space dependent upon the layout of the site to accommodate the buses and monetary considerations.

b. Status

The Authority has issued a Request for Proposals for Design (Architectural) and/or Engineering Services for said Bus Terminal. A Pre-bid meeting took place on July 1, 2009 at 10:00am the RFP requires Bids to be submitted by July 15, 2009 at 12:00pm at which time Bids will be opened. SRTA has not yet obtained a site for said Bus Terminal.

B. PRE-PROPOSAL CONFERENCE

A pre-proposal conference will be held on Friday July 24, 2009 at 10:00 A.M. at the Southeastern Regional Transit Authority. NO TELEPHONE CALLS WILL BE ACCEPTED REGARDING THIS RFP PRIOR TO THIS CONFERENCE.

C. QUESTIONS

Questions regarding this RFP can be submitted, via email, to jcsrta@aol.com until July 31, 2009. A response will be prepared and forwarded via email within five (5) business days.

THE RFP CAN BE DOWNLOADED FROM OUR WEBSITE—WWW.SRTABUS.COM.

II. SCOPE OF WORK

A. GENERAL

1. The Owner is dedicated to the timely and cost effective construction of a quality project. The Project Management Firm will review schedules and cost estimates as needed to adequately ensure that the design, timing, and construction costs are within the schedules and budgets specified by the Owner. Project cost estimates will include all costs the Owner will reasonably be expected to expend for a full operating and satisfactory facility;
2. The Project Management Firm is to represent the Owner's interests, as further defined by the Owner, during the design, construction and close-out phases of the project. The Project Management Firm will be responsible to the Owner to act as the Owner's principal agent and will be independent of the designer and construction contractor. The Project Management Firm will be designated as the authorized representative of the Owner to administer both consultant and construction contracts as specified in this request for proposal and/or as negotiated;
3. The services of the Project Management Firm shall commence upon issuance of the Notice to Proceed. These services shall continue through the construction phase until issuance of the final Certificate of Occupancy and the completion of the project close-out phase;
4. The Project Management Firm will maintain complete, up-to-date, project records and on-site (during construction). Written reports will be submitted to the Owner and the Architect, including information on each contractor and each contractor's work, as well as the entire project. These reports shall provide data on percentages completed versus percentage scheduled, the number and amounts of change orders, and the percentage of change orders as a percentage of the total cost of construction contracts. The Project Management Firm will keep a daily log containing a record of the weather, contractors' work on-site, number of workers, work accomplished, problems encountered and other similar relevant data as the Owner may require. The Project Management Firm will make the log available to the Owner and the Architect as requested. At the completion of the project, the original log will be the property of the Owner.
Oral reports will be made to the Owner on a regular basis as required by the Owner. Oral reports will include, but not be limited to, project coordination, progress, budget updates, any issues of non-compliance with Owner/Contractor Agreement or other contract documents and schedule status updates. The Project Management Firm will be responsible for ensuring that all Federal and State required reports are submitted on a timely basis, i.e. certified payrolls, certificates of inspection, certificates of compliance, etc.;
5. The Project Management Firm will attend public meetings and presentations regarding the project as requested by the Owner. The Project Management Firm will be responsible for providing the following services, including, but not limited to, development of a quality assurance/control process; review of information provided or required by the designer and/or contractor including, but not limited to, procurement, budget, schedules, specifications and drawings; close-out activities; and any other responsibilities associated with this project and the items outlined herein;
6. The Project Management Firm will facilitate teamwork among all the involved parties and be proactive in identifying, addressing and minimizing potential obstacles that may arise in providing recommendations to the Owner for corrective action;

7. The Project Management Firm will review previously developed specifications with the Owner and the designer to revise as necessary.
8. Provide the Owner with an original project cash flow budget. The initial cash flow report should be developed by the Project Management Firm in conjunction with the architect and the general contractor. This task will be completed prior to ground breaking;
9. Provide updated cash flow reports to the Owner on a monthly basis. The revised cash flow report should be developed by the Project Management Firm in conjunction with the architect and general contractor. The report should be prepared upon completion and approval of each month's payment requisitions. The updated reports should reflect the original budget amount and any variances. The owner will be provided with narrative detailing the monthly variances;
10. Maintain cost accounting records on authorized work performed under unit costs, additional work performed on the basis of actual costs of labor and materials or other work requiring accounting records. At the completion of the project the original accounting records will become the property of the Owner;
11. Implement procedures for the review and processing of applications by contractors for progress and final payments. Review contractor payment requests with the architect to ensure that all work being billed has been performed satisfactorily. Make recommendations to the architect for certification to the Owner for payment. Recommend payment or denial of payment to the Owner.

PART I

PROJECT MANAGEMENT FOR THE FINAL DESIGN AND BID PHASE

A. FINAL DESIGN PHASE

The firm selected will be required to perform the following services, including, but not limited to:

1. Serve as the Owner's representative in administration of design contract, the coordination of the design team's activities, and in the provision of leadership with respect to the implementation of design phase procedures by all parties;
2. Monitor the project design, schedule and inform the other team members, in writing, when actual or potential constraints to achieving the schedule have been created and make written recommendations for corrective action;
3. Prepare and provide a monthly project design status report which will include planned and actual schedule performance and identification of any unresolved problems;
4. Conduct design progress meetings in conjunction with the Owner, Architect and others as necessary. Record, transcribe and distribute minutes of those meetings to all attendees and all other appropriate parties;
5. Review the design and bid documents as soon as they are prepared by the Architect. Provide timely advice on site use and improvements, selection of materials, building systems and equipment and project delivery. Provide recommendations on relative feasibility of construction methods, availability of materials, labor and equipment, time requirements for procurement, installation and construction, and factors relating to cost including, but not limited to, costs of alternative designs or materials, life cycle costs, value engineering, preliminary budgets and possible economies;
6. Participate in the value engineering (VE) process to assure that construction materials and methods specified are the most cost effective. Identify for the Owner's consideration any changes in design which reduce the cost of construction while satisfying the Owner's requirements. Analyze schedule implications of alternative building and mechanical systems and other design element changes as may be proposed during the design phase:
 - a. Review the ongoing work of the designer with the objectives of reducing construction and operating costs;
 - b. Present options based upon VE concepts and explore these with the designer and the Owner. Specific VE reviews will be conducted at 30% and 60% design completion;
 - c. List, with a specific cost differential identified based on cost estimates, alternatives that could result in cost savings to the project. This could include construction methods and material selections, but in all cases, would not impact on the Owner's program requirements;
 - d. Recommend changes in construction methods and procedures, alternative materials, design parameters and/or required schedule changes so as to improve life cycle costs according to sound VE practices.

7. Evaluate the constructability of the proposed design in terms of quality, the sequence of the trades, contractor's work; adequacy of the supporting utilities and the utility systems to be installed; environmental safety for the occupants, and the cost efficiency of the design parameters;
8. Review the construction contract documents for conformance with engineering/architectural instructions in effect at the time, and recommend the necessary modifications to incorporate any requirements for specific project conditions;
9. Coordinate project documents by consulting with the Owner and the Architect regarding drawings and specifications as they are being prepared and recommend alternative solutions whenever design details affect construction feasibility, cost or schedules. Verify the technical accuracy of drawings, specifications or other information furnished to the Owner;
10. Provide recommendations and information to the Owner and the Architect regarding the assignment of responsibilities for safety precautions and programs, temporary project facilities and equipment, materials and services;
11. Assist the Owner and Architect in public relations, including preparation of project information and making presentations regarding the project at internal and public meetings;
12. Assist in obtaining any required building permits and special permits, excluding permits required to be obtained directly by the general and subcontractors. Assist in obtaining approvals from authorities having jurisdiction over the project.

B. BID PHASE

1. Assist the Owner in the development of procurement strategy. Prepare for the Owner a review of all bid documents with comments and recommendations prior to the release of the documents. The timeliness of the presented review should allow for an appropriate time frame for the procurement process.
2. Coordinate with the Architect a pre-bid conference to familiarize bidders with the bid documents and management techniques and with any special systems, materials or methods. Coordinate communications relative to bidder inquiries and seek resolution from the appropriate party. Assist the Architect with the issuance of any addenda. Provide a review of each addendum during the bidding phase for time, cost or constructability impact and make appropriate comments or recommendations. Provide a cost estimate for each addendum that would affect overall contract cost;
3. Assist the Owner by developing minimum evaluation criteria. Evaluate costs for any deductive base bids proposed by the designer;
4. With the architect's assistance receive bids, evaluate the bids for completeness, full responsiveness and price, including alternate prices and unit prices and make formal recommendations to the Owner for award of the contracts or rejection of the bids;
5. Assist with bid protests, re-bidding and/or renegotiating contracts for construction, materials, equipment and services;
6. Conduct with the Owner and the Architect a pre-award conference with successful bidders. Assist the Owner in preparing construction contracts and advise the Owner on the acceptability of subcontractors and material supplies proposed by the contractors.

PROJECT MANAGEMENT FOR THE CONSTRUCTION AND CLOSEOUT PHASE

A. CONSTRUCTION PHASE

Construction phase Project Management activities will include, but not be limited to:

1. Serve as the Owner's representative in administering the construction contract. Provide administrative management and related services as required to coordinate work of the contractors with the activities and responsibilities of the Program Firm, the Owner and the Architect to complete the project in accordance with the Owner's objectives for cost, time and quality;
2. Provide sufficient organization, personnel and management to carry out the terms of the Agreement between the Owner and the Project Management Firm;
3. Provide an on-site facility with all required communications, personnel and facilities to carry out the Project Management Firm's responsibilities from the time the general contractor is performing on-site until substantial completion of the project is documented and accepted by the Owner;
4. Schedule and conduct pre-construction, construction progress and project meetings as required by circumstances and/or the Owner, bringing together representatives of the architect, general contractor, and necessary subcontractors for the purpose of discussing procedures, progress, problems and scheduling;
5. If required, assist the Owner in selecting and retaining the professional services of surveyors, special consultants and testing laboratories. Coordinate their services;
6. Observe on-site construction at all times while active construction is taking place to assure that work is being performed according to plans and specifications and that work is being performed to the specified level of quality. Provide full-time continuous construction inspection through the use of an experienced superintendent, or similarly qualified individual, to ensure that the work underway and completed conforms to contract requirements. Should the Project Management Firm be absent from the site for three (3) or more working days, the Owner will be advised as to the names of the appropriately experienced substitute. The Owner will have the right of approval of any substitutes
7. Endeavor to achieve satisfactory performance from the architect, general contractor and all subcontractors. Recommend courses of action to the Owner when requirements of any contract are not being fulfilled and the nonconforming party will not take satisfactory corrective action;
8. Consult with the Owner, when necessary, and the architect if the general contractor requests interpretations of the meaning and intent of the drawings and specifications and assist in the resolution of questions that might arise;
9. Establish and implement procedures for processing submittals. Receive from the contractors and coordinate the review of all shop drawings, product data, samples and other information contained in related documents and transmit to the architect those recommended for approval. In collaboration with the architect establish procedures for expediting the processing/approval of shop drawings, product data, samples and other submittals. Maintain a log of submittals and their status. Update the Owner on submittal status as requested;
10. Determine, in general, that the work of each contractor is being performed in accordance with the requirements of the construction contract documents. Endeavor to guard the

Owner against defects and deficiencies in the work. As appropriate, require special inspection or testing or make recommendations to the architect regarding special provisions of the construction contract documents whether or not such work is then fabricated, installed or completed. Subject to prior approval of the architect and the Owner, reject work that does not conform to the requirements of the construction contract documents;

11. Proactively mitigate construction impacts and address unforeseen impacts quickly. The Project Management Firm will also provide a key community contact person to receive feedback during construction and provide a timely response. The Project Management Firm will attend meetings as required by the Owner;
12. Implement the Change order processing system in accordance with Federal Transit Administration requirements. Review, assist and expedite resolution of all suggested change orders. The Project Management Firm will intervene during construction to resolve issues without change orders. Recommend necessary or desirable changes to the architect and the Owner, review requests for changes, evaluate contractors' proposals, submit recommendations to the architect and the Owner and, if they are accepted by the Owner, prepare change orders for the architect's signature and the Owner's authorization. Prepare and distribute change order reports on a monthly basis throughout the construction phase. Assist in the resolution of issues related to change orders. The Project Management Firm will provide a written recommendation stating all relevant facts and summarizing the various positions. Prepare independent cost and time estimates for change orders for comparison to the contractor's estimate and provide a recommendation to the Owner. Upon authorization negotiate change order values with the general contractor;
13. Administer project schedule to ensure that the project is completed in the allotted time. The Project Management Firm will review, evaluate, and approve the general contractor's baseline project schedule, including, construction phasing and subcontractor relationships;
14. The Project Management Firm will attend weekly meetings and review the work in progress with the general contractor. At the weekly job meetings, the Project Management Firm will issue a revised project schedule with look ahead schedules (2 weeks, 3 weeks, or monthly, as applicable), and review work progress, critical path work items, late work, late critical path items, late deliveries, etc. The revised project schedule becomes the As-Built Project Schedule for the system, to differentiate from the originally approved official project schedule;
15. Work with the contractors to avoid delays and if unavoidable, work to find the quickest recovery. Evaluate any claim for a time extension by the general contractor. The Project Management Firm will ascertain whether or not the claimed time delay was valid by determining if the delay impacted any work activity on the critical path of the official project schedule. The Project Management Firm will establish a position in relation to any claim for time extensions, and, if valid, will determine the appropriate number of days to extend the completion date of the project, as well as stating the cause of the delay. Any time delays and reasons therefore, will be reported to the Owner immediately;
16. Maintain at the project site, on a current basis, a record copy of all contracts, drawings, specifications, addenda, change orders and other modifications in good order and marked to record all changes made during construction; shop drawings; product data; samples; submittals; purchases; materials; equipment; applicable handbooks; maintenance and operating manuals and instructions and other related documents and revisions that arise out of the contracts or work. Maintain records, in duplicate, of principal building layout lines, elevations of the bottoms of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. Make all records available to the architect and the Owner; maintain a set of reproducible as-built drawings. The as-built drawings will become the property of the Owner.

B. CLOSE-OUT PHASE

1. Assist the Architect in determining when the project or designated portion thereof is substantially complete. Prepare for the Architect and the Owner a summary of the status of the work of the contractors, listing changes in the previously issued Certificates of Substantial Completion of the Work and recommending the times within which the contractors will complete unfinished items on their previously issued Certificates of Completion of Work;
2. When the Project Management Firm considers the contractor's work, or designated portion thereof, substantially complete, the Project Management Firm will prepare for the Architect and the Owner a list of the incomplete or unsatisfactory items and a schedule for their completion. The Project Management Firm will assist the Architect in conducting follow-up inspections. After the Architect certifies the Date of Substantial Completion of the Work, the Project Management Firm will coordinate the correction and completion of the work;
3. With the architect and the owner's maintenance personnel observe the contractor's check-out of utilities, operational systems and equipment for readiness and assist in their initial start-up and testing;
4. Assist the Owner in obtaining required occupancy permits. Prepare an occupancy plan that will include a schedule indicating critical interfaces for location of furniture, equipment, new furniture and equipment and the relocation of the Owner's personnel if required.
5. Participate in the preparation of the punch list indicating all items that are not complete or satisfactory. Follow up to ensure that all items are satisfactorily completed;
6. Ensure that spares, extra stock warranty requirements, and operations and maintenance manuals are completed and relevant items are turned over to the Owner;
7. Ensure that all systems are functioning properly and in compliance with construction contract documents;
8. Provide documents to the Owner on final project completion and recommend release of retainage;
9. Serve as a consultant and/or witness for the Owner in any litigation, Arbitration or administrative proceeding involving the project;
10. Arrange for training sessions to be provided by the contractor for all systems furnished. Review for completeness the contractors' training of maintenance personnel on the operation and maintenance of utilities and equipment;
11. Following the Architects' issuance of a Certificate of Substantial Completion of the Project or designated portion thereof, evaluate the completion of the work of the contractor and make recommendations to the Architect when work is ready for final inspections. In conjunction with the Architect, at the conclusion of all corrective action on punch list items make a final comprehensive review of the project. Secure and transmit to the Owner required guarantees, affidavits, releases, bonds and waivers. Deliver all keys, manuals, record drawings and maintenance stock to the Owner;
12. Conduct warranty inspections prior to the expiration of the contractor warranty and monitor contractor compliance in correcting items found outstanding.

C. QUALITY ASSURANCE/CONTROL (QA/C)

1. Conduct, perform and/or report the results of tests to verify the quality of the work;
2. Develop a QA/C program for construction to guard the Owner against defects and deficiencies in the work;
3. Review of general contractor submittals to ensure that the materials intended for use on the project meet or exceed the quality of those specified;
4. Inspect the work and provide acceptance and certification that the materials, workmanship and equipment incorporated in the work comply with the construction contract documents, including the plans, specifications and approved shop drawings.

III. PROPOSAL REQUIREMENTS

A. General Requirements

1. **One (1) unbound original and Five (5) copies** of the proposal must be furnished to the SRTA, by Friday, August 7, 2009 at the following address:

**Southeaster Regional Transit Authority
700 Pleasant Street, Suite 103
New Bedford MA 02740
Attn.: Joseph L. Cosentino, Administrator**

The offeror is fully responsible for the delivery of the proposal. Reliance upon mail or public carrier is at the offeror's risk. Late proposals will not be considered.

2. The proposal should be printed on 8½' x 11" paper, bound on the long side.
3. A Narrative and a cost proposal should be submitted each in a separate sealed envelope identified with the offeror's name and address and labeled accordingly as follows:

PROPOSAL NARRATIVE: Project Management Services

COST PROPOSAL: Project Management Services

4. Each proposal must comply with the guidelines set forth below. Any proposal not in compliance with the guidelines will be disqualified and will not be evaluated.

B. Proposal Contents

1. The offeror should describe the proposed methodology for conducting this project.
2. Offerors are welcome to describe efforts of similar undertakings.
3. Provide a budget for each task including direct labor, fringe benefits, overhead rate, direct costs and fee, with an upset amount for the total contract.
4. For each task, list the number of hours of each person assigned to the project.
5. For all key personnel, attach resumes. Firms are encouraged to provide a brief description of key personnel highlighting their relevant experience to this project.
6. Provide a timetable for this project

C. Certifications

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

1. Certification Regarding Ineligible Contractors
2. Non-Collusion Certification
3. Revenue Enforcement Attestation Certification
4. If the proposed price will equal or exceed \$100,000, then the following additional certification is required: Lobbying (Appendix A, CFR Part 20)

D. References

Please provide three (3) references with telephone numbers and addresses.

E. Disadvantaged Business Enterprise

The following applies to the implementation of a Disadvantaged Business Enterprise element for this effort:

1. It is the goal of the MVRTA that certified Disadvantaged Business Enterprises participate in a minimum of 3.5% of the total dollar value of all SRTA goods and services procurements. Disadvantaged Business Enterprises, both at the prime contractor and sub-contractor level are encouraged to respond to this solicitation notice.
2. Any firm that represents itself as a DBE will be required to provide a valid certification from the Commonwealth of Massachusetts, State Office of Minority and Women's Business Assistance (SOMWBA) **or it will not be allowed to represent itself as a DBE.**
3. The forms contained in Appendix B will be used to meet the requirements of this section.
4. The prime contractor must pay subcontractors for satisfactory performance of their contracts no later than 15 days from the receipt of payment made to the prime by SRTA. Prompt return of retainage payments from the prime contractor to the subcontractor will be made within 15 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment among the parties may take place only for good cause, with the Authority's prior written approval. If the prime contractor determines the work to be unsatisfactory, it must notify the SRTA immediately, in writing, and state the reasons. Prime contractors and subcontractors will be required to use approved alternative dispute resolution mechanisms to resolve payment disputes. The prime contractor will not be reimbursed for work performed by subcontractors until the prime ensures that subcontractors are promptly paid for the work performed. Failure to comply with this requirement will be construed to be a breach of contract and subject to contract termination.

IV. PROPOSAL EVALUATION AND SELECTION PROCESS

A. **Proposed Evaluation**

The following criteria, will be used in evaluating proposals:

1. Responsibility

- a. Submission of all certifications
- b. Experience
- c. Qualifications
- d. Record of Performance

Review of this section will be based on:

1. the professional qualifications necessary and the ability to satisfactorily perform all of the required services,
2. performance and number of previous projects similar in scope and complexity to these projects including cost control, quality of work, and compliance with performance schedules;
3. length of time in architectural and engineering services.
4. The capacity to accomplish the work from resources within the individual firm or through a subcontract relationship will also be reviewed.
 - a. Included in this review will be the qualifications and technical competence of specific personnel assigned to this project;
 - b. The experience of project manager or other senior level positions on other projects similar in scope;
 - c. Academic credentials;
 - d. The professional qualifications, certifications, and registration of other personnel and/or consultants.

2. Technical

a. Methodology in Conducting the Scope of Work

1. Offeror must demonstrate a clear understanding of the Scope of Work.
2. The clarity and adequacy of presentation of the approach will be reviewed,
3. Resources to be applied, imagination, etc.
4. Review of this section includes, the adequacy and reasonableness of task descriptions, and
5. Identifiable end product for SRTA.

3. Familiarity with Local Conditions

- a. Experience in understanding local conditions and working in this environment.

B. Selection

1. All proposals will be ranked using the evaluation criteria. Negotiations will be conducted with the most qualified offeror. If agreement is not reached with the most qualified offeror, then negotiations will be held with the next most qualified offeror.
2. Confidentiality will be maintained during the evaluation process. The name and number of proposals received will not be released to competitors or the public. Competitive information provided relative to both the technical and cost proposals will remain confidential during the evaluation process and in some instances, after award of a contract.
3. The offeror, with whom negotiations are conducted, will be given reasonable opportunity to support and clarify its proposal.
4. Unsuccessful offerors will be notified at the earliest practicable time that their proposals are no longer being considered.
5. Award will be made to the offeror whose proposal will be most advantageous to the SRTA, responsibility, technical and other factors considered.
6. Respondents are advised that the Administrator of the SRTA, as Chief Executive Officer, is solely responsible for the award of a contract. Any respondent who communicates with any SRTA Advisory Board members, the press or engages the services of any individual or firm for the purposes of influencing the outcome of the proposal process will be disqualified from further consideration.

V. **MISCELLANEOUS PROVISIONS**

1. Proposal and Modifications

The proposal and all other accompanying documents or materials submitted by the respondent will be deemed to constitute part of the proposal. Changes in the certificates, alternative proposals, or modifications of the proposal documents that are not specifically called for in the RFP will result in rejection of the proposal. Any proposed change in the response to the RFP should be submitted in writing to the SRTA for its prior approval. The submitted proposal must not contain erasures, changes, or corrections. Any changes made to this Request for Proposal will be made by addendum and will be sent to all respondents. Should any addendum be issued, certification of receipt of such must be included in the proposal.

2. Withdrawal of Proposal

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

3. Cost of Proposal Preparation

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

4. Tax Exemption

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

5. Contract Eligibility

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

6. Protests

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

7. Inquiries and Correspondence

All correspondence relating to this project should be addressed to:

Joseph L. Cosentino, Administrator
RFP SRTA 2009-004
Southeastern Regional Transit Authority
700 Pleasant Street, Suite 103
New Bedford, MA 02740
Tel: (508) 997-6767 Fax: (508) 993-9196
Email: jcsrta@aol.com

VI. NOTIFICATION OF CONTRACT AWARD

The SRTA currently has adequate ARRA funds to begin the Project. Upon selection of the Project Management Firm, written notification of said contract award will be sent together with the issuance of a notice to proceed.

VI. FEDERAL CLAUSES

The following clauses of the Federal Transit Administration apply to this contract (located in Appendix E):

- A. Certification Regarding Debarment, Suspension, and Other Responsibilities
- B. Certification Regarding Lobbying
- C. State and Local Government
- D. Termination (a, b, c, d, e)
- E. Patent Rights in Data
- F. Disadvantaged Business
- G. Civil Rights
- I. Air Quality
- J. Clean Water
- K. Energy Conservation
- M. Privacy
- N. Access to Records (1, 5, 6)
- Q. Third Party Contract Disputes or Breaches
- R. Seismic Safety
- T. Federal Changes
- U. Recycled Products
- V. No Government Obligation
- W. Program Fraud
- X. Incorporation of FTA Terms
- DD Fly America Requirements

The following clauses only apply if the dollar value of the contract will exceed \$100,000:

- J. Clean Water
- I. Clean Air
- A. Government Wide Debarment
- B. Lobbying
- Q. Breach of Contract

Appendix A

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

INELIGIBLE CONTRACTORS CERTIFICATE

The _____ (name of third-party contractor) hereby certifies (check one) that it is is not included on the U.S. Comptroller General’s Consolidated List of Persons or Firms Currently Debarred for Violations for Various Public Contracts Incorporating Labor Standard provisions.

Company

By: _____

Title

Date: _____

INFORMATION TO BE SUBMITTED IN ENVELOPE NUMBER 1, PROPOSAL NARRATIVE.

NON-COLLUSION CERTIFICATION

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____

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

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

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

(Name of Contractor)

Signature

(Also type or print name under signature.)

Subscribed and sworn to before me this

Date: _____

Notary Public of

My commission expires _____.

INFORMATION TO BE SUBMITTED IN ENVELOPE NUMBER 1, PROPOSAL NARRATIVE.

REQUIREMENT OF REVENUE ENFORCEMENT AND PROTECTION PROGRAM

In accordance with the provisions of the Revenue Enforcement and Protection Program and the requirements thereunder as enacted by Section 35 and 36 of Chapter 233 of the Acts and Resolves of 1993, the Southeastern Regional Transit Authority must obtain an attestation from a provider of goods or services that said provider is in compliance with all laws of the Commonwealth relating to taxes.

According to the law any person or company failing to execute the attestation clause shall not be allowed to obtain a contract.

THE ATTESTATION CLAUSE MUST BE SUBMITTED WITH YOUR PROPOSAL

Note: Any questions concerning the law or its implementation may be directed to the Massachusetts Department of Revenue, Leverett Saltonstall Building, 100 Cambridge Street, Boston, Massachusetts 02204, Telephone 727-4201.

REQUIRED ATTESTATION CLAUSE

Pursuant to M.G.L. ch. 62C, Sec. 49A, I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all state tax returns and paid all state taxes required under law.

**Social Security Number
or Federal Identification

*Signature of Individual or
Corporate Name

By: _____
Corporate Officer
(if applicable)

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

** Your Social Security Number or Federal Identification Number will be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended. This request is made under the authority of Mass. G.L. c.62C s.49A.

INFORMATION TO BE SUBMITTED IN ENVELOPE NUMBER 1, PROPOSAL NARRATIVE.

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

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

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

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

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C., 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. [Note: Pursuant to 31 U.S.C., 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

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

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

APPENDIX B

DISADVANTAGED BUSINESS ENTERPRISE

DBE AFFIDAVIT

(This affidavit to be completed by either the DBE prime contractor or the DBE sub-contractor)

STATE OF _____ (Date _____)

COUNTY OF _____ S.S.

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

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

of _____
(Name of DBE)

and certifies that since the date of its certification by SOMWBA:

Insert Date

That this certification has not been revoked nor has it expired nor has there been any change in the minority status of

(Name of DBE)

(Signature and Title of
Person Making Affidavit)

Sworn to before me this date: _____

(Notary Public)

NOTE: Attach the most recent SOMWBA certification letter or Document to this affidavit.

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

(To be supplied if using DBE sub-contractors)

LETTER OF INTENT

To: _____ (Name of Prime Offeror)

The undersigned intends to perform work in connection with this project as (check one):

- an individual DBE a partnership a joint venture

The Disadvantaged Business status of the undersigned is confirmed

(a) on the most recent reference list of Disadvantaged Business Enterprises published by SOMWBA dated _____, or

(b) on the attached Disadvantaged Business Enterprise Identification Statement

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

At the following price: _____

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

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

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

Date _____

Name of Disadvantaged Business Enterprise

By _____

DISADVANTAGED BUSINESS ENTERPRISE UNAVAILABILITY CERTIFICATE

I, _____,

(Name)

(Title)

of _____, certify that on _____

(Prime Bidder)

(Date)

I contacted the following Disadvantaged Business Enterprise to obtain a bid for work items to be performed on this project.

Work Items Sought

Form of Bid Sought (i.e., unit price, materials & labor, labor only, etc.)

_____	_____
_____	_____
_____	_____

To the best of my knowledge and belief, said Disadvantaged Business Enterprise was unavailable for work on this project, or unable to prepare a bid for the following reason(s):

Signature: _____

Date: _____

_____, was offered an opportunity to

(Name of Disadvantaged Business Enterprise)

bid on the above-identified work on _____ by _____

(Date)

(Source)

The above statement is a true and accurate account of why I did not submit a bid on this project.

(Signature of DBE)

(Title)

Date: _____

APPENDIX C

ADDENDA ACKNOWLEDGMENT FORM

AMENDMENT PAGE

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

(Give number and date of each):

Amendment No.	_____	Date	_____
Amendment No.	_____	Date	_____
Amendment No.	_____	Date	_____
Amendment No.	_____	Date	_____
Amendment No.	_____	Date	_____
Amendment No.	_____	Date	_____
Amendment No.	_____	Date	_____

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

Signature _____

Title _____

INFORMATION TO BE SUBMITTED IN ENVELOPE NUMBER 1, PROPOSAL NARRATIVE.

APPENDIX D

FEDERAL CLAUSES

REQUIRED FTA CLAUSES

For

PROFESSIONAL SERVICES

A. Certification Regarding Debarment, Suspension and Other Responsibility Matters

1. **By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.**
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, MVRTA may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to SRTA if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact SRTA for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by SRTA.
6. **The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction”, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.**

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to check the Nonprocurement List issued by US General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, SRTA may pursue available remedies including suspension and/or debarment.

“Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction”

1. The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its “principals” [as defined at 49 C.F.R. & 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

B. Restrictions on Lobbying

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. & 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CR part 20, “New Restrictions on Lobbying.” Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

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

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

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

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

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

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

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

C. Prohibited Interests

1. No member, officer, or employee of the SRTA, or of a local public body during their tenure or for one year thereafter will have any interests, direct or indirect, in a contract or the proceeds thereof.
2. In accordance with 41 U.S.C. 22, the Contractor agrees that it will not admit any member of or delegate to the United States Congress to any share or part of the Project or any benefit derived therefrom.

D. Termination of Contract

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

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the SRTA may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the SRTA that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the SRTA, after setting up a new delivery performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) The SRTA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to SRTA's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within [ten (10) days] after receipt by Contractor of written notice from the SRTA setting forth the nature of said breach or default, SRTA shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude SRTA from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- d. **Waiver of Remedies for any Breach** In the event that SRTA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by SRTA shall not limit SRTA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- e. **Termination for Convenience (Professional or Transit Service Contracts)** The SRTA, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the SRTA shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- f. **Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the SRTA may terminate this contract for default. The SRTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.
- g. **Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the SRTA may terminate this contract for default. The SRTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

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

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

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

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

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of SRTA, acts of another Contractor in the performance of a contract with the SRTA, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the Contractor , within [10] days from the beginning of any delay, notifies the SRTA in writing of the causes of delay. If in the judgment of the SRTA, the delay is excusable, the time for completing the work shall be extended. The judgment of the SRTA shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

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

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

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

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

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

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

E. Patent Rights in Data

The FTA patent clause is substantially similar to the text of 49 C.F.R. Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. Rights in Data - These following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (*i.e.*, a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

F. Disadvantaged Business Enterprise

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is ___ %. A separate contract goal of ___ % **DBE participation has** been established for this procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may

result in the termination of this contract or such other remedy as **SRTA** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

c. Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **concurrent with and accompanying sealed bid or concurrent with and accompanying an initial proposal**:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

[Bidders][Offerors] must present the information required above **as a matter of responsiveness or with initial proposals** (*see* 49 CFR 26.53(3)).

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **SRTA**. In addition, **the contractor is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the SRTA and contractor's receipt of the partial retainage payment related to the subcontractor's work.**

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

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

(1) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. & 2000d, section 303 of the Age Discrimination Act of 1975, as amended, or 42 U.S.C., 6102, section 202 of the ADA of 1990, 42 U.S.C. & 12132, and Federal Transit law at 49 U.S.C. & 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. & 2000e, and Federal Transit laws at 49 U.S.C. & 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of US Department of Labor (US DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. & 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. && 623 and Federal Transit law at 49 U.S.C. & 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. & 12112, the Contractor agrees that it will comply with the requirements of US Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3). The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

I. Air Quality

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

J. Clean Water

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

K. Energy Conservation

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

M. Privacy

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

1. The contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 USC & 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

N. ACCESS TO RECORDS

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a major capital project excludes contracts less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, an hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1), through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonable needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exception related thereto. Reference 49 CFR 18.39(i)(11).
7. FTA does not require the inclusion of these requirements in subcontracts.

Q. Third Party Contract Disputes or Breaches

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

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

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

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

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

R. Seismic Safety

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

T. Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

U. Recycled Products

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

V. No Obligation by the Federal Government

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

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

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

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. &&3801 *et seq.* And US DOT regulations “Program Fraud Civil Remedies,” 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. &5307, the Government reserves the right to impose the penalties of 18 U.S.C. &5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

X. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any SRTA requests which would cause SRTA to be in violation of the FTA terms and conditions.

DD. Fly America Requirements

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

APPENDIX E

**Massachusetts General Laws
Chapter 149, Section 44A ½**

CHAPTER 149. LABOR AND INDUSTRIES

FAIR COMPETITION FOR BIDDERS ON CONSTRUCTION, ETC., OF PUBLIC WORKS

Chapter 149: Section 44A1/2. Fair competition for bidders on construction

Section 44A1/2. (a) A public agency, before entering into a contract for design services pursuant to section 38D or section 38K of chapter 7, shall contract for the services of an owner's project manager to serve as the public agency's agent and consultant during the planning, design and implementation of a contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by the public agency estimated to cost not less than \$1,500,000. The duties of the owner's project manager shall include, but need not be limited to, providing advice and consultation with respect to design, value engineering, scope of the work, cost estimating, general contractor and subcontractor prequalification, pursuant to Section 44D 1/2 or 44D 3/4 when applicable, scheduling, construction and the selection, negotiation with and oversight of a designer and a general contractor for the project, ensuring the preparation of time schedules which shall serve as control standards for monitoring performance of the building project, and assisting in project evaluation including, but not limited to, written evaluations of the performance of the design professional, contractors, and subcontractors. For the purposes of this subsection, the term "owner's project manager" shall mean an individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other entity engaged in the practice of providing project management services for the construction and supervision of construction of buildings. The owner's project manager shall be a person who is registered by the commonwealth as an architect or professional engineer and who has at least 5 years experience in the construction and supervision of construction of buildings or a person, if not registered as an architect or professional engineer, who has at least 7 years experience in the construction and supervision of construction of buildings. The owner's project manager shall be independent of the designer, general contractor or any sub-contractor involved in the building project.

(b) Notwithstanding subsection (a), a public agency may assign an existing employee to serve as the owner's project manager, if that employee meets or exceeds the minimum qualifications as outlined in subsection (a) and has experience in the construction and supervision of construction of buildings of similar size and scope of complexity as the project to which he is assigned.

(c) The public agency shall use a qualifications based selection process to procure the services of an owner's project manager.