



REQUEST FOR PROPOSAL

FOR

OFFICE RENOVATIONS - PHASE II

Montachusett Regional Transit Authority
1427R Water Street
Fitchburg, MA 01420
Project No. 11.3.21
Office Renovations – Phase II

NOVEMBER 2021

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LEGAL NOTICE
REQUEST FOR PROPOSAL

The Montachusett Regional Transit Authority (MART) invites qualified contractors to submit proposals for: RFP: **PROJECT NO. 11.3.21 Office Renovations – Phase II**, in accordance with plan specifications, at 1427R Water Street, Fitchburg, MA 01420

Contractors are invited to obtain the Request for Proposal document which outlines the instructions and format for proposals by accessing our website at <http://www.mrta.us/doing-business/contracting-opportunities> or contacting procurement@mrta.us. Proposals will be accepted until 10AM on November 24, 2021, and should be sent via email to procurement@mrta.us. Proposals received after the date and time specified above will be considered late. MART reserves the right to accept or to reject any and/or all Proposals.

The award under this solicitation is subject to funding from Federal Transit Administration and Massachusetts Department of Transportation. Disadvantaged Business Enterprises are encouraged to submit proposals; and no proponent will be subject to discrimination based on race, color, national origin, gender, age, or disability. The successful proponent will be required to comply with federal and state regulations including Equal Employment Opportunity and the Americans with Disabilities Act.

MONTACHUSETT REGIONAL TRANSIT AUTHORITY

RFP PROCUREMENT SCHEDULE

REQUEST FOR PROPOSALS for

PROJECT NO. 11.3.21 OFFICE RENOVATIONS – PHASE II

- | | |
|--|---|
| 1. Wednesday November 3, 2021 | Release RFP |
| 2. Monday November 15, 2021 | Pre-Proposal Meeting: 840 N. Main St. Leominster MA 01453 @ 10AM. Email procurement@mrta.us if attending |
| 3. Thursday November 18, 2021 | Deadline 10AM - Questions Submitted by Contractors for Clarification Send questions to procurement@mrta.us |
| 4. Monday November 22, 2021 | Response to Questions by MART through Addendum by 2PM |
| 5. Tuesday November 30, 2021 | RFP Submittals due by 12PM via email to procurement@mrta.us . Please email should you have issues with submittal |
| 6. Thursday December 2, 2021 | Anticipated Award Notification |
| 7. Thursday December 2 -
December 9, 2021 | Anticipated Mandatory 5-day Protest Period |
| 8. Friday December 10, 2021 | Anticipated Contract Issuance |
| 9. Monday December 13, 2021 | Anticipated Notice to Proceed Notification |

REQUEST FOR PROPOSALS

for

PROJECT NO. 11.3.21 OFFICE RENOVATIONS – PHASE II

I. INTRODUCTION & NOTIFICATION

Montachusett Regional Transit Authority (MART) is seeking qualified contractors to perform Phase II of office building renovations located at 840 N. Main Street, Leominster, MA 01453

This Request for Proposal (RFP) document outlines instructions and format for proposals. Copies of the RFP document, and any subsequently issued addenda, may be obtained by accessing MART's website at <http://www.mrta.us/doing-business/contracting-opportunities> or contacting procurement@mrta.us

II. INSTRUCTIONS TO PROPONENTS

A. PROPOSAL SUBMISSION

Each submission shall be sent electronically and listed in the subject line: **PROJECT NO. 11.3.21 OFFICE RENOVATIONS – PHASE II**

B. SUBMISSION DEADLINE

Proposals must be received in the offices of the Montachusett Regional Transit Authority by **12PM Tuesday, November 30, 2021**. Proposals received after the date and time specified will be considered late.

C. PRE- PROPOSAL MEETING

A pre-proposal meeting is scheduled for **Monday, November 15, 2021 at 10AM** (see procurement schedule on pg. 2).

D. Q & A

A Question & Answer period will be held. Submit all questions to procurement@mrta.us by **10AM on Thursday, November 18, 2021**. Responses will be published by MART in the form of an Addendum available on MART's website <http://www.mrta.us/doing-business/contracting-opportunities> on or before **Monday, November 22, 2021**.

E. PROCUREMENT PROCESS

1. COST PROPOSALS

a. A Cost Proposal must be submitted for this Request for Proposal. All proposals must follow the Scope of Work under Section III. Technical Proposals must include a detailed bid proposal with a fixed cost for the Base Bid and separately for each ADD/ALT if any.

b. This Proposal must also provide a detailed solution for the project scope

The cost submitted by the proponent shall be the full and total cost for the entire project. All applicable costs, charges and/or fees shall be included.

2. SELECTION CRITERIA – DELIVERABLES FOR RFP RESPONSE

All proposals will be evaluated and ranked according to the following Criteria for Selection. The award will be made on a “best value” basis.

- a. Cost Proposal: The costs proposed should be fair and reasonable. Please provide a Price Breakdown by Project Manual Sections. Points will be based on where proponents price point was in comparison to the lowest bidder - **See Attachment 11.**
- b. Required Documents: Completion and submission of all requested documents and attachments issued by MART in the posting. Failure to meet these criteria may result in bid disqualification regardless of score - **See Attachments 1 – 14**
- c. Project Schedule / Time to Completion: Provide a statement with milestones and a completion time frame that your organization can achieve, completing all the tasks associated with this RFP. Provide date of Mobilization in conjunction with time frame of completion. The earliest time of completion will receive the most points and the longer time of completion will receive points based in comparison to the earliest time of completion. **See Attachment 12.**
- d. Statement of Qualifications: Provide a single page qualification statement outlining time in industry, experience, and listing 3-5 similar jobs, along with completion year and total cost at completion. – **See Attachment 13**
- e. Contractor Coordination: Include details on how your firm plans to coordinate and work cooperatively in close quarters with Phase 1 Contractors to achieve objectives. – **See Attachment 14**
- f. **Failure to submit any of the above criteria and/or deliverables below will result in a lower ranking score.**

3. FORMS REQUIRED TO BE SUBMITTED WITH THIS PROPOSAL (ATTACHMENTS)

The following forms are attached and need to be completed, signed and submitted with proposal.

1. Completeness of Bid/Proposal
2. Financial and Legal Status Statement & W-9 Federal Taxpayer ID Form
3. Conflict of Interest Certification
4. Non-Collusion Affidavit
5. Massachusetts Tax Certification
6. DBE Certification (with current SDO certification attached)
7. Certification of Restrictions on Lobbying

8. Special Requirements and Conditions
9. Certification of Implementation of Clean Water Requirements
10. Buy America Certificate
11. Bid Submission Form
12. Project Schedule/Time to Completion
13. Statement of Qualification
14. Contractor Coordination

4. CHANGES TO RFP

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

5. WITHDRAWAL OF PROPOSALS

All proponents specifically waive any right to withdraw a proposal after it has been submitted to MART, except as provided in the following:

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

6. PROPOSAL REJECTION

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

MART reserves the right to award a contract based on original proposals without further negotiations, and to make awards in the best interest of MART.

7. SINGLE RESPONSE

In the event of a single bid response, FTA Guidelines for RFP negotiation will be followed.

8. CANCELLATION OF RFP

MART has the authority to terminate this Request for Proposal at any time.

III. SCOPE OF WORK

A. MINIMAL QUALIFICATIONS:

Please see specifications prepared by Wendel WD Architecture, Engineering, Surveying, & Landscaping Architecture, P.C.

Please see drawings prepared by Wendel WD Architecture, Engineering, Surveying, & Landscaping Architecture, P.C.

B. CLAUSES AND OTHER REQUIREMENTS

1. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

(a) 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, the Federal Government is not a party to the contract and shall not be 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.

(b) 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.

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

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

(b) 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. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extend the Federal Government deems appropriate.

(c) 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.

3. ACCESS TO RECORDS

(a) The Consultant shall permit the authorized representatives of the Authority, the U.S. Department of Transportation and the Comptroller General of the United States to inspect and audit all data and records of the Consultant relating to his performance under the contract until the expiration of three years after final payment under this contract.

(b) The Consultant further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Authority, the Department of Transportation and Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, paper and records of such subcontractor, involving transactions related to the subcontractor. The term "subcontract" as used in this clause excludes purchase orders not exceeding \$10,000.

(c) The periods of access and examination described above, for records which relate to (1) litigation of the settlement of claims arising out of the performance of this contract, or (2) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed of.

4. FEDERAL CHANGES

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

5. CIVIL RIGHTS

Nondiscrimination - In accordance with Title VII 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 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.

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 U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. 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 U.S. 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.

6. DISADVANTAGED BUSINESS ENTERPRISES

The Department of Transportation of the United States Government has, as a matter of policy, determined that grantees and their contractors shall endeavor to expend project funds with qualified disadvantaged business enterprises, as subcontractors, located within a reasonable trade area determined in relation to the matter of services or supplies intended to be procured. The Federal Transit Administration (FTA) encourages award of this solicitation, or any portion thereof, to contractors and/or suppliers, who qualify as Disadvantaged Business Enterprises (DBE) as defined by FTA. All DBE's must be certified by Supplier Diversity Office (SDO) or similar agency and approved by MART. If you are so certified, please submit certification documentation with your Statement of Qualification.

The following DBE requirements apply to the resulting contract of this solicitation:

- 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%.
- 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 MART 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 respondent will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- d. The prime contractor is required to pay each subcontractor under this contract for satisfactory performance of its contracts no later than fifteen (15) days from receipt of each payment received by the prime contractor from MART. Any delay or postponement of

payment between prime and sub-contractors may take place only for good cause, and with MART's prior written approval.

MART will establish, as part of the contract between the Prime Contractor and MART, a schedule of values detailing the project activities and timelines for work performed by the GC and all subcontractors. Retainage release payments will be established based upon this schedule of values. The prime contractor must return retainage payments to each subcontractor within 15 days after the subcontractors' work is satisfactorily completed. Any delay or postponement of payment between prime and subcontractors may take place only for good cause, and with MART's prior written approval.

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

If a prime contractor determines subcontractor work to be unsatisfactory, it must notify MART's Liaison Officer immediately, in writing, and state the reasons. Failure to comply with this requirement will be construed to be a breach of contract and subject to contract termination.

- e. The contractor must promptly notify MART 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 MART.

7. 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 MART requests which would cause MART to be in violation of the FTA terms and conditions.

8. TERMINATION

Termination for Convenience: MART 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 as determined by MART in its sole and exclusive discretion. The contractor shall be paid its costs associated with work performed up to time of termination. The Contractor shall promptly submit its termination claim to MART to be paid the Contractor. If the Contractor has any property in its possession belonging to MART, the Contractor will account for the same, and deliver it in the manner MART directs.

Termination – Without Cause: Either party to this Contract shall have the right to terminate this Contract without cause during said term provided that either party notify the other of such desire by forty-five (45) day notice in writing.

Termination for Cause: If the Contractor fails to perform the services described in the Contract documents, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, MART may terminate this contract for cause. MART shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of any 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 MART equipment, the Contractor shall, upon direction of MART, protect and preserve the equipment until surrendered to MART or its agent. The Contractor and MART shall agree on payment for the preservation and protection of equipment. Failure to agree on amount will be resolved under the Dispute Clause.

Opportunity to Cure: MART may, at its sole discretion, in the case of a termination for cause, allow the Contractor up to thirty (30) days in which to cure any breach or default under this Contract. The notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to MART's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within thirty (30) days after receipt by Contractor of written notice from MART setting forth the nature of said breach or default then MART shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for breach or default shall not in any way operate to preclude MART from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

9. SUSPENSION AND DEBARMENT

Title 2 of the Code of Federal Regulations (CFR), Subtitle A, Part 180 [OMB Guidelines for Agencies on Government-wide Suspension and Debarment (Non-Procurement)] and under DOT supervision thru Subtitle B, Part 1200 (Non-Procurement Debarment and Suspension) mandate that MART (grantee), contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. The contract resulting from this procurement is a covered transaction for purposes of 2 CFR Part 180. MART does this by checking the Excluded Parties List System and adding a clause or condition to the contract. As such, the contractor is also required to verify that none of its principals, affiliates, or sub-contractors are excluded or disqualified and must include the

requirement to comply with 2 CFR Part 180, Subpart C in any lower tier covered transaction it enters into.

10. BUY AMERICA REQUIREMENTS

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7 and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60% domestic content.

A bidder must submit to the FTA recipient the appropriate Buy America certification with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Proposals that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

a. Pre-Award and Post-Delivery Audit Requirements

The Contractor agrees to comply with 49 U.S.C. § 5323(1) and FTA's implementing regulation at 49 CFR Part 663 and to submit the following certifications:

- i.) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of the final assembly.
- ii.) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.
- iii.) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

11. RESOLUTION OF DISPUTES, BREACHES AND OTHER LITIGATION

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures. Specific language for dispute resolution will be provided in any resultant contract of the successful proponent.

12. LOBBYING

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.

13. CLEAN AIR REQUIREMENTS

(a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. 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.

(b) 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.

14. CLEAN WATER REQUIREMENTS

(a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. 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.

(b) 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.

Construction Activities:

15. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

a. Minimum Wages

(1) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers

or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2) (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- i. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- ii. The classification is utilized in the area by the construction industry; and
- iii. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- iv. With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate,

the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(4) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account asset for the meeting of obligations under the plan or program.

(5) (A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination, and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- i. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- ii. The classification is utilized in the area by the construction industry; and
- iii. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- b. Withholding - The Montachusett Regional Transit Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract

subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Montachusett Regional Transit Authority may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

c. Payrolls and Basic Records

(1) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(2) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Montachusett Regional Transit Authority for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- i. That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
- ii. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- iii. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(3) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

d. Apprentices and Trainees

(1) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered

program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer

be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(3) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

- e. Compliance with Copeland Act Requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- f. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- g. Contract Termination: Debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- h. Compliance with Davis-Bacon and Related Act Requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- i. Disputes Concerning Labor Standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- j. Certification of Eligibility
 - (1) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

16. CONTRACT WORK HOURS AND SAFETY STANDARDS

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, *et seq.* The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ “laborers or mechanics on a public work.” The clause language is drawn directly from 29 CFR 5.5(b) and any deviation from the model clause below should be coordinated with counsel to ensure the Act’s requirements are satisfied.

Contract Work Hours and Safety Standards

(a) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(c) Withholding for unpaid wages and liquidated damages - MART shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(d) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

17. BONDING – WARRANTY REQUIREMENTS

Bid Bond Requirements (Construction)

A Bid Bond will - NOT - be required for this project.

Performance and Payment Bonding Requirements (Construction)

A Performance Bond - WILL - be required to be submitted in conjunction with the signed contract.

A Payment Bond will - NOT - be required for this project.

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless MART determines that a lesser amount would be adequate for the protection of MART.

2. MART may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. MART may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds - NOT **APPLICABLE**

1. The penal amount of the payment bonds shall equal:

- (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
- (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- (iii) Two and one half million if the contract price is more than \$5 million.

2. If the original contract price is \$5 million or less, MART may require additional protection as required by subparagraph 1 if the contract price is increased.

Warranty of the Work and Maintenance

(a) The Contractor warrants to MART, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by MART, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

(b) The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by MART and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to MART.

18. ENERGY CONSERVATION

The proponent shall comply with mandatory standards and policies relating to energy efficiency that are contained in applicable State energy conservation plans issued in

compliance with the Energy Policy and Conservation Act, 42 U.S.C. Sections 6321 *et seq.*

19. ADA ACCESS

Introduction: 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 Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private public and private entities. Third party contractors must comply with their responsibilities under Titles I thru V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies. The following clauses should be included for the appropriate procurement action.

(a) Rolling Stock Accessibility: Rolling stock must comply with the accessibility requirements of DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37, and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38. Vehicles acquired (with limited exceptions) should be accessible to and usable by individuals with disabilities, including individuals using wheelchairs;

(b) Purchased Transportation Services Accessibility. A third-party contractor providing public transportation services must operate its services in compliance with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” using facilities and equipment that comply with 49 CFR Part 37; and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38. Private entities must comply with the requirements of 49 CFR Part 37 applicable to public entities with which they contract to provide public transportation services. MART advises its third-party contractors operating public transportation services to review the requirements for public entities in this context which include but are not limited to:

(1) Complementary Paratransit Service. Requirements that public entities providing fixed-route service provide complementary paratransit service to individuals with disabilities who cannot use the fixed-route service.

(2) Equal Opportunity. Requirements for compliance with service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems and services

(c) Design and Construction Accessibility. Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37; and

Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38. Notably, DOT incorporated by reference the ATBCB’s “Americans with Disabilities Act Accessibility Guidelines” (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities, and are incorporated into Appendix A to 49 CFR Part 37. DOT also added specific provisions to Appendix A modifying the ADAAG, with the result that buildings and facilities must comply with both the ADAAG and amendments thereto in Appendix A to 49 CFR Part 37.

C. 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 these 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 MART by the proponent, proponent’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 MART; 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 22 cities and towns serviced by MART; 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 Authority’s 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 proponent shall certify compliance, with these terms and the Massachusetts Conflict of Interest Laws, by completing the “Conflict of Interest Certification” form (**see Attachment 3**).

D. COLLUSION

The proponent shall sign an affidavit stating that it is understood that any proposal submitted to MART is made without collusion with any other proponent submitting a bid

on the same commodity/service and is in all respects fair and without fraud (see Attachment 3).

E. PROTEST PROCEDURES

Within five (5) business days after the proposal submission deadline, MART will make a determination of the successful proponent. Three types of protest to this RFP may be filed in writing to MART.

1. A pre-bid or solicitation phase protest must be received five (5) business days prior to the proposal due date. This protest should stem from a concern or perceived wrong with the RFP content.
2. A pre-award protest is a protest against making an award and must be received within five (5) business days after receipt of the proposal submission deadline.
3. A post-award protest is a protest received after the award of a contract due to a concern with the selection of the successful proponent. This written protest must be received within five (5) business days after the notice of award. Any appeal filed may delay award of the contract.

Protests must be submitted in writing to the MART Procurement. The protest must contain the name and address of the protestor, the solicitation description, and statement of grounds for the protest. MART will respond in detail to each substantive issue raised in the protest within five (5) business days. Any decision made by the MART Procurement will be final. Protest claims which are validated by MART may alter the RFP schedule.

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

F. NEGOTIATIONS

MART will select the proponent that achieves the highest score. If unsuccessful, MART will proceed to the next highest scored proponent until satisfactory contractual arrangements are achieved. MART reserves the right to not award a contract should none of the proposals adequately address the requirements outlined in the RFP.

G. EXECUTION OF CONTRACT

Any Contract resulting from this RFP will incorporate the RFP Legal Notice, RFP documents, RFP response submittal, and any Addenda with changes or clarifications formally issued by MART.

H. PAYMENT

Full payment for products and services provided will be made by MART after it is completely satisfied that the products are in compliance with the scope of work attached. Payment schedules will be divided into agreed milestones. Requests for partial or material payment within these milestones will be honored when appropriate and when properly documented and justified. A partial payment schedule must be submitted to and approved by MART prior to contract execution.

APPENDIX A

Mandatory Form Attachments

ATTACHMENT 1

COMPLETENESS OF BID/PROPOSAL

I herein certify that I have read and understand all BIDDING/PROPOSAL documents and any amendments submitted by the Montachusett Regional Transit Authority and that I have fully complied with all provisions of same.

I further certify and represent that any omission or deviation from these documents may or will, at the sole discretion of MART, render this proposal unresponsive and ineligible for further consideration in this process.

Company

Signature

Address

Name

Request for Taxpayer Identification Number and Certification

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

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

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

Part I Taxpayer Identification Number (TIN)

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

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

Social security number				
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> </tr> </table>				
or				
Employer identification number				
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> </tr> </table>				

Part II Certification

Under penalties of perjury, I certify that:

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

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

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

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

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

Purpose of Form

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

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

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

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

ATTACHMENT 3

CONFLICT OF INTEREST CERTIFICATION

The undersigned hereby certifies that the Proponent shall comply with Massachusetts Conflict of Interest Laws, G.L. c. 268A and with the Authority's Conflict of Interest terms stated in Section II.H of these RFP Documents.

BIDDER'S NAME: _____

AUTHORIZED SIGNATURE: _____

TITLE: _____

DATE: _____

ATTACHMENT 4

AFFIDAVIT OF NON-COLLUSION

It shall be understood that any proposal submitted to MART is made without collusion with any other proponent submitting a proposal on the same commodity/service and is in all respects fair and without fraud.

STATE OF: _____ Date: _____

COUNTY OF _____

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

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

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

and works in _____
(City/Town)

and certifies under penalties of perjury that this proposal is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this paragraph the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

(Signature and Title of Person Making Affidavit)

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

Notary Public: _____

My commission expires: _____

ATTACHMENT 5

**REQUIREMENT OF REVENUE ENFORCEMENT AND PROTECTION PROGRAM
COMMONWEALTH OF MASSACHUSETTS**

In accordance with the provision of the Revenue Enforcement and Protection Program and the requirements hereunder as enacted by Section 35 and 36 of Chapter 233 of the Acts and Resolves of 1983, the Montachusett Regional Transit Authority must obtain an attestation from a provider of goods and 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 BELOW MUST BE SUBMITTED WITH YOUR BID.

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, MA 02204
Telephone Number (617) 727- 4201

Required Attestation Clause:

Pursuant to M.G.L. Chapter 62C, Section 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 Number

Signature of Individual or
Corporate Name

By: _____
Corporate Officer
(If applicable)

ATTACHMENT 6

SCHEDULE OF DBE PARTICIPATION

No contract goals are being set for this procurement so DBE participation, although encouraged, is not mandatory. No penalties or advantages will be assessed based upon DBE participation. All subcontractors anticipated to be utilized, whether DBE or not, must be reported as part of this bid proposal.

I hereby certify that _____
 (Name of Company)

___ Is a Certified Disadvantaged Business Enterprise (DBE), **and a valid DBE certificate is enclosed.**

OR

___ Is NOT a Certified Disadvantaged Business Enterprise.

I further certify that our company shall:

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

OR

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

Company/Firm Name:	Contact Person:	Function being performed:	\$ Value of Work to be Performed	DBE Status (Y or N):

 Signature of Contractor’s Authorized Representative

ATTACHMENT 7

CERTIFICATION OF RESTRICTIONS ON LOBBYING

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

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

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

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.

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

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

Executed this _____ day of _____, 20__.

By _____
(Signature of Contractor's Authorized Official)

(Title of Authorized Official)

ATTACHMENT 8

SPECIAL REQUIREMENTS AND CONDITIONS

I herein certify that I have read and comply with all requirements included in this REQUEST FOR PROPOSAL. I further understand that any contract arising out of this RFP is subject to assistance from the Federal Transit Administration (FTA), the Massachusetts Department of Transportation (MassDOT) and the Montachusett Regional Transit Authority (MART). I further understand that any contract arising out of this RFP includes the Advertisement for PROPOSALS; the PROPOSAL Document; and the Proponent's responses to the RFP. All Massachusetts and FTA Regulations appropriate and pertinent to this type of solicitation whether or not contained in the proposal documents will be complied with.

FIRM

SIGNATURE

ADDRESS

NAME

TITLE

TELEPHONE #

DATE

ATTACHMENT 9

CERTIFICATION OF IMPLEMENTATION OF CLEAN WATER REQUIREMENTS

By signing this Bid/Proposal, the Bidder/Proponent will be deemed to have stipulated as follows:

1. The Bidder/Proponent 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 Bidder/Proponent 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 Bidder/Proponent also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Date

Company

Signature

Title

ATTACHMENT 10

BUY AMERICA CERTIFICATION
(Steel, Iron & Manufactured Products)

Certification is a requirement for the procurement of steel, iron, or manufactured products in Compliance with 49 U.S. C. 5323(j) (1) (formerly Section 165(a) of the Surface Transportation Assistance Act of 1982 as amended by 337 of the Surface Transportation and Uniform Relocation Assistance of 1987.)

SELECT AND COMPLETE ONLY ONE OF THE FOLLOWING CERTIFICATIONS:

Certificate of Compliance with 49 U.S.C. 5323 (j) (1)

The Proposer hereby certifies that it will meet the requirements of 49 U.S.C. 5323U) (I) and the applicable regulations in 49 CFR Part 661.

Signature: _____

Title: _____

Firm: _____

Date: _____

Certificate of Non-Compliance with 49 U.S.C. 5323 (j) (1)

The Proposer hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j) (I), but it may qualify for an exception pursuant to 49 U.S.C. 5323 (j) (2) (8) or (j) (2) (D) and the regulations in 49 CFR 661.7.

Signature: _____

Title: _____

Firm: _____

Date: _____

ATTACHMENT 11

BID FORM

Attach Price Breakdown by Project Manual Sections

Bid of _____ (hereinafter called "Bidder") *

To the Montachusett Regional Transit Authority (hereinafter called "Owner").

Gentlemen:

A) The undersigned Bidder, in compliance with your invitation for bids for the project known as **PROJECT NO. 7.14.21 840 N. MAIN ST OFFICE RENOVATIONS PHASE - 1**, having examined the plans and specifications and related documents and the site of the proposed work, having had the opportunity to visit the site, and being familiar with all of the conditions surrounding the construction of the proposed project including the availability of materials and labor, hereby proposes to furnish all labor, materials, and supplies, and to construct the project in accordance with the contract documents and the plans and specifications within the time set forth below, and at the prices stated below. These prices are to cover all expenses incurred in performing the work required under the contract documents, of which this proposal is a part.

The Bidder hereby agrees to commence work on or after the date to be specified in written "Notice to Proceed" of the Owner and will complete the project within _____ consecutive calendar days thereafter.

B) Bidder acknowledges receipt of, and this bid includes the following addenda:

No. _____ Dated: _____

No. _____ Dated: _____

No. _____ Dated: _____

No. _____ Dated: _____

C) The Bidder agrees to perform the work described in the specifications and shown on the plans for the following fixed price contract:

_____ Dollars (\$ _____)

The undersigned agrees that, if he is selected as general contractor, he will within five days, Saturdays, Sundays and legal holidays excluded, after presentation thereof by the awarding authority, execute a contract in accordance with the terms of this bid and furnish a performance bond of a surety company qualified to do business under the laws of the Commonwealth of Massachusetts and satisfactory to the awarding authority and each in the sum of the contract price, the premiums for which are to be paid by the general contractor and are included in the contract price; provided, however, that if there is more than one surety company, the surety companies shall be jointly and severally liable.

The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work; that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and that he will comply fully with all laws and regulations of the Commonwealth of Massachusetts.

The Bidder understands that the Owner reserves the right to reject any or all bids and to waive any informalities in the bidding.

The Bidder agrees that this bid shall be good and may not be withdrawn for a period **90** days, Saturdays, Sundays and legal holidays excluded, after the opening of bids.

The selected Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the contract price in accordance with Section B.17 of the RFP, BONDING – WARRANTY REQUIREMENTS and any supplemental general conditions thereto.

Respectfully submitted:

Date: _____

By: _____
(Signature)

(Type Name of Bidder)

(Title)

(Business Address)

(City and State)

(Telephone Number)

ATTACHMENT 12

PROJECT SCHEDULE / TIME TO COMPLETION

Provide a statement with milestones and a completion time frame that your organization can achieve, completing all the tasks associated with this RFP. Provide date of Mobilization injunction with time frame of completion. The earliest time of completion will receive the most points and the longer time of completion will receive points based in comparison to the earliest time of completion.

ATTACHMENT 13

STATEMENT OF QUALIFICATIONS

Provide a single page qualification statement outlining time in industry, experience, and listing 3-5 similar jobs, along with completion year and total cost at completion.

ATTACHMENT 14

CONTRACTOR COORDINATION

Include details on how your firm plans to coordinate and work cooperatively in close quarters with Phase 1 Contractors to achieve objectives.

APPENDIX B

1. INSURANCE REQUIREMENTS:

Prior to commencing the Work, Contractor shall procure, and thereafter maintain, at its own expense, until final acceptance of the Work or later as required by the terms of the Contract or any individual Work Order, insurance coverage required by this Contract. At a minimum, and subject to modification in individual Work Orders, the types of insurance and minimum policy limits specified shall be maintained in a form and from insurers acceptable to Owner as set forth below. All insurers shall have at least an A- (excellent) rating by A.M. Best and be qualified to do business in the state where the project is located.

This insurance will provide a defense and indemnify the Owner, but only with respect to liability for bodily injury, property damage and personal and advertising injury caused in whole or in part by the Contractor's acts or omissions or the acts or omissions of those acting on the Contractor's behalf. Proof of this insurance shall be provided to the Owner before the Work commences, as set forth below. To the extent that the Contractor subcontracts with any other entity or individual to perform all or part of the Contractor's Work, the Contractor shall require the Subcontractors to furnish evidence of equivalent insurance coverage, in all respects, terms and conditions as set forth herein, prior to the commencement of work by the Subcontractor. In no event shall the failure to provide this proof, prior to the commencement of the Work, be deemed a waiver by the Owner of Contractor's or the Subcontractor's insurance obligations set forth herein.

In the event that the insurance company(ies) issuing the policy(ies) required by this exhibit deny coverage to the Owner, the Contractor or the Subcontractor will, upon demand by the Owner, defend and indemnify the Owner at the Contractor's or Subcontractor's expense.

Commercial General Liability Insurance - \$1,000,000 Each Occurrence Limit (Bodily Injury and Property Damage); \$1,000,000 General Aggregate per Project;

Professional Liability Insurance - (Errors and Omissions Insurance included) - \$1,000,000, for this Project. Such coverage shall also be in effect for three (3) years from the date of final payment of the general contractor.

Business or Commercial Automobile Liability Insurance - \$1,000,000 combined single limit per accident. If business, non-commercial vehicle is used then - \$500,000 combined single limit per accident will apply

Workers' Compensation and Employers' Liability Insurance - \$500,000 Each Accident; \$500,000 Each Employee for Injury by Disease; \$500,000 Aggregate.