

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY
MBTA CONTRACT NO. K78CN03
SOUTH COAST RAIL
FALL RIVER SECONDARY COMMUTER RAIL EXPANSION PROJECT
BERKLEY TO FALL RIVER, MASSACHUSETTS

ADDENDUM NO. 3

The attention of bidders submitting bids for the above project is called to the following Addendum to the Notice to Bidders and Instructions to Bidders.

The items set forth herein, whether of omission, addition or substitution are to be included in and form a part of the Bid submitted.

THE NUMBER OF THIS ADDENDUM (NO. 3) MUST BE ENTERED IN THE SPACE PROVIDED ON PAGE 00410-3 OF THE FORM FOR BID IN THE BID FORM.

March 20, 2020

By: Jennifer Tabakin
SCR Program Manager

NOTICE TO BIDDERS

1. Remove existing Section 00100 – NOTICE TO BIDDERS and replace with Section 00100 – NOTICE TO BIDDERS included on pages 3 to 4 of this document.
 - a. Bid opening has been extended to Thursday April 23, 2020.

INSTRUCTIONS TO BIDDERS

1. Remove existing Section 00200 – INSTRUCTIONS TO BIDDERS and replace with Section 00200 – INSTRUCTIONS TO BIDDERS included on pages 5 to 17 of this document.

**MASSACHUSETTS BAY TRANSPORTATION AUTHORITY
10 PARK PLAZA
BOSTON, MASSACHUSETTS 02116**

NOTICE TO BIDDERS

Electronic proposals for the following project will be received through the internet using Bid Express until the date and time stated below and will be posted on www.bidx.com forthwith after the bid submission deadline. No paper copies of bids will be accepted. Bidders must have a valid digital ID issued by the Authority in order to bid on projects. Bidders need to apply for a digital ID with Bid Express at least 14 days prior to a scheduled bid opening date.

Electronic bids for MBTA Contract No. K78CN03, **South Coast Rail, Fall River Secondary Commuter Rail Expansion Project, Berkley to Fall River, MA, (CLASS 1 – GENERAL TRANSIT CONSTRUCTION \$50,000,000, CLASS 3 – TRACK WORK, \$30,000,000, CLASS 7 – BUILDINGS, \$10,000,000, PROJECT VALUE \$164,561,323)**, can be submitted at www.bidx.com until two o'clock (2:00 p.m.) on ~~Thursday April 9~~ **Thursday April 23, 2020**. Immediately thereafter, in a designated room, the Bids will be opened and read publicly.

The Work involves three major elements: (1) the construction of approximately twelve miles of new trackway along the existing Fall River Secondary right of way from Berkley to Fall River, (2) the construction of two commuter rail passenger stations, and (3) the construction of an end of the line layover facility.

Each prospective bidder proposing to bid on this project must be prequalified in accordance with the Authority's "Procedures Governing Classification and Rating of Prospective Bidders." Copies may be obtained at www.mbta.com. Applications for prequalification for this Project will be accepted by the Authority up to the bid opening date. Contractors should allow for ample time for the Authority to evaluate and respond to the Prequalification Application prior to the bid opening date. Only contractors prequalified by the bid date will be considered eligible.

Potential bidders must [download](#) and submit a completed "Request for Proposal Form" for approval to: plans&specifications@mbta.com.

Bidding documents may be downloaded from the MBTA FTP site or delivered on CD via Fed Ex. Documents will be available starting at 9:00 AM on February 18, 2020. Contract Specifications and Drawings shall be available in portable data file (.pdf) format. Interested parties may request FTP site credentials or Fed Ex delivery of the project documents on CD by completing the request form on the project page at: http://bc.mbta.com/business_center/bidding_solicitations/current_solicitations/

Bidders attention is directed to Appendix 1, Notice of Requirement for Affirmative Action to Insure Equal Employment Opportunity; and to Appendix 2, Supplemental Equal Employment Opportunity, Anti-Discrimination, and Affirmative Action Program in the specifications. While there is no DBE goal associated with this contract, the Authority strongly encourages the use of Minority, Women, and Disadvantaged Business Enterprises as prime contractors, subcontractors, and suppliers in all of its contracting opportunities.

Bidders will affirmatively ensure that in regard to any contract entered into pursuant to this solicitation, minority and female construction contractors will be afforded full opportunity to submit Bids and will not be discriminated against on the grounds of race, color, religion, sex, age, or national origin in consideration for an award.

K78CN03
2020

NOTICE TO BIDDERS
00100-1

ISSUED FOR BID
02/14/2020

Bidders will be required to comply with Federal Equal Employment Opportunity Regulations and the President's Executive Order No. 11246 and any amendments or supplements thereto. Bidders will also be required to comply with the Governor's Executive Order No. 481, prohibiting the use of undocumented workers on State Contracts and any amendments and supplements thereto.

Authorization for the Bidders to view the site of the work on the MBTA's property shall be obtained from the Director of Construction - South Coast Rail, **Kimberly Dobosz**; kdobosz@mbta.com, 617.222.4332. The Authority will conduct an inspection tour of the station sites and layover facility site on March 4, 2020. Bidders are requested to be present in front of the future Freetown Station site **161 South Main Street, Freetown, Massachusetts**, at 1:00 p.m. to participate in the tour. Bidders are advised that they should have representation at this tour as no extra visits are planned.

A Pre-bid Conference will be held on March 4, 2020, at 9:00 am at the **Transportation Board Room, 10 Park Plaza, 2nd Floor, Boston, MA 02116; 617.222.4332**. The Authority will conduct an inspection tour of the site immediately following the pre-bid conference. Attendance at both the pre-bid conference and the on-site inspection is highly recommended for all prospective bidders. All questions during the bid phase should be directed in writing or by e-mail to the Director of Construction - South Coast Rail, Kimberly Dobosz, at 10 Park Plaza, Suite 4510, Boston, MA 02116, Telephone Number 617.222.4332, e-mail Address kdobosz@mbta.com. **Questions are to be submitted no later than ten (10) days prior to the date set for the opening of bids.**

Bidders will be required to certify as part of their bids that they are able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work.

This Contract is subject to minimum State wage rates as well as all other applicable labor laws.

Bid Guaranty shall consist of a bid deposit in the amount of five (5) percent of the value of the bid, in the form of a bid bond, cash, certified check, treasurer's or cashier's check.

The successful Bidder shall be required to furnish a Performance Bond and a Labor and Materials Payment Bond each for the full amount of the Contract price.

The Authority reserves the right to reject any or all Bids, to waive informalities, to advertise for new Bids or proceed to do the work otherwise, as may be deemed to be in the best interests of the Authority. This information may be viewed at the MBTA website:

http://bc.mbta.com/business_center/bidding_solicitations/current_solicitations/

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

Date: February 14, 2020	By: Stephanie Pollack Secretary and Chief Executive Officer of MassDOT	Steve Poftak General Manager of the MBTA
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K78CN03
2020

NOTICE TO BIDDERS
00100-2

ISSUED FOR BID
02/14/2020

SECTION 00200

INSTRUCTIONS TO BIDDERS

1.1 BID FORMS AND DRAWINGS

- A. Prequalification Prior to Requesting Bid Forms.
1. Prospective Bidders proposing to bid on any work to be awarded by the Authority shall be pre-qualified and certified in accordance with the Authority's "Procedures Governing Classification and Rating of Prospective Bidders", if the value of work to be bid added to the value of the Prospective Bidder's uncompleted work already under contract with the Authority will aggregate \$1,000,000 or more. (Also see Article 1.12 of this Section.)
 2. For work aggregating under \$1,000,000, pre-qualification and certification is desirable, but not required.
- B. Issuance of Bid Forms and Drawings.
1. Prequalified Bidders shall obtain from the Contract Administrator a "Request for Bid Forms" and submit same properly filled out to the Contract Administrator for approval. Authority will consider each "Request for Bid Forms" and determine whether or not the prospective Bidder will be permitted to submit an electronic bid using Project Bids Software.
 2. The Notice to Bidders, Instructions to bidders, and Bid Form, specifying limits, location and description of the contemplated work, time within which the work must be completed, certain special requirements for the particular Contract, and estimates of the various quantities of the Work to be performed and materials to be furnished will be provided to permitted bidders. Permission to bid will also entitle the prospective Bidder to a set of Contract Drawings, Contract Specifications, and other Contract Documents relating to the contemplated work.
 3. Copies of the aforementioned documents, for informational purposes only, are made available to interested parties as described in the Notice to Bidders for each construction project.

1.2 INTERPRETATION OF BASIC ESTIMATE OF QUANTITIES

- A. Bids will be compared on the estimate of quantities of work to be done, as shown in the Bid form.
1. Quantities in the Bid Form are approximate only, being given as a basis for the comparison of bids. Authority does not expressly or by implication agree that the actual amount of Work will correspond there-with, but reserves the right to increase or decrease the amount of any class or portion of the Work, as may be deemed necessary or expedient by the Authority.
- B. Bidders shall submit their bid upon the following express condition which shall apply to and become part of every bid received, viz: An increase or decrease in the quantity for any item shall

not be regarded as cause for an increase or decrease in the Contract unit prices, nor in the time allowed for completion of the Work, except as provided in the Contract. (Also see Section 00700, Article 2.3, and Section 01150, Articles 1.4 and 1.5.)

1.3 EXAMINATION OF CONTRACT DOCUMENTS AND SITE OF WORK

- A. Before submitting a Bid, each prospective Bidder shall (1) examine Contract Documents thoroughly; (2) visit the site to be familiar with observable conditions that may in any manner affect cost, progress, or performance of the Work; (3) be familiar with Federal, State, and local laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the Work and; (4) study and correlate information thus determined with the Contract Documents.
- B. By submitting a bid the Bidder represents that every requirement of this Article and the following Article 1.4 has been complied with and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.
- C. A pre-bid conference will be held on March 4, 2020, at 9:00 am at the Transportation Board Room, 10 Park Plaza, 2nd Floor, Boston, MA 02116. The Authority will conduct an inspection tour of the site following the pre-bid conference. Bidders are advised that they should have representation at this tour as no extra visits are planned. Attendance at both the pre-bid conference and the on-site inspection is highly recommended for all prospective bidders.
- D. Bidders shall visit the site to ascertain pertinent local conditions readily determined by inspection and inquiry, such as the location, accessibility, traffic conditions and general character of the site, labor conditions, the character and extent of existing work within or adjacent thereto, and any other work being performed.
- E. The Authority does not guarantee or represent that existing construction or conditions conform to the Drawings. The Bidder shall visit the site and satisfy himself as to existing conditions. All necessary information shall be verified in the field before fabrication of new material. No claim for extra cost will be allowed by the Authority because of the Contractor's unfamiliarity with site conditions.

1.4 SUBSURFACE CONDITIONS DATA

- A. Where investigation of the subsurface conditions and rock conditions has been conducted for the Authority by independent soil engineering consultants in those areas where the project work is to be performed, prospective Bidders may inspect the records of such investigations including the soil and rock samples and cores as are available at the locations and at the times as may be indicated in the Supplementary Conditions, or as otherwise stated in the Contract Documents.
- B. Information, interpretations and conclusions presented in these reports are not necessarily an accurate representation of existing conditions and therefore are not made part of the Contract Documents but are furnished in order that all Bidders may have access to the same information as Authority. Prospective Bidders shall form their own opinions and conclusions from these reports and Authority shall not be held responsible in any way for the accuracy of soil representation or any deductions, interpretations or conclusions drawn from them by prospective Bidders.
- C. Test boring logs for test borings indicated and identified on the Contract Drawings are included in the Geotechnical Data Report.

- D. In addition to any geotechnical information presented in the sources and classifications listed above, the results of environmental testing performed during the subsurface investigation program are included in the Geotechnical Data Report.
1. The Geotechnical Data Reports pertaining to the Work will be made available to all prospective bidders with the bidding documents.

1.5 PREPARATION OF BIDS

A. Bid Prices.

1. Bidder shall submit the Bid electronically after using Project Bids Software to prepare the bid submission package. Bids are to be submitted at: <https://www.bidx.com>
2. Price for any item, bid and contracted for, unless otherwise noted or specified, shall include full compensation for all materials, equipment, tools, labor, and incidental work necessary to complete the item to the satisfaction of Authority. Prices, without exception, shall be net, not subject to discount, and shall include all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the Work.
3. The Schedule of Bid Prices included in the electronic bid submission will be used for the indicating of the Bid price information specified above.
4. In the event that there is an error in the computed totals based upon the unit prices and estimated quantities, the unit prices shall govern.

B. Addenda.

1. Prospective Bidder shall acknowledge receipt of Addenda by noting the numbers of those received on the appropriate form contained in the electronic bid package.

C. Signatures.

1. Bid shall be submitted using secure electronic signature provisions built into the bid submission function of the AASHTOWare's Project Bids software.
 - a. If Bid is made by an individual, that person's name and post office address shall be stated.
 - b. If Bid is made by a firm, partnership, or corporation, it shall be signed by a person having such legal authority from said firm, partnership or corporation as the person so signing Bid shall give his own name and title (if any) in addition to the name and address of the firm, partnership, or corporation. If Bid is made by a firm or partnership, names and addresses of the individual members shall be given.
 - c. If Bid is made by a corporation, the name of the State under the laws of which the corporation was chartered and names and titles of the President, Treasurer, and Secretary or Clerk of the corporation shall be given.

- d. If Bid is made by two or more individuals, a joint venture must be formed for the purpose of submitting such a bid. The joint venture company must be prequalified as described previously in section 1.1.A.1

D. Affidavits.

1. Bidder shall certify on the affidavit form included with Bid that:
2. To the best of the Bidder's knowledge, said Bidder has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such Contract.
3. Bids must contain the properly completed affidavit of non-collusion folder contained in the electronic bid submission package

1.6 DELIVERY OF BIDS

A. Prior to the time set for openings of Bids, Bidder shall submit Bid as follows:

1. All bids must be submitted using AASHTOWare's Project Bids software at www.bidx.com
2. A Bid may also be modified or withdrawn by a Bidder or the Bidder's authorized representative, using the capabilities to modify or withdraw bids at www.bidx.com, but only if the withdrawal is made prior to the exact time set for opening of Bids. (Also see Section 00100, Article 1.8).
3. The only acceptable evidence to establish the time of bid submission is the receipt generated by the bid submission function of the Project Bids software at www.bidx.com.
4. Bidders are advised that the Bid Form must include a Bid price for each of the items listed on the Contract Schedule of Bid Prices. The omission of a Bid price for any of the items is cause for rejection of all Bid prices of the Bid.

1.7 BID GUARANTY REQUIRED

- A. In order to insure the faithful fulfillment of its term, each Bid shall be accompanied by a Bid Guaranty. Bid Guaranty shall be in the amount as specified in the "Notice to Bidders" in the form of an acceptable bid bond, cash, certified check, treasurer's or cashier's check issued to the MBTA by a responsible bank or trust company or by a surety or insurance company licensed or authorized by the Massachusetts Division of Insurance to engage in the business of surety in the Commonwealth and satisfactory to the Authority. Bid Guaranty shall be enclosed in a sealed envelope and be submitted with the Bid Form.

1.8 WITHDRAWAL OF BIDS

- A. Bidder may withdraw the Bid provided the request in writing is in the hands of Authority by the time set for opening Bids.
1. When any such Bid is reached during the opening of the Bids, it will remain unread.

1.9 PUBLIC OPENING OF BIDS

- A. Bids will be publicly opened and the total price of each bid read at the time and place indicated in the "Notice to Bidders." Any person may at reasonable times and in the presence of a duly authorized representative of Authority examine any or all Bids after they have been opened and read.

1.10 REJECTION OF BIDS

- A. Bids which fail to meet the requirements of Articles 1.5, 1.6, and 1.7 of this Section or which are incomplete, conditional or obscure, or which contain additions not called for, erasures, alterations or irregularities of any kind or in which errors occur, or which contain abnormally high or abnormally low prices for any class or item of work, may be rejected as informal.
 - 1. On Federally Assisted (Financed) Projects, Bids will be rejected from any Bidder whose name appears on the U.S. Comptroller General's list of ineligible contractors for federally financed and assisted construction.
 - 2. Bidders are advised that the certificate pertaining to Ineligible Contractors on the electronic Bid Form must be completed in its entirety. Failure to fully complete and submit the required certification will be considered an informality and may render the Bid non-responsive.
- B. More than one Bid from the same Bidder, whether or not the same or different names appear on the signature page, will not be considered. Reasonable proof for believing that a Bidder is interested in more than one Bid for the Work contemplated will cause the rejection of all Bids made by the Bidder directly or indirectly. Any or all Bids will be rejected if there is reason for believing that collusion exists among Bidders. (See Article 1.14 of this Section.)

1.11 DISQUALIFICATION OF BIDDERS

- A. Bidders whose Bids have been rejected because of evidence of collusion, as specified in Article 1.10 of this Section shall not be considered in future Bids for the same work and such Bidders may be disqualified from bidding on future work.

1.12 COMPETENCY OF BIDDERS

- A. No contract will be awarded except to a responsible Bidder who has been prequalified and certified in accordance with the Authority's "Procedures Governing Classifications and Rating of Prospective Bidders" and adjudged capable of performing the class of work contemplated, when bid amount added to the value of Bidder's uncompleted work already under contract with Authority would aggregate \$1,000,000 or more.
- B. When Bidder prequalification is not required, low Bidder or lowest responsible Bidder (if requested by Authority) shall submit within five business days after the opening of bids, a post-qualification statement, duly signed and sworn to, outlining Bidder's experience, equipment and financial resources, on forms prescribed or furnished by Authority. A Bidder who fails to comply with this requirement will not be considered for Award of the Contract.

1.13 MATERIAL GUARANTY

- A. Bidder may be required to furnish without expense to the Authority a complete statement of the origin, composition, and manufacture of any or all materials proposed to be used in the construction of the work, together with samples, which may be subjected to the test required by Authority to determine the quality and fitness of the material.

1.14 CONSIDERATION OF BIDS

- A. Authority reserves the right to reject any or all Bids, to waive technicalities, to advertise for new Bids, or proceed to do the Work as may be deemed to be in the best interests of the Authority.

1.15 AWARD OF CONTRACT

- A. Contract will be awarded by Authority subject to the reservations of Article 1.14, within 30 days after the opening of Bids, to the lowest responsible and eligible Bidder. However, for Contracts requiring concurrence by other State or Federal agencies, the Contract will be awarded 45 days from the opening of Bids. The successful Bidder will be notified in writing by mail or otherwise that Bid has been accepted and that Contract has been awarded.
- B. Basis of Award. The Contract will be awarded by the Authority subject to the reservations of Section 00200 Article 1.14 as specified above, within 60 calendar days after opening of Bids to the lowest responsible and eligible Bidder whose Total Estimated Contract Bid Price, based upon the proposed schedule [of unit, lump sum, and allowance] Bid Prices, is the lowest Bid received.

1.16 CANCELLATION OF AWARD

- A. Authority reserves the right to cancel the award of any contract at any time before the execution of the said contract by all parties without any liability against the Authority.

1.17 RETURN OF BID GUARANTY

- A. Bid Guaranty in the form specified in Article 1.07, except those of two lowest bidders will be returned within five days following opening of Bid.
- B. Bid Guarantees of lowest bidder and second lowest bidder will be retained until execution of the contract, previous to which, however, either Bidder who submitted cash, certified check, treasurer's or cashier's check as Bid Guaranty, may substitute a bid bond in an acceptable form furnished by a surety or insurance company licensed or authorized by the Massachusetts Division of Insurance to engage to the business of surety in the Commonwealth and satisfactory to the Authority.
- C. After 60 days from the opening of Bids (as specified in Article 1.15), low Bidder may withdraw the Bid and request return of the Bid Guaranty, in which case Bid Guaranty of lowest Bidder and second lowest Bidder will be returned and second lowest Bidder's Bid shall not be considered or award. After 60 days from the opening of Bids (as specified in Article 1.15), second lowest Bidder may withdraw the Bid and request return of the Bid Guaranty, in which case only Bid Guaranty of second lowest Bidder will be returned.

1.18 CONTRACT BONDS REQUIRED

- A. Performance Bond in the full amount of the Contract will be required by Authority to ensure faithful performance of the Contract.
- B. Labor and Materials Payment Bond in the full amount of the Contract will be required to be furnished by the Contractor to Authority as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. Said security shall remain in force until the validity of all claims shall be determined and if valid, paid by the surety.
- C. Name of the agency or agent writing these bonds shall be identified with or on the bond.
 - 1. Surety may be a bond in an acceptable form furnished by a surety or insurance company licensed or authorized by the Massachusetts Division of Insurance to engage in the business of surety in the Commonwealth and satisfactory to the Authority.
 - 2. All Alterations, extensions of time, extra work and any other changes authorized under these specifications, or under any part of the Contract may be made without obtaining the consent of the surety or sureties on the Contract Bonds.

1.19 EXECUTION OF CONTRACT

- A. Successful Bidder shall execute and deliver the Contract and furnish the required surety and certificate of insurance to Authority within 10 days after the date of the Notice of Award.
- B. Contract shall be in writing and shall be executed in the number of copies required by the Authority. One fully executed copy will be delivered to the Contractor.

1.20 FAILURE TO EXECUTE CONTRACT

- A. Should successful Bidder fail to execute the Contract and furnish the surety and certificate of insurance within the time stipulated, Authority may, at its option, determine that Bidder has abandoned the Contract and thereupon Bid and acceptance shall be null and void. Guaranty accompanying Bid shall be retained and collected by Authority. It is agreed that this Article shall be construed and treated by the parties to the Contract not as imposing a penalty upon said Contractor for failing to fully execute The Contract as agreed on or before the time specified in Bid, but as liquidated damages to compensate Authority for additional costs incurred by Authority because of the failure of the Contractor to fully execute the Contract on or before the date specified in Bid.

1.21 INTERPRETATIONS OF BID DOCUMENTS

- A. All questions about the meaning and intent of Bid Documents shall be submitted in writing, to the Director of Construction – South Coast Rail of the Massachusetts Bay Transportation Authority, at the address specified in the Notice to Bidders. To be given consideration, all questions must be received ~~by March 19, 2020~~ at least 10 days prior to the date fixed for the openings of Bids. An interpretation of all questions which Authority elects to give will be issued by written Addenda. Only questions answered by formal written Addenda will be binding. Oral communications or interpretations will be without binding legal effect. All Addenda so issued shall become part of the Bid Documents. The first Addenda is scheduled to be issued on March 2, 2020, with the final Addenda scheduled ~~for no later than~~ to be on or

about April 16th, 2020. ~~April 2, 2020.~~ Obvious discrepancies in Bid Documents which are not addressed by a Bidder in accordance with the above procedure will be construed against the successful Bidder should a dispute arise.

- B. A separate copy of the questions referring to meaning and intent of the Bid Documents shall be mailed to the Project Manager, at the address specified in the Notice to Bidders, and to be given consideration must be received at least 10 days prior to the date fixed for the openings of Bids. All interpretations the Authority elects to give will be made in the form of written Addenda to the Contract Documents, which Addenda shall become a part of the Bid Documents. The Addenda will be mailed to all persons who obtained Bid Documents in the manner described in the Notice to Bidders.

1.22 MASSACHUSETTS SALES AND USE TAX LAW OF 1967

- A. Attention of Bidders is directed to the Massachusetts Sales Tax, Chapter 64H, Section 6, and the Massachusetts Use Tax, Chapter 64I, Section 7, which state that these taxes are not applicable to the sales of construction materials and supplies incorporated, consumed, employed or expended in Construction Contracts of this Authority. This exemption is also applicable to rental charges for construction vehicles, equipment and machinery rented, specifically for use on the site of the Authority's construction projects. Bidders are direct to exclude any allowance for Sales or Use Tax from their Bids as said tax would relate to the foregoing specific categories.

1.23 NOT USED

1.24 DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PROVISION

- A. Attention of all Bidders is directed to the assurance to be submitted with their Bids that they will make sufficient reasonable efforts to meet the stated DBE goal for this Contract. This assurance is provided on the EEO Certification and DBE Assurance folder of the electronic Bid Package.
- B. In addition, the attention of Bidders is directed to the requirements of the Disadvantaged Business Enterprise List folder of the electronic Bid Package included as Appendix 3 of the Supplementary conditions. The Disadvantaged Business Enterprise Participation Letter of Intent form, the Disadvantaged Business Enterprise Affidavit form, and the Disadvantaged Business Enterprise Unavailable Certification form may be reproduced for additional copies. Failure to comply and submit the required documentation will render the Bid non-responsive.
- C. For the purpose of this Contract, Bidders are reminded that the MBTA will only accept DBE's that are certified by the Massachusetts Supplier Diversity Office (SDO) or a certified out-of-state firm certified under Section 8(a) of the Small Business Act. The two lowest Bidders must submit the DBE(s) most recent certification letter(s) within three business days of the bid opening.

1.25 NOT USED

1.26 FUEL AND ASPHALT PRICE ADJUSTMENT CLAUSE

- A. Should this Contract contain a fuel and asphalt price adjustment clause, the Supplementary Conditions of the Contract Specifications will provide information for baseline prices and application guidelines.

1.27 PREBID CONFERENCE

- A. A pre-bid conference will be held on March 4, 2020, at 9:00 am at the Transportation Board Room, 10 Park Plaza, 2nd Floor, Boston, MA 02116. The Authority will conduct an inspection tour of the site following the pre-bid conference. Bidders are advised that they should have representation at this tour as no extra visits are planned. Attendance at both the pre-bid conference and the on-site inspection is highly recommended for all prospective bidders. Any request for interpretation of drawings and specifications should be submitted in writing at the same time.

1.28 NOT USED

1.29 EQUAL EMPLOYMENT OPPORTUNITY (EEO)

- A. Attention of all Bidders is directed to Section 00700, General Conditions, Article 5.26, and Paragraph AA of the Supplementary Conditions. Compliance with these Specifications requires completion in full of the certification contained in the electronic bid package. Failure to comply fully and submit the required Certification may render the Bid non-responsive.

1.30 BIDDER STATUS IDENTIFICATION

- A. Bidder's attention is directed to the applicable folder in the electronic bid package regarding status identification. Bidders are advised that the applicable section of the above must be completed in its entirety.

1.31 CERTIFICATION OF DUMPING FACILITIES

- A. Bidders are advised that the Certification of Dumping Facilities folder in the electronic bid package must be completed in its entirety.

1.32 RIGHT-TO-KNOW LAW

- A. Bidders are advised that the Right-to-Know Law Certification folder in the electronic bid package must be completed in its entirety.

1.33 APPEALS AND PROTEST PROCEDURES

- A. **Introduction** -The following procedures apply to all MBTA procurements, including those that originate from and are the responsibility of the Materials Management Department (Goods and Services Purchases) and the Capital Delivery Department (Construction and Professional Services contracts). Interested parties (Interested Party means an actual or prospective bidder, proposer or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract) must follow the procedures specified for the particular procurement that is being appealed/protested. In the event that an interested party has an appeal/protest for a procurement/contract that involves an area of responsibility not identified herein, the appeal/protest must be sent to the MBTA's Chief of Staff, General Manager's Office, Ten Park Plaza, Boston, for review. A protest will be processed in the time frames and structure as specified below. In addition, the MBTA will disclose information regarding the protest to the Federal Transit Administration (FTA) in writing.

B. PRE-BID APPEALS – CONSTRUCTION AND PROFESSIONAL SERVICES

1. If it is the opinion of any interested party that the Specifications/Scope of Work or any other requirement of the proposed procurement are in any way ambiguous, incorrect, incomplete or restrictive, the interested party shall contact the Authority, in writing, via U.S. Mail and facsimile, at least ten (10) business days prior to the bid opening date or proposal submittal date. The letter should be addressed to the Director of Contract Administration of the MBTA at 10 Park Plaza, Boston, MA 02116. The letter should identify the procurement that is underway (Contract/RFP number and description) and the specific issue to be addressed. Any protest about the content of a specification is waived if not filed prior to the bid opening or proposal submittal date. The Director of Contract Administration will review the interested party's protest and will respond, in detail, to each substantive issue raised by the interested party within three (3) business days. If the matter requires further evaluation, the Director of Contract Administration will notify the protesting party in writing (by facsimile and U.S. Mail) of the extended review period. A final response will be issued by the Director of Contract Administration upon final review of the matter. One of the following steps will be taken prior to the bid opening date or proposal submittal date:
 - a. The Authority may elect to conduct an informal conference on the merits of a protest with interested parties;
 - b. If, upon review, the Authority determines that a change should be made to the specification and/or the bid documents, an addendum will be issued to all interested parties;
 - c. If the Authority determines that no change should be made to the specification and/or the bid documents, but that it is necessary to clarify any point made by the interested party, a Letter of Clarification will be issued to all interested parties; or
 - d. If the Authority determines that neither a change nor a clarification should be made to either the specification or the bid documents, then, the interested party should be notified in a timely fashion in writing (by facsimile and telephone, if possible) of the Authority's determination.
2. If the interested party does not believe that the response addressed his/her concerns, he/she may appeal this decision to the General Counsel, in writing, prior to the bid opening date or the proposal submittal date. The matter will be reviewed and a response will be made in accordance with steps a. through d. above. The bids or proposals may be opened and the Authority may elect to proceed with an award during the pendency of a protest, if the Authority determines that:
 - a. The items to be procured are urgently required; or
 - b. Delivery or performance will be unduly delayed by failure to make the award promptly; or
 - c. Failure to make prompt award will otherwise cause undue harm to the MBTA.
3. ONCE THE GENERAL COUNSEL'S DETERMINATION HAS BEEN MADE, THE AUTHORITY'S DECISION IS FINAL AND WILL NOT BE RECONSIDERED UNLESS THERE IS ADDITIONAL INFORMATION WHICH WAS NOT AVAILABLE TO THE APPEALING PARTY AT THE TIME THE APPEAL WAS MADE.

C. POST APPEALS –CONSTRUCTION & PROFESSIONAL SERVICES

1. Post -Bid appeals by an interested party shall be made in writing via U.S. Mail and facsimile within three (3) business days of the bid opening date or the notification date of a selected proposer and shall be made as follows:

- a. The initial protest or appeal shall be made to the Director of Contract Administration of the MBTA at 10 Park Plaza, Boston, MA 02116, who will collect the factual information pertaining to the appeal.
 - b. After discussion and appropriate review, the Director Contract Administration will forward a recommendation to the Assistant General Manager for Capital Delivery (AGM).
 - c. If the AGM does not concur with the recommendation, the AGM will obtain any other additional information required so that a determination can be made, at which time the interested party will be notified in writing of the Authority's determination within five (5) business days. If the matter requires further evaluation, the AGM will notify the protesting party in writing (by facsimile and U.S. Mail) of the extended review period. A final response will be issued by the AGM upon final review of the matter.
 - d. If the interested party does not agree with the determination, he/she may appeal directly to the Authority's General Counsel in writing within three (3) business days of the AGM's determination.
 - e. The General Counsel will review all facts of the appeal and will make a final determination and will advise the interested party of his decision within five (5) business days. If the matter requires further evaluation, the General Counsel will notify the protesting party in writing (by facsimile and US Mail) of the extended review period. A final response will be issued by the General Counsel upon final review of the matter.
2. ONCE THE GENERAL COUNSEL'S DETERMINATION HAS BEEN MADE, THE AUTHORITY'S DECISION IS FINAL AND WILL NOT BE RECONSIDERED UNLESS THERE IS ADDITIONAL INFORMATION WHICH WAS NOT AVAILABLE TO THE APPEALING PARTY AT THE TIME THE APPEAL WAS MADE.

D. GENERAL INSTRUCTIONS/ INFORMATION

1. In the event that the subject contract procurement is federally funded, all prospective interested parties are notified of the following:
 - a. FTA's review of the protest will be limited to the MBTA's failure to have or follow its written protest procedures. The appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation. The protest/appeal is to be in accordance with FTA Circular 4220.1F (as periodically updated).
 - b. Note: The interested party must exhaust all administrative remedies with the MBTA before electing to pursue a protest with the Federal Transit Administration (FTA).
2. In the event that a protest is pending:
 - a. The MBTA reserves the right to proceed with the procurement, which may include the opening of bids or proposals and the subsequent award of a contract, regardless of the existence of a protest that is pending, in the event that a determination has been made that:
 1. The supplies or services to be contracted for are urgently required;
 2. Delivery or performance will be unduly delayed by failure to make award promptly;
 3. Failure to make a prompt award will otherwise cause undue harm to the MBTA or the Federal Government.

3. If award is made, the procurement file will be documented to explain the basis of award. Written notice of the decision to proceed with the award will be sent to the protester and other interested parties.

1.34 NOT USED

1.35 NOT USED

1.36 STANDARD PLANS

- A. The Authority's "Railroad Operations Book of Standard Plans - Track and Roadway" is available at no charge on MBTA.com. Also, the MBTA's Standard Plan entitled "MBTA Railroad Operations - Commuter Rail Design Standards Manual", is available at no charge on MBTA.com.

1.37 CERTIFICATION OF CONSTRUCTION EQUIPMENT STANDARD COMPLIANCE

- A. The contractor certifies that all diesel construction equipment used in this contract shall have emission control devices installed, such as oxidation catalysts or particulate filters on the exhaust system side of the diesel combustion engine equipment.
- E. Bidders are advised that the MBTA Construction Equipment Standard Compliance folder in the electronic bid package must be completed in its entirety.

1.38 CERTIFICATION OF UNDOCUMENTED WORKERS

- A. The contractor certifies that all workers and employees used in this contract are legally documented workers and that the Contractor has verified the immigration status of all workers assigned to the Contract.
- B. Bidders are advised that the MBTA Contractor Certification for Undocumented Workers folder in the electronic bid package must be completed in its entirety.

1.39 OSHA TRAINING CERTIFICATION

- A. Attention of all Bidders is directed to Section 00700, General Conditions, Article 5.15, regarding worker safety training. Compliance with these Specifications requires completion in full of the Certification of Work in Harmony and OSHA Training contained in the electronic bid package. Failure to comply fully and submit the required Certification may render the Bid non-responsive.

1.40 CONTRACTOR CERTIFICATION MBTA RETIREE PARTICIPATION DISCLOSURE

- A. Bidders are advised that the MBTA Retiree Participation Disclosure folder in the electronic bid package must be completed in its entirety

END OF SECTION

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INSTRUCTIONS TO BIDDERS
00200 - 13

ISSUED FOR BID
02/14/2020