



**Pioneer Valley Transit Authority (PVTA)**

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**REQUEST FOR QUALIFICATIONS (RFQ)  
RFQ #20-004**

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**Facility Management Consultant Services**

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**Development of a Bus Maintenance Facility Planning Program**

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**Springfield Bus Operations & Maintenance Facility  
665 Cottage Street, Springfield, MA**

**Issue Date: October 25, 2019**

**Due Date: November 19, 2019 @ 2:00 PM**

## REQUEST FOR QUALIFICATIONS (RFQ) NOTICE

To All Interested Parties:

The Pioneer Valley Transit Authority (PVTA) is seeking qualifications from interested parties to provide facility management consulting services for the develop a Bus Maintenance Facility Planning Program for PVTA's new Bus Operating and Maintenance (O&M) Facility located at 665 Cottage Street Springfield, MA. The specifics of the RFQ are set forth in the supporting documents attached hereto and made a part hereof. PVTA anticipates negotiating a contract (based on available funding) for a specific scope of services with the firm deemed most qualified for this project.

**Proposals** in response to PVTA's RFQ # 20-004 for Facility Management Consulting Services must be received at the PVTA Administration Office, 2808 Main Street, Springfield, MA 01107 no later than 2:00 P.M. EST on November 19, 2019.

The Pioneer Valley Transit Authority (PVTA) is a Regional Transit Authority and Political Subdivision of the Commonwealth of Massachusetts. PVTA is organized pursuant to the provisions of Chapter 161B of the Massachusetts General Laws. Its statutory mandate is to provide public transit services to twenty-four (24) communities within the region of the Pioneer Valley in Western Massachusetts. PVTA is funded with federal, state and local funds, as well as passenger farebox revenue. PVTA is required to comply with the provisions of the Americans with Disabilities Act (ADA) as well as all federal and state laws, regulations and statues. A guiding principal of PVTA is to continually improve the quality of its operations while providing accessible, safe, reliable, cost effective service to citizens of the Pioneer Valley.

Any contract resulting from proposals submitted to this RFQ is subject to funding between the PVTA, the Massachusetts Department of Transportation, and the Federal Transit Administration. Further, any contract entered into pursuant to this RFQ, will afford full opportunity to disadvantaged business enterprises to submit proposals, who will not be subjected to discrimination on the basis of race, color, sex or national origin in consideration for an award.

The Authority reserves the right to reject any and all proposals submitted to this Request for Qualifications and waive informalities and irregularities, as it deems in its best interest.

Pioneer Valley Transit Authority  
2808 Main Street, Springfield, MA 01107 .Phone: 413-732-6248 .Fax: 413-737-2954  
[www.pvta.com](http://www.pvta.com)

## TABLE OF CONTENTS

<b>1.0</b>	<b>GENERAL INFORMATION</b>	<b>5</b>
1.1	PIONEER VALLEY TRANSIT AUTHORITY	5
1.2	BACKGROUND & GENERAL SCOPE OF LSP SERVICES SOUGHT	5
1.3	DUE DATE	7
1.4	QUESTIONS/REQUESTS FOR CLARIFICATION	7
1.5	ACCEPTANCE PERIOD	8
1.6	CANCELLATION OF SOLICITATION	8
1.7	PROCUREMENT SCHEDULE	8
<b>2.0</b>	<b>INSRUCTION TO PROPOSERS</b>	<b>8</b>
2.1	SCOPE OF PROPOSAL	8
2.2	AUTHORITY TO SUBMIT PROPOSAL/EXECUTE CONTRACTS	8
2.3	CHANGES TO THE RFP VIA ADDENDA	8
2.4	EXTENSION OF PROPOSAL DUE DATE	9
2.5	ACKNOWLEDGEMENT AND POSTING OF ADDENDA	9
2.6	SUBMISSION REQUIREMENTS	9
2.7	LATE SUBMISSIONS, MODIFICATIONS & OFFER WITHDRAWALS	10
2.8	PROPOSER DISQUALIFICATION	10
2.9	WAIVER OF INFORMALITIES/DEVIATIONS, ERRORS & MATTERS OF FORM	11
2.10	APPEAL/PROTEST PROCEDURES	11
2.11	PRE-CONTRACTUAL EXPENSES	11
2.12	TAX EXEMPTION	11
2.13	CONFLICT OF INTEREST	12
<b>3.0</b>	<b>CONSULTANT SELECTION PROCESS</b>	<b>12</b>
3.1	QUALITY (QBS)	12
3.2	CONTRACT AWARD	13
<b>4.0</b>	<b>EVALUATION OF PROPOSALS</b>	<b>13</b>
4.1	EVALUATION CRITERIA	13
4.2	QUALIFICATIONS COMPLIANCE DETERMINATION	14
<b>5.0</b>	<b>OTHER TERMS &amp; CONDITIONS</b>	<b>14</b>
5.1	TERMINATION	14
5.2	NON-COMPLIANCE WITH TERMS AND CONDITIONS	15
5.3	PROPRIETARY INFORMATION	15
5.4	FEDERALLY-REQUIRED CONTRACT CLAUSES	15
<b>6.0</b>	<b>INSURANCE</b>	<b>15</b>
6.1	GENERAL REQUIREMENTS	15

<b>6.2</b>	<b>MINIMUM REQUIRED INSURANCE COVERAGES</b>	<b>16</b>
<b>6.3</b>	<b>WAIVER OF SUBROGATION</b>	<b>17</b>
<b>ATTACHED EXHIBITS FOR SIGNATURE</b>		<b>18</b>
	<b>EXHIBIT A, CERTIFICATE OF AUTHORITY</b>	<b>19</b>
	<b>EXHIBIT B, ADDENDA ACKNOWLEDGEMENT FORM</b>	<b>20</b>
	<b>EXHIBIT C, CERTIFICATION OF ELIGIBILITY TO BID OR PROPOSE</b>	<b>21</b>
	<b>EXHIBIT D, CERTIFICATION OF TAX COMPLIANCE</b>	<b>22</b>
	<b>EXHIBIT E, CERTIFICATION OF RESTRICTIONS ON LOBBYING</b>	<b>23</b>
	<b>EXHIBIT F, CERTIFICATION OF NON-COLLUSION</b>	<b>24</b>
	<b>EXHIBIT G, CONFLICT OF INTEREST CERTIFICATION</b>	<b>25</b>
	<b>EXHIBIT H, PVTA'S PRESERVATION OF RIGHTS AND DISCLAIMERS</b>	<b>26</b>
	<b>EXHIBIT I, FEDERALLY-REQUIRED CONTRACT CLAUSES</b>	<b>29</b>

## **1.0 GENERAL INFORMATION**

### **1.1 PIONEER VALLEY TRANSIT AUTHORITY**

The Pioneer Valley Transit Authority (“PVTA”) is the largest regional transit authority in Massachusetts with over 175 fixed-route buses and over 140 paratransit vans serving its 24 participating member communities within the Pioneer Valley region. PVTA is funded with federal, state and local monies, as well as farebox revenue. PVTA was created pursuant to Massachusetts General Laws, Chapter 161B, in August of 1974. PVTA is prohibited, by the provisions of Section 25 of Chapter 161B, from directly operating transit service; thus, all fixed-route and paratransit services are provided by subcontractors. PVTA is required to comply with the mandates of the Americans with Disabilities Act (ADA), as are the entities with which it contracts for transit and paratransit service.

PVTA provides comprehensive transit service via 41 fixed routes and 3 community shuttles in the region’s major urban centers and surrounding communities. PVTA provides complementary ADA paratransit service to the region’s disabled and elderly population. Paratransit service is generally available to a wider area than is reached by the fixed-route transit system.

The PVTA service area has a combined population of 578,218 residents (ACS 2012-2016 five-year estimates) and widely varying development patterns over approximately 600 square miles. These communities range from urbanized cities to suburbs and rural towns. The City of Springfield is the most densely populated community, with 4,831 residents per square mile, while many outlying towns have fewer than 1,000 residents per square mile—and 9 of PVTA’s 24 communities have fewer than 300 residents per square mile. Approximately 72% of PVTA’s service area is considered suburban or rural.

The region PVTA serves is developed around two urban areas. The largest, in the south of the region, has the cities of Springfield, Chicopee, and Holyoke as its urban core. In the north, the City of Northampton is a hub around which development is now occurring in the surrounding towns of Hadley, Amherst, and Easthampton. As home to the flagship campus of the state university, Amherst too is a significant center of employment and activity. Serving mixed population densities shapes the services that PVTA provides and how it functions.

### **1.2 BACKGROUND AND GENERAL SCOPE OF SERVICES SOUGHT**

PVTA opened its new 230,000 square-foot, \$55.7 Million Bus Operations and Maintenance Facility at 665 Cottage Street, Springfield in May 2019. The facility provides light-, medium and heavy-duty maintenance to PVTA's entire fleet of fixed-route buses. It provides indoor storage to over 100 fixed-route buses as well as offices for PVTA's bus operator - the Springfield Area Transit Company (SATCO) - and its administrative staff, bus maintenance personnel, dispatchers and bus drivers.

This following scope of work is intended to be general in nature. It is expected that PVTA will collaborate with the selected consultant to refine this scope to include more detailed tasks as

necessary. In developing this refined scope of services, the selected consultant will be able to review plans, documents and systems at the facility itself. Some of the tasks in the anticipated scope of work for developing a Facility Planning Program (FPP) include data collection of all equipment and systems, asset photos of equipment, lockout-tagout identification of energy sources, locations and apparatus for source isolation. The data collection work will also include basic equipment tasks as identified in the manufacturer's maintenance manuals regarding preventative maintenance, calibration tasks/frequencies for sensors and equipment. The consultant will also provide a list of recommended basic consumables for inventory.

The FPP shall utilize a computerized maintenance management software (CMMS) as the basis of tracking program progress. PVTA may elect to use their current Trapeze software being used for fleet maintenance. This module is currently being evaluated to integrate with the fleet maintenance software.

### **Building Systems for this Project**

The program under this scope will be developed for the following building systems:

- Life Safety Building Systems- including all fire protection equipment, gas monitoring system, elevator and fuel distribution and storage.
- Electrical Distribution - including switchgear/panel boards/ emergency switchboard as well as generators and automatic transfer switch
- Mechanical (HVAC and Air Compressor)- including 217 units (air handlers, fans, cooling tower, unit heaters, water source heat pumps, exhaust fans, pumps, boilers etc.

Specific tasks and requirements resulting from the developed FPP will be assigned to a combination of full-time maintenance staff and contract maintenance support staff at the facility. Currently, PVTA is within a 1-year warranty for most facility systems that will end on December 8, 2019, however, certain systems have extended warranties.

### **Sample Test Asset**

The Consultant for this project will work closely with a PVTA-designated project manager in the development of the maintenance database. The initial task will be to create at least three (3) sample test assets in the database to verify what information can be included. Equipment information should include, but is not limited to, items listed above as well as service reports, maintenance readings, etc., to verify inventory and reporting capabilities of the CMMS.

### **Data Collection**

- The Consultant will conduct a detailed collection of building equipment nameplate information to establish building asset information.

- The Consultant will work with the PVTA project manager to develop a maintenance data collection method. From there, the Consultant will develop and provide data collection forms and a schedule for field activities.
- The Consultant will field collect all equipment information needed for the database. The final product of the data collection must be in a format for PVTA to easily input and/or upload the collected information into the CMMS. PVTA will upload and/or enter data collected into the database.

### **Lockout-Tagout**

The Consultant will provide basic lockout-tagout information for installed equipment. This information will include the source power isolation point(s), and the apparatus required for proper isolation of the energy source(s) only. Unless negotiated as “additional services”, the Consultant is not responsible for development of a full lockout-tagout program to meet OSHA requirements.

### **PVTA will provide the following:**

- Financial information relative to lifecycle costs, depreciation, and capital planning aspects of the PM program
- Other documents and plans
- Lifts and ladders will be available to Consultant for field work of data collection

### **1.3 DUE DATE**

Proposals of qualifications for the work described herein are due by 2:00 PM EST, November 19, 2019 at the PVTA Administration Office, 2808 Main Street, Springfield, MA 01107. PROPOSERS ARE REQUIRED TO SUBMIT A PROPOSAL INCLUDING ALL FORMS CONTAINED IN THIS PACKAGE.

Late submissions will not be accepted. It is the responsibility of any entity responding to this RFQ to ensure that its Proposal is delivered to PVTA by the deadline. Delivery by facsimile or email will not be accepted.

### **1.4 QUESTIONS/REQUESTS FOR CLARIFICATION**

The deadline for written questions and requests for clarification regarding the RFQ or RFQ process is 5:00 PM on November 12, 2019. All questions or requests for clarifications must be submitted in writing via email to Sandra Sheehan at [ssheehan@pvta.com](mailto:ssheehan@pvta.com) Communication by any Proposer with any agent, employee or consultant of PVTA or PVTA relative to this RFQ or the pending process, other than as established herein, may in the sole judgment of the Authority, result in the Proposer being disqualified.

PVTA reserves the right, at any time, to issue addenda to this RFQ or to make adjustments to its project schedule if it is deemed in PVTA's best interest to do so.

**1.5 ACCEPTANCE PERIOD**

The PVTA requires an Acceptance Period of one-hundred twenty (120) calendar days. "Acceptance Period" for purposes of this solicitation means the number of calendar days available to the PVTA for awarding a contract based on the Due Date specified in this solicitation for receipt of proposals.

**1.6 CANCELLATION OF SOLICITATION**

The PVTA reserves the right to cancel this solicitation at any time prior to execution of the Contract by all parties and without any liability against the PVTA.

**1.7 PROCUREMENT SCHEDULE**

10/25/19	Distribute RFQ to Prospective Firms
11/12/19 @ 5:00 PM	Deadline for Written Questions/Requests for Clarifications
11/19/19 @ 2:00 PM	Deadline for Submission of Proposals
12/2/19	Selection Committee Evaluation/Award (Projected)
12/16/19	Execute Contract/Notice-to-Proceed (Projected)

**2.0 INSTRUCTIONS TO PROPOSERS**

**2.1 SCOPE OF PROPOSAL**

Pursuant to this Request for Qualifications ("RFQ"), Proposers are required to comply with the terms and conditions stated herein to be deemed responsive and responsible. Proposers must address all terms, conditions, and concerns listed in this RFQ and describe how it plans to complete the work effort such that the Authority's requirements are fully met. If a proposal does not meet all the requirements listed in the RFQ, the Proposer's proposal may be deemed non-responsive. Failure by the Proposer to examine all information pertaining to this solicitation or participate in an on-site visit, if scheduled by the Authority, will be at the Proposer's risk.

**2.2 AUTHORITY TO SUBMIT PROPOSAL/EXECUTE CONTRACTS**

Proposers shall complete, execute and return with their Non-Price Proposal, the Certificate of Authority as attached in **Exhibit A** of this RFQ, certifying the signing individual has the authority to submit the proposal and execute contracts on behalf of the Proposing firm.

**2.3 CHANGES TO THE RFQ VIA ADDENDA**

Should PVTA make changes to any specification, stipulation, requirement, or procedure, notification will be made to all Proposers in the form of written Addenda. No officer, agent, or employee of PVTA is authorized to amend any provision contained in this RFQ, including the specifications, unless such amendment is issued as an Addendum and sent to all Proposer in accordance with this section.



## 2.4 EXTENSION OF PROPOSAL DUE DATE

Requests for an extension of the Due Date must be submitted in writing to the attention of Sandra Sheehan at [ssheehan@pvta.com](mailto:ssheehan@pvta.com) no later than five (5) business days prior to the Due Date. PVTA reserves the right to determine whether an extension is justified. All Proposers will be notified in writing of any extension granted.

## 2.5 ACKNOWLEDGEMENT AND POSTING OF ADDENDA

Proposers shall acknowledge written Addenda by signing and returning the Addenda Acknowledgment form attached in **Exhibit B** of this RFQ with the Proposer's Proposal. If this RFP is modified by an amendment, then all terms and conditions that are not modified remain unchanged.

## 2.6 SUBMISSION REQUIREMENTS

### 2.6.1 Technical Proposal Elements

Proposals shall include five (5) identical hard copies and include the following items, along with other material to demonstrate Consultant's expertise and capability:

- A brief written description of the Consultant's approach to the project.
  - The expertise of the Project Manager and consultant team that will carry out the work.
  - A list of comparable projects undertaken by Consultant and/or team members.
  - A copy of at least one maintenance planning program previously created by the Consultant and currently utilized.
1. **Description of Approach:** Up to two pages describing the Consultant's typical approach to projects similar to this one, including but not limited to the data collection method and schedule including extent of site visits to complete the work.
  2. **Team Expertise:** Brief description of general qualifications, the multi-disciplinary nature of the Project Manager and team assembled for this project, specific evidence of relevant experience with all aspects of facilities management including but not limited to creating maintenance planning programs, and a listing with relevant experience of key personnel that would be available to work on this project.
  3. **Comparable Projects:** Summary of Facility management projects in progress or completed, with the following information for each:
    - a. Reference name, with current contact information
    - b. Current status of project (in progress; date completed; adopted?)
    - c. Nature of work/tasks involved
    - d. Client type (clarifying role of private sector client, if any)
    - e. CMMS systems used if any?
    - f. Size and type of industry/uses of the facility?
    - g. Building systems included in the project (Life safety, mechanical, etc?)

h. Level of coordination effort with project owner.

4. **Sample Data Collection Document:** Please include one or more sample data collection documents selected from the list of comparable projects. Briefly explain the data collection method and timeframe involved to complete the task.

#### **2.6.2 Submission Forms, Certifications and Statements for Execution**

Proposers responding to this RFQ must fully complete, sign, and submit with their Proposal the Forms, Certifications, Statements listed in this Section as well as any requested supplemental documentation required in the Forms, Certifications and Statements listed and attached with this RFQ.

Exhibit A	Certificate of Authority
Exhibit B	Addenda Acknowledgement Form
Exhibit C	Certification of Eligibility to Bid or Propose
Exhibit D	Certificate of Tax Compliance
Exhibit E	Certification of Restrictions on Lobbying
Exhibit F	Certification of Non-Collusion
Exhibit G	Conflict of Interest Certification

### **2.7 LATE SUBMISSIONS, MODIFICATIONS AND WITHDRAWALS OF OFFERS**

#### **2.7.1 Late Submission**

Any offer received by PVRTA Procurement after the exact time specified for receipt as designated in Section 1.3 (Due Date) will not be considered unless the package was received prior to award by a method authorized by the PVRTA and the late receipt was due solely to the mishandling of the package by the PVRTA after receipt; or it is the only offer received by PVRTA.

#### **2.7.2 Withdrawal of an Offer**

Proposals may be withdrawn by written notice to the PVRTA or in person by the Proposer or an authorized representative of the Proposer at any time before award.

### **2.8 PROPOSER DISQUALIFICATION**

PVRTA reserves the unqualified right, in its sole and absolute discretion, to disqualify any team, firm or individual from any phase or component of the selection process due to an ineligibility to propose or:

- i. a determination by PVRTA that the Proposer has failed to disclose any matter that materially relates to the fitness or the ability of the Proposer to perform the work and Services associated with this RFQ; or
- ii. a conflict of interest; or
- iii. is in any way a violation of the procurement process.

To this end, the following certification forms included with this RFQ must be completed, signed and

submitted with the Proposal: Certification of Eligibility to Bid or Propose (attached **Exhibit C**), Certificate of Tax Compliance (attached **Exhibit D**), Certification of Restrictions on Lobbying (attached **Exhibit E**), Certification of Non-Collusion (attached **Exhibit F**), and Conflict of Interest Certification (attached **Exhibit G**).

PVTA reserves the unqualified right to disqualify any prospective Proposer or reject any response at any time solely on the grounds that a real or perceived legal or policy conflict of interest is presented, or terminate any contract arising out of this RFQ if, in the opinion of PVTA, any such relationship would constitute or have the potential to create a real or perceived conflict of interest.

**2.9 WAIVER OF INFORMALITIES, DEVIATIONS, ERRORS & MATTERS OF FORM**  
PVTA reserves the right to waive any informalities, deviations, errors, and matters of form rather than substance regarding the bid documents, which can be waived or corrected without prejudice to the Contractor. No officer or agent of PVTA is authorized to waive this reservation.

**2.10 APPEAL/PROTEST PROCEDURES**

Bid appeals/protests relative to this procurement will be reviewed and adjudicated in accordance with PVTA's Appeals/Protest Procedure. A copy of this procedure is available by contacting the Procurement Officer. In the event this procurement is federally funded with financial assistance from the Federal Transit Administration (FTA), interested parties may elect to issue a protest to the FTA if the interested party believes that PVTA failed to follow the protest procedures identified above. Such protests to FTA must be filed in accordance with FTA Circular 4220.1F, Section 7l, Written Protest Procedures.

**2.11 PRE-CONTRACTUAL EXPENSES**

PVTA shall not be liable for any pre-contractual expenses incurred by the Proposer in the preparation of its proposal. The Proposer shall not include any such expenses as part of its proposal. Pre-contractual expenses are defined as expenses incurred by the Proposer in:

**2.11.1** Preparing its proposal in response to this RFQ;

**2.11.2** Submitting its proposal to PVTA;

**2.11.3** Negotiating with PVTA any matter related to this proposal; or

**2.11.4** Any other expenses incurred by Proposer prior to date of award, if any, of the Agreement.

**2.12 TAX EXEMPTION**

PVTA is exempt from Federal Excise Tax, including Transportation Tax, and will furnish properly executed tax exemption certificates upon request. PVTA is also exempt from Massachusetts State Sales Tax -- Exemption Number E-042-562-370. Such taxes should not be included in bid prices, except for gasoline taxes.

As an independent Contractor, the Contractor alone shall be responsible for payment of all

federal, state and local taxes of all types and kinds applicable to such fees incurred under this Agreement.

### **2.13 CONFLICT OF INTEREST**

Massachusetts Conflict of Interest Law, G.L. c. 268A, governs the conduct of all public officials and employees, including all dealings with potential contractors. Therefore, it is the responsibility of Contractor to ensure compliance with the Commonwealth's Conflict of Interest Laws and avoid any conduct which might result in or give the appearance of creating for Board members, officers or employees of the Authority in their relationship with the Contractor any conflicts of interest or favoritism and/or the appearance thereof or any conduct which might result in a Board member, officer or employee failing to comply with G.L., c. 268A. Non-compliance with the Conflict of Interest terms shall constitute a material breach of this Contract.

For purposes of this solicitation, it is understood and agreed that no gift, loan or other thing has been or will be given to any employee, agent or officer of PVTa by the Proposer, Proposer's employees, subcontractors, or agents in connection with the award or performance of this Contract. It is further understood and agreed that no Board member, officer, or employee of PVTa; no officer or employee of any independent authority or political subdivision of the Commonwealth of Massachusetts, no officer, employee, or elected official of the Commonwealth of Massachusetts, executive or legislative of any city, county, or town within the 24 cities and towns serviced by PVTa; and no member or delegate to the Congress of the United States, during his/her tenure shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

If, during the performance of this Contract and any extension thereof, the Contractor becomes aware of any relationship, financial interest, or other activity in which it or an affiliated person or company is involved which is not in compliance with these provisions, the Contractor shall promptly notify the PVTa Procurement Officer in writing and fully disclose all circumstances thereof. The Authority reserves the right to grant an exception to the requirements of this Section, if so allowed by law, and notify the Contractor thereof. If the Authority does not grant an exception, the Contractor shall, within ten (10) days of written notice from the Authority, take all action necessary to comply with the terms stated herein. The Proposer shall certify compliance with these terms and the Massachusetts Conflict of Interest Laws by executing the Certification form referenced in Section 2.8 of this RFQ.

### **3.0 CONSULTANT SELECTION PROCESS**

#### **3.1 QUALITY-BASED SELECTION (QBS)**

PVTa utilizes QBS for procuring consulting services.

##### **3.1.1 Selection Committee/Ranking of Proposals**

A Selection Committee ('SC') approved by the PVTa Administrator, while maintaining strict confidentiality, will review the Proposals to determine if the submissions are compliant with the technical and contractual requirements stipulated in this RFQ. The SC will review, evaluate and

rank all Proposals based on established evaluation criteria and weightings listed in this RFQ. The SC may invite some or all Proposers to submit additional material to clarify or support their Proposal, and may at its sole discretion, conduct interviews with all Proposers or with short-listed Proposer's only.

### **3.1.2 Detailed Scope/Cost/Fee Negotiation with Top-Rated Firm**

Following selection of the firm deemed most qualified to complete the work, the PVTA will attempt to negotiate with that firm a refined scope and acceptable fee for the services presented. If the top-rated firm is invited into negotiations but a lump sum fee and Contract, acceptable to PVTA, is not achieved, the PVTA will terminate negotiations with that firm, open the Cost Proposal of the second rated firm and begin negotiations with the second-rated firm, and so on, until an agreed-upon lump sum fee and Contract is achieved.

### **3.2 CONTRACT AWARD**

When the Procurement Officer determines that an award can be made that is judged by PVTA to be in its best interest, a recommendation is made to the PVTA Administrator to proceed with making the award. The Contracting Officer prepares a request for approval by the Administrator that contains the Evaluation Committee's documentation supporting the final recommendation. Following receipt of the Administrator's approval, all Proposers will be advised, in writing, of PVTA's final decision. The Contract will then be executed between PVTA and the selected Proposer(s). Upon execution of the Contract, a formal Notice to Proceed will be issued to the Contractor.

## **4.0 EVALUATION OF PROPOSALS**

The SC will evaluate all submittals to determine which Consultants have the experience and qualifications that are most suited for this project. PVTA may request personal interviews with the highest-ranked Consultants or may request one or more prospective Consultants to submit detailed proposals including specific tasks, methodologies, schedules, person-hour allocations of time, work product schedules and deliverables.

1. Hourly rates (inclusive of overhead and profit) for personnel or personnel categories. A not-to-exceed amount for the completion of this project. Any additional services not described in the Scope of Services will either at the same hourly rate established for this project, or for a fixed fee fairly negotiated.
2. Data expected to be provided by PVTA.

### **4.1 EVALUATION CRITERIA**

Evaluation criteria is based on the importance of several qualifications-based factors that include but are not limited to:

- Experience in facilities management services and specifically developing facilities management planning programs for new state-of-the-art facilities.

- Experience with a wide variety of building systems and preventative maintenance tasks including but not limited to mechanical, electrical, life safety, etc.
- Strong project management skills.
- Strong written and oral communication skills.
- Experience in identifying, documenting, evaluating, and explaining the essential qualities of an effective facility maintenance planning program.
- Experience in coordinating with property owners to ensure methods and documentation meet the needs of the project.
- Experience with CMMS software systems.

The Proposals, including project approach, qualifications, experience, and references shall be evaluated based upon the following criteria and scoring based out of a possible 100-point total:

**4.1.1 Overall Quality and Responsiveness of Proposal (15 points)**

**4.1.2 Approach to Project (15 points)**

**4.1.3 Project Manager Qualifications (25 points)**

**4.1.4 Team Qualifications (25 points)**

**4.1.5 Comparable Projects (20 points)**

**4.2 QUALIFICATIONS COMPLIANCE DETERMINATION** - PVTA is the sole judge in determining compliance with qualifications standards.

**5.0 OTHER TERMS AND CONDITIONS**

**5.1 TERMINATION**

The Proposer selected and awarded a contract through this RFQ shall receive payment for Services from PVTA. PVTA reserves the right to terminate the Contract or modify it accordingly, including termination for cause and termination for convenience:

**5.1.1 Termination for Cause** - If at any time during the term of the Agreement PVTA determines that the Contractor has breached the terms of this Agreement by negligently or incompetently performing the work, or any part thereof, or by failing to perform the work in a timely fashion, or by failing to perform the work to the satisfaction of PVTA, or by not complying with the direction of PVTA or its agents, or by otherwise failing to perform this

Agreement in accordance with all of its terms and provisions, PVTA shall notify the Contractor in writing stating therein the nature of the alleged breach and directing the Contractor to cure such breach within two (2) calendar days. The Contractor specifically agrees that it shall indemnify and hold PVTA harmless from any loss, damage, cost, charge, expense or claim arising out of our resulting from such breach regardless of its knowledge or authorization of the actions resulting in the breach. If the Contractor fails to cure said breach within two (2) calendar days, PVTA may, at its election at any time after the expiration of said two (2) calendar days, terminate this Agreement by giving written notice thereof to the Contractor specifying the effective date of the termination. Upon receipt of said notice, the Contractor shall cease to incur additional expenses in connection with this Agreement. Upon the date specified in said notice, this Agreement shall terminate. Such termination shall not prejudice or waive any rights or action which PVTA may have against the Contractor up to the date of such termination, and the Contractor shall be liable to PVTA for any amount which it may be required to pay in excess of the compensation provided herein in order to complete the work specified herein in a timely manner. Upon such termination, the Contractor shall be entitled to compensation for all satisfactory work completed prior to the termination date, as determined by PVTA.

**5.1.2 Termination for Convenience** - PVTA may terminate this Agreement at any time for convenience by providing the Contractor written notice specifying therein the termination date which shall not be sooner than ten (10) calendar days from the issuance of said notice. Upon receipt of said notice, the Contractor shall cease to incur additional expenses in connection with this Agreement. Upon such termination, the Contractor shall be entitled to compensation for all satisfactory work completed prior to the termination date, as determined by PVTA, such payment not to exceed the fair value of the services provided hereunder.

## **5.2 NON-COMPLIANCE WITH TERMS AND CONDITIONS**

Any terms and conditions proposed by a Proposer that do not comply in substance with all material requirements of the RFQ, are contrary to the best interests of PVTA, or that are inconsistent with PVTA policy or PVTA terms and conditions, shall be deemed non-responsive. PVTA may disqualify any Proposal that, in PVTA's sole and absolute discretion, contains exceptions to material provisions of the RFQ or PVTA terms and conditions. A complete list of PVTA's reservation of rights and disclaimers are attached as **Exhibit H**.

## **5.3 PROPRIETARY INFORMATION**

All Proposals shall become the property of PVTA. If any proprietary information is contained in or attached to a Proposal, it must be clearly identified as such. If more than twenty-five percent (25.00%) of the contents of the Proposal are specified as proprietary information, the Proposal may be deemed non-responsive. Please note that PVTA is subject to the provisions of Chapter 4, Section 7(26) of the general laws of Massachusetts, a public records law, and particularly sub-clause (g) which excludes from the definition of a "public record": "trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy and upon a promise of confidentiality; but this sub-clause shall not apply to information submitted as required by law or as a condition of receiving a governmental contract or other benefit."

## **5.4 FEDERALLY REQUIRED CONTRACT CLAUSES**

The Federally required Contract clauses listed in the attached **Exhibit I** will become part of the Contract with the Proposer selected and awarded a Contract under this RFQ.

## **6.0 INSURANCE**

### **6.1 GENERAL REQUIREMENTS**

Vendor shall maintain worker's compensation, general liability, automobile, and umbrella insurance for the minimum amount required outlined below. Insurance certificates shall be provided. Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Vendor's Commercial General Liability Policy. These certificates and the insurance policies shall contain a provision that coverage is afforded under the policies will not be cancelled or allowed to expire until 30 days prior written notice has been given to Pioneer Valley Transit Authority. Pioneer Valley Transit Authority shall be named as an additional insured on a primary and non-contributory basis on all liability and excess policies.

### **6.2 MINIMUM REQUIRED INSURANCE COVERAGES**

Contractor shall carry the following minimum required insurance limits (coverage on an occurrence basis):

**6.2.1 Commercial General Liability (CGL)** – with limits of Insurance of not less than \$1,000,000 each occurrence and \$2,000,000 Annual Aggregate. If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each location. CGL coverage shall be written on ISO Occurrence form CG 00 01 (10 93) or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury. Pioneer Valley Transit Authority shall be included as insureds on the CGL, using ISO Additional Insured Endorsement CG 20 10 (11 85) or CG 2010 (10 93) **AND** CG 20 37 (10 01) or CG2033 (10 01) **AND** CG2037 (10 01) or an endorsement providing equivalent coverage to the additional insureds. This insurance for the additional insureds shall be as broad as the coverage provided for the named insured subcontractor. It shall apply as Primary and non-contributing Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured.

**6.2.2 Automobile Liability** - Business Auto Liability with limits of at least \$1,000,000 each accident. Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles. Business Auto coverage must include as insureds all entities that are additional insureds on the CGL.

**6.2.3 Workers' Compensation and Employers Liability** - Employers Liability Insurance limits of at least \$500,000 each accident for bodily injury by accident and \$500,000 each employee for injury by disease.

**6.2.4 Commercial Umbrella Liability** - \$2,000,000 Umbrella coverage must include as



insureds all entities that are additional insureds on the CGL. Umbrella coverage for such additional insureds shall apply as primary before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured other than the CGL, Auto Liability and Employers Liability coverages maintained by the Vendor.

**6.2.5 Professional Liability - Aggregate - \$4,000,000 / Each Occurrence \$2,000,000**

**6.3 WAIVER OF SUBROGATION**

Contractor waives all rights against Pioneer Valley Transit Authority and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability or workers compensation and employer's liability insurance maintained per requirements stated above.

**ATTACHED EXHIBITS FOR SIGNATURE:**

**EXHIBIT A, CERTIFICATE OF AUTHORITY**

At a duly authorized meeting of the Board of Directors of \_\_\_\_\_  
(Name of Corporation)

held on \_\_\_\_\_, 20\_\_ it was VOTED that:

\_\_\_\_\_  
(Name) (Officer's Title)

of this corporation, be and he/she hereby is authorized to submit bids and proposals, execute contracts, deeds and bonds in the name and on behalf of said corporation, and affix its corporate seal hereto; and such execution of any contract, deed or obligation in this corporation's name on its behalf by said Officer under seal of the company, shall be valid and binding upon this corporation.

A True Copy:

ATTEST:

\_\_\_\_\_

TITLE:

\_\_\_\_\_

PLACE OF BUSINESS:

\_\_\_\_\_

I hereby certify that I am the clerk of the

\_\_\_\_\_

that \_\_\_\_\_ is the duly elected

\_\_\_\_\_ of  
(Name)

said corporation, and that the above vote has not been amended or rescinded and remains in full force and effect as of the date of this contract.

\_\_\_\_\_  
(Clerk)

CORPORATE SEAL:

**EXHIBIT B, ADDENDA ACKNOWLEDGEMENT FORM**

Proposer acknowledges receipt of the following amendments to RFP# 18-004.

Amendment No. \_\_\_\_\_ Dated: \_\_\_\_\_

Amendment No. \_\_\_\_\_ Dated: \_\_\_\_\_

Amendment No. \_\_\_\_\_ Dated: \_\_\_\_\_

Amendment No. \_\_\_\_\_ Dated: \_\_\_\_\_

Amendment No. \_\_\_\_\_ Dated: \_\_\_\_\_

PROPOSER'S NAME: \_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**EXHIBIT C, CERTIFICATION OF ELIGIBILITY TO BID OR PROPOSE**

\_\_\_\_\_ hereby certifies that it is not included on the  
(Name of Proposer)

U.S. Comptroller General's Debarred Bidders List.

Signature of Authorized Official: \_\_\_\_\_

Firm: \_\_\_\_\_

The Proposer further certifies to the best of its knowledge and belief that it and its principals

Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

Have not within a three (3) year period preceding the date of this Proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) transaction or contract under a public transaction, violation of Federal or state anti-trust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making a false statement, or receiving stolen property.

Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, state or local) with commission of, any of the offenses enumerated in Paragraph B of this certification.

Have not within a three (3) year period preceding the date of this Proposal had any public transactions (Federal, state or local) terminated for cause or default.

Where the Proposer is unable to certify to any of the statements in this Certification, such Proposer shall attach an explanation to this Proposal.

(Check One)

\_\_\_\_\_ I DO CERTIFY \_\_\_\_\_ I DO NOT CERTIFY

DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

NAME & TITLE: \_\_\_\_\_

**EXHIBIT D, CERTIFICATE OF TAX COMPLIANCE**

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A (b), I,  
\_\_\_\_\_, authorized signatory for \_\_\_\_\_, do hereby certify  
under the pains and penalties of perjury that said Contractor has complied with all laws of the  
Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and  
withholding and remitting child support.

\_\_\_\_\_  
Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Tax Identification Number

**EXHIBIT E, CERTIFICATION OF RESTRICTIONS ON LOBBYING**

I, \_\_\_\_\_, of \_\_\_\_\_,  
(Name and Title) (Name of Firm)

hereby certify that:

No Federal appropriated funds have been paid or shall 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 of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or shall be paid to any person for making lobbying contacts to 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 this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete submit a Standard Form, "Disclosure Form to Report Lobbying," in accordance with its instruction as amended.

The undersigned shall require that the language of this Certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements), and that all sub-recipients shall certify and disclose accordingly.

- (4) The undersigned acknowledges that this certification is a material representation of fact upon which reliance shall be placed at the time that the transaction concerned herewith was made or entered into, and that submission of this certification is a prerequisite for making or entering into such transaction imposed by Section 1352, Title 31, U.S. Code as amended. 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.
- (5) The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 US Code A3801, et seq., apply to this certification and disclosure, if any.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

By: \_\_\_\_\_  
(Signature and Title of Authorized Official)

**EXHIBIT F, CERTIFICATION OF NON-COLLUSION**

The undersigned certifies under penalties of perjury that this Proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this Certification, the word "person" shall mean any natural person, business, partnership, corporation, union committee, club, or other organization, entity or group of individuals.

SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

FIRM: \_\_\_\_\_

DATE: \_\_\_\_\_



**EXHIBIT G, CONFLICT OF INTEREST CERTIFICATION**

The undersigned hereby certifies that the Proposer shall comply with Massachusetts Conflict of Interest Laws, G.L. c. 268A and with the Authority’s Conflict of Interest terms stated in 2.13 of these Documents.

PROPOSER’S NAME: \_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

## **EXHIBIT H, PVTA'S PRESERVATION OF RIGHTS AND DISCLAIMERS**

The PVTA is requesting responses to this RFP pursuant to its determination that such a process best serves the interests of the PVTA and the general public, and not because of any legal requirement to do so.

The PVTA shall not be responsible in any manner for any costs associated with responses to this RFP.

The PVTA reserves the unqualified right, in its sole and absolute discretion, to undertake discussions with one or more Proposer or any third party, to waive any irregularities, to waive defects or non-compliance in the filing or contents of any Proposal, and to proceed with that Proposal, or elements of one or more Proposals, if any, which in its sole judgment shall, under the circumstances, best serve the PVTA's interest.

The PVTA reserves the unqualified right to amend the terms of this RFP at any time, and to solicit and accept modifications to any Proposal at any time when it is in the best interest of the PVTA to do so.

The PVTA reserves the unqualified right, in its sole and absolute discretion, to choose or reject any Proposal received in response to this RFP, either on the basis of an evaluation of the factors listed in this RFP or for other reasons, whether or not any Proposal offers the highest monetary compensation to the PVTA or any other public entity.

The PVTA reserves the unqualified right, in its sole and absolute discretion, to reject any and all Proposals or to suspend or abandon this RFP process at any time, with no recourse for any Proposer.

The information contained in this RFP and in any subsequent addenda or related documents is provided as general information only. The furnishing of such information by the PVTA shall not create or be deemed to create any obligation or liability upon it for any reasons whatsoever, and each recipient of the RFP, by submitting a Proposal to the PVTA, expressly agrees that it has not relied upon the foregoing information, and that it shall not hold the PVTA, or any third party who advised or prepared a report for the PVTA, liable or responsible therefore in any manner whatsoever.

The PVTA may, at any time, request further information from any Proposer, interview any Proposers to more fully understand their responses to this RFP, and require any Proposer to arrange a site visit for its Selection Committee.

The PVTA reserves the right, in its sole discretion, to develop the project on any schedule and use any chosen approach.

Neither the expression of any Proposer's interest, nor the submission of any Proposer's

qualifications and any documents or other information, nor the acceptance thereof by the PVTA, nor any correspondence, discussions, meetings or other communications between a Proposer and the PVTA, nor a determination by the PVTA that the Proposer is qualified hereunder, shall:

(i) impose any obligation on the PVTA to include the Proposer in any such further procedures which the PVTA may utilize prior to the final selection of a Proposer,

(ii) be deemed to impose any obligation whatsoever on the PVTA to select the Proposer, or to enter into negotiations with the Proposer, or

(iii) entitle the Proposers to any compensation or reimbursement for any costs or expenses incurred by the Proposer in connection with the Proposer's submission hereunder.

No costs of responding to the RFP or any addenda thereto, nor of the attending any subsequent interviews or meetings in connection with this development opportunity, shall be reimbursed by the PVTA.

The PVTA may consult individuals familiar with each Proposer regarding the Proposer's prior operations and development or management projects, financial plan, past performance, experience and qualifications, or other matters, whether or not the specific individuals are identified in the Proposal. Submission of a Proposal in response to this RFP shall constitute permission for the PVTA to make such inquiries, and authorization to third parties to respond thereto.

The individual responses to this RFP, including all drawings, plans, photos and narrative material shall become the property of the PVTA upon their receipt thereof. The PVTA shall maintain the confidentiality of any material that is provided in response to this RFP and clearly marked "Confidential", to the maximum extent possible, in a manner consistent with applicable law. Given the liberal nature of the Commonwealth's public records law, Proposers shall nevertheless be aware that any information given to the PVTA in response to this RFP or any correspondence, discussion, meeting, or other communication between the Proposer and the PVTA before, with, or after the submission of the response, either orally or in writing, may not be, or may not be deemed to have been, proprietary or confidential.

Neither the members of the PVTA nor any individual member, nor any officer, agent, or employee thereof shall be charged personally by a Proposer or any third party with any liability or held liable to it under any term or provision of this RFP nor any statement made herein.

The PVTA reserves the unqualified right, in its sole and absolute discretion, to disqualify any team, firm, or individual from any phase or component of the selection processor this development opportunity, due to:

(i) felonious or other criminal record in any jurisdiction(domestic or foreign);

(ii) a determination by the PVT A that the Proposer has failed to disclose any matter that materially relates to the fitness or ability of the Proposer to perform the work and Services associated with this development opportunity, or a conflict of interest; or

(ii) a determination that such disqualification would serve the public interest.

The PVT A reserves the unqualified right to:

(i) disqualify any prospective Proposer or reject any response at any time solely on the grounds that a real or perceived legal or policy conflict or interest is presented;

(ii) require any prospective Proposer to take any action or supply any information necessary to remove the conflict, including without limitation, obtaining an opinion from the State Ethics Commission; or

(iii) terminate any contract arising out of this RFP if, in the opinion of the PVT A, any such relationship would constitute or have the potential to create a real or perceived conflict of interest.

## **EXHIBIT I: Federally-Required Contract Clauses**

**Fly America Requirements** - The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub recipients 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.

**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.

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

### **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 Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

**Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 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 CFR 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 other 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 Authority.

#### 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 of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for 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, 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 sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance 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.

**Access to Records** - The following access to records requirements apply to this contract:

1. The Contractor agrees to provide the Authority, 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 C. F. R. Part 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 U.S.C. § 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309 or 5311.
2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. 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 Authority, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR Part 18.39(i)(11).

**Federal Changes** - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Authority 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.

**Clean Air.**

(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 Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

**Recovered Materials** - 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.

**No Obligation by the Federal Government.**

(1) The Authority and Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the Authority, 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.

**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 United States Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR 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 this Agreement, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Authority or 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 Authority or 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 Authority or 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 Authority or government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Authority or 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.



**Termination for Convenience or Default** - The Authority may terminate this contract in whole or in part, for the Authority's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Authority 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 Authority, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

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

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 Authority.

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

### **Suspension and Debarment.**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

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

The certification in this clause is a material representation of fact relied upon by the Authority. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Authority, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49

CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**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, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law set forth in 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 the federal transit laws set forth in 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR 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) 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 performance of this Agreement. 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 set forth in 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 U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal

Employment Provisions of the Americans with Disabilities Act," 29 CFR 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.

**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 the Authority'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 the Authority, 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 his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Authority 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 Authority 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 Authority or Contractor shall constitute a waiver of any right or duty afforded any of them under this Agreement, 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.

**Disadvantaged Business Enterprises.**

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 Authority's goal for DBE participation on this project is 5%.

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 the Authority deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

c. The successful bidder/proposer will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

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 Authority. In addition, the contractor may not hold retainage from its subcontractors.

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

**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 4220.1F, 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 Authority requests which would cause the Authority to be in violation of the FTA terms and conditions.

**Prohibition against Exclusionary or Discriminatory Specifications** - Apart from inconsistent requirements imposed by federal statute or regulations, the Contractor agrees that it will comply with the requirements of 49 U.S.C. § 5323(h)(2) by refraining from using any federal assistance awarded by the Authority to support procurements using exclusionary or discriminatory specifications.

**Access for Individuals with Disabilities** - The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section

504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, and any subsequent amendments to these laws or other laws pertaining to access for individuals with disabilities to the extent applicable. In addition, the Contractor agrees to comply with applicable implementing federal regulations and directives and any subsequent amendments thereto, as follows:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;
- (7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F;
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR Part 1194;
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing regulations, except to the extent the federal government determines otherwise in writing.

**Metric System** - To the extent U.S. DOT or FTA directs, the Contractor agrees to use the metric system of measurement in its Project activities, in accordance with the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. § 205a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and U.S. DOT or FTA regulations and directives. As practicable and feasible, the Contractor agrees to accept products and services with dimensions expressed in the metric system of measurement.