	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

**MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY**

**DESIGN-BUILD
PROCEDURES**

DECEMBER 2020



	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

TABLE OF CONTENTS

SECTION 1 – Introduction		1
1.1	Purpose	
1.2	Authority	
1.3	Scope	
1.4	FTA Procedural Guidance for Design Build Procurement	
1.5	Owner’s Representative	
SECTION 2 – Definitions		6
SECTION 3 – Design Build Procurement Process- Best Value		9
3.1	Best Value or Low Bid	
3.2	Development of Design and Construction Scope of Work	
3.3	Advertisement	
3.4	Preparation of Request For Qualifications (RFQ)	
3.5	Evaluation of Statements of Qualifications	
3.6	Preparation of Request For Proposals (RFP)	
3.7	Proposer Meetings	
3.8	Proposals Submitted by Proposers	
3.9	Proposal Evaluation Process	
3.10	Negotiations	
3.11	Recommendation for Award	
SECTION 4 – Design Build Procurement Process-Low Bid		19
4.1	Best Value or Low Bid	
4.2	Development of Design and Construction Scope of Work	
4.3	Advertisement	
4.4	Preparation of Request For Qualifications (RFQ)	
4.5	Evaluation of Statements of Qualifications	
4.6	Preparation of Request For Proposals (RFP)	
4.7	Proposer Meetings	
4.8	Proposals Submitted by Proposers	
4.9	Proposal Evaluation Process	
4.10	Negotiations	
4.11	Recommendation for Award	

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

SECTION ONE

INTRODUCTION

1.1 PURPOSE


The Design Build procurement process is one of the tools the MBTA is authorized to use in third party contracting. This document has been developed to establish MBTA procedures to be used in the Design Build procurement process.

1.2 AUTHORITY

The use of Design Build procurement for “Public Works Projects” is subject to Sections 14–21 of Chapter 149A of the General Laws as inserted by Section 27, Chapter 193 of the Acts of 2004, as subsequently modified by Section 114 of Chapter 46 of the Acts of 2015. Chapter 149A allows for the use of Design Build for the construction, reconstruction, alteration, remodeling, or repair of a public works project estimated to cost not less than \$5,000,000. Under Section 16 of Chapter 149A, the MBTA must annually submit its Design Build procedures to the Office of Inspector General (OIG) for review and approval. Additionally, if the MBTA modifies or amends the approved procedures, the MBTA shall immediately submit the amended procedures to the OIG for approval.

The MBTA shall conduct a Design Build procurement in a manner that is consistent with these procedures in every respect and, except for Section 39M of Chapter 30, consistent with the requirements of all other provisions of the Massachusetts public bidding laws to which the MBTA is otherwise subject, including sections 39F, 39G, 39J, 39N, 39O, 39P and 39R of said Chapter 30, in the same manner as they apply to public works projects generally procured by the MBTA to the extent practicable and consistent with Design Build.

Section 15 of Chapter 149A defines “public works project” as a project subject to Section 39M of Chapter 30 or Section 34 of Chapter 90; but the term "public works project" shall not include a “building project.” “Building project” is defined as "the construction, reconstruction, installation, demolition, maintenance or repair of any building.” Since the MBTA has been specifically exempted from the requirements of the law applicable to the construction of public buildings, Chapter 149, all of its major construction work is completed either in accordance with Section 39M of Chapter 30 or via an alternative delivery method authorized either under special legislation or Chapter 149A of the General Laws. Where appropriate and advisable, the MBTA intends to continue to use the Design Build delivery method on its public works projects, some of which may include buildings or structures.

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build


1.3 SCOPE

The information presented in these procedures provides the requirements for using the Design Build procurement process for the MBTA’s public works contracts estimated to cost not less than \$5,000,000.

1.4 FTA PROCEDURAL GUIDANCE FOR DESIGN BUILD PROCUREMENT


The Federal Transit Administration’s (FTA’s) enabling legislation expressly authorizes the use of FTA capital assistance to support Design Build projects “after the recipient complies with Government requirements,” 49 U.S.C. Section 5325(d)(2). The MBTA will follow this FTA procedural guidance for all projects in which the FTA has an interest.

- (1) Procurement Method Determined by Value. First, the MBTA must separate the various contract activities to be undertaken and classify them as design or construction, and then calculate the estimated total value of each. Because both design and construction are included in a single procurement, the FTA expects the MBTA to use the procurement method appropriate for the services having the greatest cost, even though other necessary services would not typically be procured by that method.
 - (a) Construction Predominant. The construction costs of a Design Build project are usually predominant so that the MBTA would be expected to use competitive negotiations or sealed bids for the entire procurement rather than the qualifications-based Brooks Act procurement procedures. Specifically, when construction costs will be predominant, unless FTA determines otherwise in writing, an FTA recipient may not use qualifications-based procurement procedures to acquire architectural, engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural and engineering, surveying, mapping, or related A&E services unless required by State law adopted before August 10, 2005.
 - (b) Design Services Predominant. In the less usual circumstance in which the cost of most work to be performed will consist of costs for architectural and engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related A&E services, FTA expects the recipient to use qualifications-based procurement procedures based on the Brooks Act as described in FTA Circular 4220.1F Chapter VI subsection 3.e.

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

1.5 OWNER'S REPRESENTATIVE

In accordance with Section 15 ½ of Chapter 149A, the MBTA will retain an Owner's Representative prior to award of a Design Build contract which has a certified estimate of cost exceeding \$50,000,000. The scope of work for the Owner's Representative shall be consistent with the requirements of Section 15 ½.


	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

SECTION TWO


DEFINITIONS

For purposes of these procedures, the following definitions shall apply:


- 2.1 **Advertisement** is the public announcement of a Design Build Project. The Advertisement shall appear on the MBTA website , Central Register and in a newspaper of general circulation in the area in which the Project is located or to be located.
- 2.2 **Construction Engineering Inspection Services (CEI)** include construction inspection, off-site plant inspection, materials sampling and testing, surveying, and other quality control functions as specified for the Project that may be required of the DB Entity for the Project.
- 2.3 **Design Build (DB)** is a construction delivery system that provides responsibility for the delivery of design services, construction services, and, in certain cases, CEI within a single contract.
- 2.4 **Design Build (DB) Entity** is an individual, sole proprietorship, firm, partnership, joint venture, corporation, or other entity that provides Design Build services. The DB Entity for the Project shall include appropriately registered and licensed professionals in the fields necessary to serve as the engineer/designer of record for the design of the Project.
- 2.5 **Design and Construction Criteria** are the design and construction requirements that define the essential elements of the Project necessary to ensure that the Project is designed and constructed to meet the needs determined by the MBTA. These requirements are to be included in the RFP.
- 2.6 **Design Professional** shall have the same meaning as "designer" as defined in Section 44(b) of Chapter 7C.
- 2.7 **Letters of Interest (LOI)** is the information provided by interested DB Entities in response to a project Advertisement. A DB Entity desiring to be considered for a Design Build project must submit a Letter of Interest and provide the information required in the Advertisement.

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

- 2.8 **Major Participant** is a private entity that would have a significant role in the design or construction of the Project as a member of the Design Build Entity.
- 2.9 **MBTA** is the Massachusetts Bay Transportation Authority.
- 2.10 **Non-Responsive** refers to any Statement of Qualifications that does not comply with the criteria identified in the RFQ or any Proposal that does not comply with the criteria defined in the RFP.
- 2.11 **Owner’s Representative** shall mean an individual registered by the Commonwealth of Massachusetts as a professional engineer, who has not less than five years of experience in the construction and supervision of construction of the type which is the subject of the Design Build contract in nature, scope and complexity.
- 2.12 **Project** means the scope of services to be designed and constructed as described in the RFP.
- 2.13 **Project Manager** is the MBTA’s designee responsible for the administration of the DB Project.
- 2.14 **Proposal** means an offer by the Proposer in accordance with all RFP provisions for the price contained in the Proposal.
- 2.15 **Proposer** means the entity that seeks to act as the DB Entity for the Project.
- 2.16 **Request for Proposal (RFP)** is the document issued by the MBTA to solicit Proposals from shortlisted Design Build Entities for the purpose of entering into a Design Build contract.
- 2.17 **Request for Qualifications (RFQ)** is the document issued by the MBTA for the purpose of shortlisting Design Build Entities to respond to an RFP to be issued by the MBTA.
- 2.18 **Responsible Proposer** is a person, corporation, or other organization or entity which has the capability to perform the requirements of the Design Build contract, has the integrity and reliability to assure good faith performance, and meets the qualifications component of the RFQ and/or RFP.

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

- 2.19 **Selection Committee** the group of individuals established by the MBTA who will review Proposals and recommend selection of best-value or low-bid Proposals. The Selection Committee may also receive assistance from any sub-committees that evaluate the Technical Proposals and or price proposals as needed. Additionally, the MBTA may use Technical Advisors as required.
- 2.20 **Statement of Qualifications (SOQ)** is the complete package received from a Proposer in response to the MBTA’s RFQ that defines the Proposer’s experience and capabilities to provide the services requested.
- 2.21 **Technical Advisor** shall mean the Project Design Professional or other publicly procured consultant.
- 2.22 **Technical Proposal** is the information provided by the Proposer that enables the MBTA to evaluate the capability of the Proposer to provide the desired services.
- 2.23 **Two-Phase Selection Process** is a procurement process in which the first phase consists of creating a short list of qualified Design Build Entities as determined by responses to an RFQ and in which the second phase consists of the submission of Proposals in response to an RFP by the short listed Proposers.

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

SECTION THREE

DESIGN BUILD PROCUREMENT PROCESS

BEST VALUE

3.1 BEST VALUE OR LOW BID

The MBTA may evaluate and select Proposals on either a best-value or low-bid basis. If the scope of work requires substantial engineering judgment, the quality of which may vary significantly as determined by the MBTA, then the basis of award shall be best value. The best value procurement process will be used to select the Proposal with the best value to the MBTA and public, in which the combination of technical, quality, schedule, operating, and pricing factors meet or exceed the MBTA’s requirements identified in the RFP.


As a general rule, the low bid approach should be used on Projects where the Design and Construction Criteria are concise and clearly defined.

3.2 DEVELOPMENT OF DESIGN AND CONSTRUCTION SCOPE OF WORK

The MBTA shall establish a multi-disciplined project development team and appoint a Project Manager early in the procurement process to develop the RFQ and RFP documents. This will include identifying the project development team members for the Selection Committee and any sub-committees. The project development team should continue to refine the Project goals, develop the preliminary design and construction scope of work, develop a detailed description of the Project, identify the required design elements, identify environmental permitting requirements, and identify ROW needs.

The Project description is an important aspect of the project development and should be developed early in the process. This information provides the vehicle to ensure that the project development team understands the complete Project and provides a common basis for distribution of project teamwork tasks. The Project description is also used to provide Project information and background to Proposers. The Project description should define the purpose of the Project, its limits, unique conditions, design elements, physical components, schedule issues, traffic management parameters, operational issues, community issues and other items as necessary to fully describe the Project.

The MBTA shall contract for the duration of the Two-Phase Selection Process with a Design Professional to provide technical advice and professional expertise to the MBTA; but, in retaining the services of a Design Professional, the MBTA may use the services of a Design Professional already in the employ of the MBTA or, if the MBTA does not already have in its employ a Design Professional, the MBTA shall procure the services of a Design Professional pursuant to its Procurement Manual, which is inclusive of FTA Circular

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

4220.1F Third Party Contracting. The Design Professional must be in place before issuing the RFQ.

The Design Professional retained to provide technical assistance and consulting services to the MBTA shall be subject to preclusion consistent with federal and state law and any conflict of interest policy adopted by the MBTA, and in particular as set forth in Section 18 of Chapter 149A, shall not be eligible to participate in any way as a member of the Proposers competing for the award of the Design Build contract.

The MBTA shall develop, with the assistance of the Design Professional, a scope of work statement that defines the Project and provides Proposers with sufficient information regarding the MBTA’s objectives and requirements. The scope of work statement shall include the Project description, a description of the work that will be completed under the contract, criteria and preliminary design, general budget parameters, and general schedule requirements.

The MBTA shall develop, with the assistance of the Design Professional, Design and Construction Criteria which clearly and completely identify Design Build requirements/services, including any information, data, and services to be furnished by the MBTA and must be included in the RFQ or RFP as applicable.

The Design and Construction Criteria shall provide a summary of the Project’s objectives and furnish sufficient information upon which Proposers may prepare Proposals. Criteria may include geotechnical analysis, surveying, environmental permitting, right of way, and utility coordination. The Design and Construction Criteria shall state the specifications, design criteria, and standards to be used in the design and construction of the Project.


If the Project is subject to FTA oversight, the RFP shall be consistent with FTA Circular 4220.1F Third Party Contracting.

3.3 ADVERTISEMENT

The MBTA will publish an Advertisement requesting LOI consistent with the requirements of Section 17 of Chapter 149A. A minimum of two weeks will be allowed from the time of the Advertisement to the deadline for submitting Letters of Interest.

Advertisements requesting LOI shall be placed in a newspaper of general circulation in the area in which the Project is located or to be located and in the Central Register. The Advertisement shall also be posted on the MBTA website.

Each Advertisement shall include:

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

- the name and description of the Project,
- location of the Project,
- the estimated value of the Design Build contract,
- the time period within which the construction work is to be completed,
- MBTA prequalification classes of work, if deemed applicable,
- the time and date for receipt of Letters of Interest,
- the name of the individual receiving the submittals,
- address of the office to which the responses are to be delivered,
- the time frame in which the MBTA will respond to the Letters of Interest,
- the number of copies to be received,
- evaluation criteria,
- Disadvantaged Business Enterprise (DBE) goal (if applicable), and
- funding source.


As set forth in Section 17 of Chapter 149A, the Advertisement shall also contain a statement that the RFQ will be used to identify qualified short listed DB Entities to submit a Proposal pursuant to Section 19 of Chapter 149A.

DB Entities submitting Letters of Interest by the deadline identified in the Advertisement will be provided with an RFQ package. The RFQ package will request an SOQ which will be used in the qualification step of the Two-Phase Selection Process.

3.4 PREPARATION OF REQUEST FOR QUALIFICATIONS (RFQ)

The RFQ shall serve as the basis by which the MBTA will create a short list of Proposers that are qualified to receive an RFP in phase two of the Two-Phase Selection Process. The RFQ will be provided to each Proposer submitting a Letter of Interest. The RFQ shall contain the date certain by which SOQ responses to the RFQ are due and shall specify the time and place for their submission. The RFQ shall also include all evaluation criteria and measures that will be utilized during the SOQ evaluation process.

The RFQ requests Proposers to submit a well-defined package outlining historical information related to capabilities, experience, and past performance on specific issues pertinent to the Project. Information about project team organization, key project team members, and individual team history may be required. The goal of the evaluation of the SOQs is to select a minimum of two highest ranked Proposers based on their qualifications and experience in specific areas that are important for the Project. At the sole discretion of the MBTA, Proposers may be required to give an oral presentation to the Selection Committee or to otherwise provide clarifying information needed to properly evaluate qualifications.

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

Requested information from each Major Participant will include:

- **Team Information** - Which includes:
 - List of Subconsultants and applicable DBE designation;
 - Team organization chart;
 - Identification and resumes of key personnel;
 - Past work experience on projects similar in size and scope for the past three years;
 - Team history;
 - prequalification certificates, if any

Terminations - Any terminations from work or failure to complete work for the past three years;


- **Litigation** - Any lawsuits filed against any Major Participant for the past three years;
- **Business and Safety Record** - The prior business record of the officers or principals of each Major Participant, and the safety record of each Major Participant; said information shall be provided for the past 3 years;
- **References** - Including references from previous clients, bank references, surety references, and a complete record of public projects for the past three years;
- **Bonding Capacity** - Which shall be evidenced by a commitment letter from an approved surety; and
- **Other Performance Measures** - Any other performance measures that will be used as a basis for evaluating responses to the RFQ.

Each Proposer shall respond to the MBTA by submitting all information required by the RFQ to the MBTA no later than the date and time indicated in the RFQ.

One or more drafts of the RFP may be issued during the procurement, including at the same time as the RFQ, for review and comment by Proposers. Proposers receiving a draft RFP may submit written comments on the draft RFP to the MBTA as the procurement schedule dictates. The MBTA, at its sole discretion, may incorporate any of these comments into the RFP.

3.5 EVALUATION OF STATEMENTS OF QUALIFICATIONS

The MBTA shall establish a Selection Committee which will be responsible for the evaluation and ranking of the SOQs on the basis of the evaluation criteria set forth in the RFQ. The designated individuals shall have Design Build experience in design, construction or other areas and be approved by the MBTA. The individuals shall prepare their evaluations based solely on the information requested pursuant to the RFQ.

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

The evaluations shall specify in writing:

- 1) For each evaluation criterion, a rating of each response as highly advantageous, advantageous, not advantageous or unacceptable, and the reasons for the rating.
- 2) A composite rating for each SOQ using said ratings as highly advantageous, advantageous, not advantageous, or unacceptable, and the reasons for said composite rating.

The evaluations may also contain a criteria point system.

The MBTA will investigate and verify all information received as it deems appropriate. All financial information, trade secrets or other information customarily regarded as confidential business information shall not be deemed to be public information and shall remain confidential to the extent permissible under current law.

Only the most highly qualified Proposers as determined by MBTA , that fall within the scoring range of highly advantageous or advantageous, shall be eligible, but are not guaranteed, to receive an RFP in phase two of the Two-Phase Selection Process. The MBTA will create a shortlist of some number of the eligible proposers and is authorized to select any number of the eligible Proposers to receive the RFP except that if the MBTA fails to identify at least two Proposers which qualify to receive an RFP, the MBTA shall not proceed with the procurement and may re-advertise the Project and renew the RFQ process. No fewer than two of the most qualified Proposers as determined by the SOQ rankings may receive the RFP.


3.6 PREPARATION OF REQUEST FOR PROPOSALS (RFP)

The components of the RFP are based on the MBTA’s standard bid proposal documents, to the extent applicable to DB, with some additional components that identify the selection process requirements and criteria to be used. The RFP will contain the necessary information to describe the Project (scope), the technical requirements for designing and constructing the Project (standards), the method for selecting the DB Entity for the Project, the scoring process to be used, relative weight assigned to the evaluation criteria, and other information consistent with MBTA operations.

3.6.1 RFP Requirements

The RFP shall include the following requirements in accordance with Section 19 of Chapter 149A.

Detailed Scope of Work – The scope of work must include design concepts,

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

technical requirements, performance criteria, construction requirements, time constraints, Design and Construction Criteria and all other requirements that have been determined by the MBTA to have a substantial impact on the cost, schedule and quality of the Project and the project development process.

Cost Basis and Submission Requirements – The RFP shall identify the cost basis, best value, by which the Proposals will be evaluated. If the basis for award is best value, Proposers must simultaneously submit two separate, sealed Proposal packages: a sealed Technical Proposal package and a sealed price proposal package.

Evaluation Criteria – The RFP must include all criteria to be used in evaluating and ranking Proposals. The RFP must specify the scoring process, quality criteria and relative weight thereof. The RFP must state the method by which the “overall value rating” for each Proposal will be calculated.

Bid Deposit – Each Proposal shall be accompanied by a bid deposit in the form of a bid bond, cash, or a certified check on, or a treasurer’s or cashier’s check issued by, a responsible bank or trust company, payable to the MBTA. The amount of the bid deposit shall be 5 percent of the value of the bid.


Noncollusion Statement – Each Proposer submitting a Proposal shall certify on the Proposal as follows: “The undersigned certifies under penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this paragraph, the word “person” shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.” The statement must be signed by the person signing the Proposal, accompanied by the company name.

Proposal Submission Information – The RFP must specify the date by which Proposals must be submitted to the MBTA and must specify the time and place for Proposal submissions. The RFP must also designate the time and place at which price proposals will be publicly opened after the evaluation of Technical Proposals is completed.

3.6.2 OPTIONAL RFP PRACTICES AND MEASURES

The MBTA may, at its option, use one or more of the following practices and measures. The use of any of the practices and measures will be described in the RFP.

Additive/Deductive Scope Options – The RFP may include a process of adding or deducting defined scope packages. The process may include MBTA’s prioritized list of additive and/or deductive scope options, and may also

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

contemplate an affordability limit. For example, the process may allow Proposers to include one or more additive scope options and/or one or more deductive scope options, in MBTA’s priority, while not exceeding the affordability limit. Those Proposals that contain the most additive scope options and/or fewest deductive scope options would then be prioritized by the MBTA.

Affordability Limit – The RFP may identify an affordability limit. In such case, the RFP may contemplate reviewing compliance with the affordability limit early in the evaluation process, including as part of the responsiveness review. The RFP may require Proposals to include a price within the affordability limit in order to be eligible for award


Alternative Technical Concepts – The procurement may provide an alternative technical concept (ATC) process for Proposers to propose deviations to technical requirements prior to Proposal submittal. The ATC process may include one-on-one meetings with Proposers. To the extent the MBTA determines that the deviations meet the requirements of an ATC and are accepted by the MBTA in the MBTA’s discretion (including conditional acceptance), the Proposer is entitled to incorporate the ATC in its Proposal.

Conceptual Technical Submittals – The RFP may provide for a process, including the establishment of a team, to review conceptual technical submittals before full Proposal submittal for the purposes of identifying defects that would cause rejection of the Proposal as Non-Responsive.

Escrowed Proposal Documents – Consistent with MBTA procedures, the RFP may require Proposers to submit all documentary information generated in preparation of their price proposals (Escrowed Proposal Documents). The Escrowed Proposal Documents will be available for joint review as set forth in the RFP, and may allow for review in connection with discussions, negotiations, change orders and disputes.

Performance Incentive Payments & Performance Disincentive Deductions – The RFP may provide for a performance based incentive payment as well as a no excuse clause and a disincentive deduction.

Stipend Information – The RFP may provide for a stipend upon terms specified in the RFP. To the extent consistent with law, MBTA may only use ideas and designs contained in non-successful Proposals if a stipend is paid to the unsuccessful Proposer. MBTA should address stipends up front so that funds for stipends are included in the Project budget.

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

The MBTA shall continually review its processes for adoption of national best practices and other improvements and will incorporate into its processes such practices and other improvements to the extent consistent with Massachusetts law. The MBTA will also, at its election, review and determine, prior to the issuance of an RFP, the best methods of payments for the particular Project (i.e. lump sum, GMP, etc.) and select appropriate accounting requirements to support the preferred method.

3.7 PROPOSER MEETINGS

In connection with a procurement, the MBTA may engage in meetings with Proposers – both as a group and on a one-on-one basis.


The purpose of a group meeting is to provide a forum for all concerned parties to discuss the proposed Project and answer questions on the solicitation documents, including Design and Construction Criteria, Project schedule, method of compensation, instructions for submitting SOQs and Proposals, contract terms, and other relevant issues.

The MBTA may also elect to meet with Proposers on a confidential one-on-one basis. One-on-one meetings may occur, for example: (a) before the procurement commences; (b) during the procurement period, enabling the MBTA to obtain input from short-listed Proposers regarding the RFP or in connection with ATCs or Conceptual Technical Submittals; or (c) in connection with requests for Proposal revisions and best and final offers.

3.8 PROPOSALS SUBMITTED BY PROPOSERS

The MBTA shall request Proposals from no fewer than two Proposers. Proposers will be asked to develop and submit Proposals based on the RFP. Proposals will be segmented into two parts: Technical Proposals and price proposals. Technical Proposals and price proposals will be received by the date, time and appropriate office, as noted in the instructions.

For **best value** procurements, Technical Proposals and price proposals shall be submitted simultaneously in separate sealed packages and with the appropriate bid deposit per Section 20 of Chapter 149A.

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

3.8.1 Technical Proposals

Technical Proposals should include the following, as applicable:

- A detailed Project schedule using CPM (or other techniques as appropriate)
- Preliminary design plans,
- Calculations
- Permit requirements,
- Total contract time and
- Other data requested in response to the RFP.

3.8.2 Price Proposals

Price proposals should include, as applicable, prices for each defined category of the work, with a final price for the total cost of all design, construction, and CEI (if CEI is included) of the Project.


3.9 PROPOSAL EVALUATION PROCESS

Proposal Opening

All of the Technical Proposals will be opened, reviewed, evaluated and scored. The price proposals shall remain sealed until the completion of the evaluation and scoring of the Technical Proposals and shall then be publically opened at the time, date and location specified in the RFP.

Responsiveness Review

The Selection Committee and/or any assigned sub-committee or Technical Advisors shall determine whether the Proposals meet the Pass/Fail criteria and whether the Proposals are otherwise responsive to the requirements of the RFP. It may be appropriate for the MBTA to contact the Proposer to discuss/clarify any responsiveness concerns prior to determining that a Proposal is Non-Responsive.

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

Proposal Review

The Selection Committee members shall evaluate the appropriate components of the Proposals against the criteria contained in the RFP.

Oral Presentation


After the Proposals are submitted, the RFP may contemplate that each Proposer is allowed to make an oral presentation to all members of the Selection Committee. The presentation will afford the Proposers the equal opportunity to highlight the significant aspects of their Technical Proposal and their understanding of the Project and offer a chance for the Selection Committee to ask clarifying questions. The Selection Committee may decide in advance as to what Technical Proposal information may require clarification and which of the Proposer's key personnel it wishes to interview. The oral presentation shall not be used to fill in missing or incomplete information that was required in the written Proposal. The oral presentation shall not be used as an opportunity by the Proposers to improve or supplement their Proposals. This step in the selection process, if used, will be clearly identified in the RFP. Following the formal presentation, Selection Committee members may ask questions of each Proposer with the intent of clarifying information in the Technical Proposal. The Selection Committee may request the submission of additional information for the purpose of clarifying and improving the Selection Committee's understanding of the Technical Proposal.

Proposal Revisions

After submission of Proposals and prior to the opening of price proposals, at MBTA's discretion and consistent with FTA best practices, MBTA may issue one or more requests for Proposal revisions to all or some Proposers. Examples of when Proposal revisions might be requested include situations where a post submission addendum is issued to correct an error in an RFP or situations in which it has been determined that further clarifications are needed from all or some of the Proposers. MBTA may conduct one-on-one discussions in connection with this process. MBTA will consider the revised information submitted as part of the Proposal revision process and reevaluate and revise Proposal evaluation ratings as appropriate.

Best Value Selection Criteria and Scoring

For best value procurements, detailed selection criteria to be used by the Selection Committee and any sub-committees will be identified in the RFP and will be detailed for each specific Project. Selection Committee members shall refer to these criteria when completing the evaluation sheets.

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

Technical Proposal

The Selection Committee will evaluate each Proposer's Technical Proposal. The rating and technical evaluation process is extremely important.

Price Proposal

The MBTA shall notify all Proposers who receive an RFP of the date, time, and location of the public opening of the sealed price proposal. The Selection Committee shall publicly open and read, at the time and place designated in the RFP, the sealed price proposals and shall publicly calculate the overall value rating for each Proposal using the method detailed in the RFP.

Overall Rating

The overall value rating shall be the total price (which included overhead and profit) divided by the technical score or other objective formula clearly detailed in the RFP.


3.10 NEGOTIATIONS

Unless all Proposals are rejected, the MBTA may enter into negotiations with the apparent best value Proposer or MBTA may seek to enter into a contract with the apparent best value Proposer without negotiations. If MBTA enters into negotiations but MBTA determines that the negotiations are unsuccessful, MBTA may enter into negotiations with the next apparent best value Proposer or MBTA may seek to enter into a contract with the next apparent best value Proposer without negotiations.

3.11 RECOMMENDATION FOR AWARD

Unless all Proposals are rejected, once negotiations are complete (if MBTA elects to hold negotiations) or upon determination of the apparent best value Proposer (if MBTA elects not to conduct negotiations), the Selection Committee shall recommend to the delegated authority, as applicable, that the contract be awarded to the apparent best value Proposer.

After signing a Design Build contract, the MBTA shall notify in writing all other Proposers that their Proposals were not accepted.

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

SECTION FOUR

DESIGN BUILD PROCUREMENT PROCESS-

LOW BID

4.1 LOW BID


The low bid approach should be used on Projects where the Design and Construction Criteria are concise and clearly defined.

4.2 DEVELOPMENT OF DESIGN AND CONSTRUCTION SCOPE OF WORK

The MBTA shall establish a multi-disciplined project development team and appoint a Project Manager early in the procurement process to develop the RFQ and RFP documents. This will include identifying the project development team members for the Selection Committee and any sub-committees. The project development team should continue to refine the Project goals, develop the preliminary design and construction scope of work, develop a detailed description of the Project, identify the required design elements, identify environmental permitting requirements, and identify ROW needs.

The Project description is an important aspect of the project development and should be developed early in the process. This information provides the vehicle to ensure that the project development team understands the complete Project and provides a common basis for distribution of project teamwork tasks. The Project description is also used to provide Project information and background to Proposers. The Project description should define the purpose of the Project, its limits, unique conditions, design elements, physical components, schedule issues, traffic management parameters, operational issues, community issues and other items as necessary to fully describe the Project.

The MBTA shall contract for the duration of the Two-Phase Selection Process with a Design Professional to provide technical advice and professional expertise to the MBTA; but, in retaining the services of a Design Professional, the MBTA may use the services of a Design Professional already in the employ of the MBTA or, if the MBTA does not already have in its employ a Design Professional, the MBTA shall procure the services of a Design Professional pursuant to its Procurement Manual, which is inclusive of FTA Circular 4220.1F Third Party Contracting. The Design Professional must be in place before issuing the RFQ.

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

The Design Professional retained to provide technical assistance and consulting services to the MBTA shall be subject to preclusion consistent with federal and state law and any conflict of interest policy adopted by the MBTA, and in particular as set forth in Section 18 of Chapter 149A, shall not be eligible to participate in any way as a member of the Proposers competing for the award of the Design Build contract.

The MBTA shall develop, with the assistance of the Design Professional, a scope of work statement that defines the Project and provides Proposers with sufficient information regarding the MBTA’s objectives and requirements. The scope of work statement shall include the Project description, a description of the work that will be completed under the contract, criteria and preliminary design, general budget parameters, and general schedule requirements.

The MBTA shall develop, with the assistance of the Design Professional, Design and Construction Criteria which clearly and completely identify Design Build requirements/services, including any information, data, and services to be furnished by the MBTA and must be included in the RFQ or RFP as applicable.

The Design and Construction Criteria shall provide a summary of the Project’s objectives and furnish sufficient information upon which Proposers may prepare Proposals. Criteria may include geotechnical analysis, surveying, environmental permitting, right of way, and utility coordination. The Design and Construction Criteria shall state the specifications, design criteria, and standards to be used in the design and construction of the Project.

If the Project is subject to FTA oversight, the RFP shall be consistent with FTA Circular 4220.1F Third Party Contracting.


4.3 ADVERTISEMENT

The MBTA will publish an Advertisement requesting LOI consistent with the requirements of Section 17 of Chapter 149A. A minimum of two weeks will be allowed from the time of the Advertisement to the deadline for submitting Letters of Interest.

Advertisements requesting LOI shall be placed in a newspaper of general circulation in the area in which the Project is located or to be located and in the Central Register. The Advertisement shall also be posted on the MBTA website.

Each Advertisement shall include:

- the name and description of the Project,
- location of the Project,

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

- the estimated value of the Design Build contract,
- the time period within which the construction work is to be completed,
- MBTA prequalification classes of work, if deemed applicable,
- the time and date for receipt of Letters of Interest,
- the name of the individual receiving the submittals,
- address of the office to which the responses are to be delivered,
- the time frame in which the MBTA will respond to the Letters of Interest,
- the number of copies to be received,
- evaluation criteria,
- Disadvantaged Business Enterprise (DBE) goal (if applicable), and
- funding source.

As set forth in Section 17 of Chapter 149A, the Advertisement shall also contain a statement that the RFQ will be used to identify qualified short listed DB Entities to submit a Proposal pursuant to Section 19 of Chapter 149A.

DB Entities submitting Letters of Interest by the deadline identified in the Advertisement will be provided with an RFQ package. The RFQ package will request an SOQ which will be used in the qualification step of the Two-Phase Selection Process.


4.4 PREPARATION OF REQUEST FOR QUALIFICATIONS (RFQ)

The RFQ shall serve as the basis by which the MBTA will create a short list of Proposers that are qualified to receive an RFP in phase two of the Two-Phase Selection Process. The RFQ will be provided to each Proposer submitting a Letter of Interest. The RFQ shall contain the date certain by which SOQ responses to the RFQ are due and shall specify the time and place for their submission. The RFQ shall also include all evaluation criteria and measures that will be utilized during the SOQ evaluation process.

The RFQ requests Proposers to submit a well-defined package outlining historical information related to capabilities, experience, and past performance on specific issues pertinent to the Project. Information about project team organization, key project team members, and individual team history may be required. The goal of the evaluation of the SOQs is to select a minimum of two highest ranked Proposers based on their qualifications and experience in specific areas that are important for the Project. At the sole discretion of the MBTA, Proposers may be required to give an oral presentation to the Selection Committee or to otherwise provide clarifying information needed to properly evaluate qualifications.

Requested information from each Major Participant will include:

- **Team Information** - Which includes:

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

- List of Subconsultants and applicable DBE designation;
- Team organization chart;
- Identification and resumes of key personnel;
- Past work experience on projects similar in size and scope for the past three years;
- Team history;
- Prequalification certificates, if any

Terminations - Any terminations from work or failure to complete work for the past three years;


- **Litigation** - Any lawsuits filed against any Major Participant for the past three years;
- **Business and Safety Record** - The prior business record of the officers or principals of each Major Participant, and the safety record of each Major Participant; said information shall be provided for the past 3 years;
- **References** - Including references from previous clients, bank references, surety references, and a complete record of public projects for the past three years;
- **Bonding Capacity** - Which shall be evidenced by a commitment letter from an approved surety; and
- **Other Performance Measures** - Any other performance measures that will be used as a basis for evaluating responses to the RFQ.

Each Proposer shall respond to the MBTA by submitting all information required by the RFQ to the MBTA no later than the date and time indicated in the RFQ.

One or more drafts of the RFP may be issued during the procurement, including at the same time as the RFQ, for review and comment by Proposers. Proposers receiving a draft RFP may submit written comments on the draft RFP to the MBTA as the procurement schedule dictates. The MBTA, at its sole discretion, may incorporate any of these comments into the RFP.

4.5 EVALUATION OF STATEMENTS OF QUALIFICATIONS

The MBTA shall establish a Selection Committee which will be responsible for the evaluation and ranking of the SOQs on the basis of the evaluation criteria set forth in the RFQ. The designated individuals shall have Design Build experience in design, construction or other areas and be approved by the MBTA. The individuals shall prepare their evaluations based solely on the information requested pursuant to the RFQ.

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

The evaluations shall specify in writing:

- 1) For each evaluation criterion, a rating of each response as highly advantageous, advantageous, not advantageous or unacceptable, and the reasons for the rating.
- 2) A composite rating for each SOQ using said ratings as highly advantageous, advantageous, not advantageous, or unacceptable, and the reasons for said composite rating.

The evaluations may also contain a criteria point system.

The MBTA will investigate and verify all information received as it deems appropriate. All financial information, trade secrets or other information customarily regarded as confidential business information shall not be deemed to be public information and shall remain confidential to the extent permissible under current law.

Only the most highly qualified Proposers as determined by MBTA, that fall within the scoring range of highly advantageous or advantageous, shall be eligible, but are not guaranteed, to receive an RFP in phase two of the Two-Phase Selection Process. The MBTA will create a shortlist of some number of the eligible proposers and is authorized to select any number of the eligible Proposers to receive the RFP except that if the MBTA fails to identify at least two Proposers which qualify to receive an RFP, the MBTA shall not proceed with the procurement and may re-advertise the Project and renew the RFQ process. No fewer than two of the most qualified Proposers as determined by the SOQ rankings may receive the RFP.


4.6 PREPARATION OF REQUEST FOR PROPOSALS (RFP)

The components of the RFP are based on the MBTA's standard bid proposal documents, to the extent applicable to DB, with some additional components that identify the selection process requirements and criteria to be used. The RFP will contain the necessary information to describe the Project (scope), the technical requirements for designing and constructing the Project (standards), the method for selecting the DB Entity for the Project, the scoring process to be used, and other information consistent with MBTA operations.

4.6.1 RFP Requirements

The RFP shall include the following requirements in accordance with Section 19 of Chapter 149A.

Detailed Scope of Work – The scope of work must include design concepts, technical requirements, performance criteria, construction requirements, time constraints, Design and Construction Criteria and all other requirements that have

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

been determined by the MBTA to have a substantial impact on the cost, schedule and quality of the Project and the project development process.

Cost Basis and Submission Requirements – The RFP shall identify the cost basis, by which the Proposals will be evaluated. Proposers shall submit one complete, sealed Proposal package that includes price information.

Evaluation Criteria – The RFP must include all criteria to be used in evaluating and ranking Proposals.

Bid Deposit – Each Proposal shall be accompanied by a bid deposit in the form of a bid bond, cash, or a certified check on, or a treasurer’s or cashier’s check issued by, a responsible bank or trust company, payable to the MBTA. The amount of the bid deposit shall be 5 percent of the value of the bid.


Noncollusion Statement – Each Proposer submitting a Proposal shall certify on the Proposal as follows: “The undersigned certifies under penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this paragraph, the word “person” shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.” The statement must be signed by the person signing the Proposal, accompanied by the company name.

Proposal Submission Information – The RFP must specify the date by which Proposals must be submitted to the MBTA and must specify the time and place for Proposal submissions. The RFP shall designate the time and place at which the Proposals will be publicly opened.

4.6.2 OPTIONAL RFP PRACTICES AND MEASURES

The MBTA may, at its option, use one or more of the following practices and measures. The use of any of the practices and measures will be described in the RFP.

Additive/Deductive Scope Options – The RFP may include a process of adding or deducting defined scope packages. The process may include MBTA’s prioritized list of additive and/or deductive scope options, and may also contemplate an affordability limit. For example, the process may allow Proposers to include one or more additive scope options and/or one or more deductive scope options, in MBTA’s priority, while not exceeding the affordability limit. Those Proposals that contain the most additive scope options and/or fewest deductive scope options would then be prioritized by the MBTA.

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

Affordability Limit – The RFP may identify an affordability limit. In such case, the RFP may contemplate reviewing compliance with the affordability limit early in the evaluation process, including as part of the responsiveness review. The RFP may require Proposals to include a price within the affordability limit in order to be eligible for award

Alternative Technical Concepts – The procurement may provide an alternative technical concept (ATC) process for Proposers to propose deviations to technical requirements prior to Proposal submittal. The ATC process may include one-on-one meetings with Proposers. To the extent the MBTA determines that the deviations meet the requirements of an ATC and are accepted by the MBTA in the MBTA’s discretion (including conditional acceptance), the Proposer is entitled to incorporate the ATC in its Proposal.


Conceptual Technical Submittals – The RFP may provide for a process, including the establishment of a team, to review conceptual technical submittals before full Proposal submittal for the purposes of identifying defects that would cause rejection of the Proposal as Non-Responsive.

Escrowed Proposal Documents – Consistent with MBTA procedures, the RFP may require Proposers to submit all documentary information generated in preparation of their price proposals (Escrowed Proposal Documents). The Escrowed Proposal Documents will be available for joint review as set forth in the RFP, and may allow for review in connection with discussions, negotiations, change orders and disputes.

Performance Incentive Payments & Performance Disincentive Deductions – The RFP may provide for a performance based incentive payment as well as a no excuse clause and a disincentive deduction.

Stipend Information – The RFP may provide for a stipend upon terms specified in the RFP. To the extent consistent with law, MBTA may only use ideas and designs contained in non-successful Proposals if a stipend is paid to the unsuccessful Proposer. MBTA should address stipends up front so that funds for stipends are included in the Project budget.

The MBTA shall continually review its processes for adoption of national best practices and other improvements and will incorporate into its processes such practices and other improvements to the extent consistent with Massachusetts law. The MBTA will also, at its election, review and determine, prior to the issuance of an RFP, the best methods of payments for the particular Project (i.e. lump sum,

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

GMP, etc.) and select appropriate accounting requirements to support the preferred method.

4.7 PROPOSER MEETINGS

In connection with a procurement, the MBTA may engage in meetings with Proposers – both as a group and on a one-on-one basis.


The purpose of a group meeting is to provide a forum for all concerned parties to discuss the proposed Project and answer questions on the solicitation documents, including Design and Construction Criteria, Project schedule, method of compensation, instructions for submitting SOQs and Proposals, contract terms, and other relevant issues.

The MBTA may also elect to meet with Proposers on a confidential one-on-one basis. One-on-one meetings may occur, for example: (a) before the procurement commences; (b) during the procurement period, enabling the MBTA to obtain input from short-listed Proposers regarding the RFP or in connection with ATCs or Conceptual Technical Submittals; or (c) in connection with requests for Proposal revisions and best and final offers.

4.8 PROPOSALS SUBMITTED BY PROPOSERS

The MBTA shall request Proposals from no fewer than two Proposers. Proposers will be asked to develop and submit Proposals based on the RFP. Proposals will be segmented into two parts: Technical Proposals and price proposals. Technical Proposals and price proposals will be received by the date, time and appropriate office, as noted in the instructions.

For **low bid** procurements, each Proposer submits the price proposal and Technical Proposal in one package.

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

4.8.1 Technical Proposals

Technical Proposals should include the following, as applicable:

- A detailed Project schedule using CPM (or other techniques as appropriate)
- Preliminary design plans,
- Calculations
- Permit requirements,
- Total contract time and
- Other data requested in response to the RFP.

4.8.2 Price Proposals

Price proposals should include, as applicable, prices for each defined category of the work, with a final price for the total cost of all design, construction, and CEI (if CEI is included) of the Project.


4.9 PROPOSAL EVALUATION PROCESS

Proposal Opening

The MBTA will publicly open the Proposals including the price or prices on the day, time, and location noted in the RFP, and send the Selection Committee the Proposal for only the lowest bid submitted for review as to responsiveness.

Responsiveness Review

The Selection Committee and/or any assigned sub-committee or Technical Advisors shall assess the responsiveness of the lowest bidder's Proposal to the RFP requirements. In the event the lowest bidder's Proposal is found to be Non-Responsive, the Selection Committee may then review the next lowest bidder's Proposal to determine its responsiveness. It may be appropriate for the MBTA to contact the Proposer to discuss/clarify any responsiveness concerns prior to moving on to the next lowest bidder. However, once determined that the Proposal is Non-Responsive, the process may continue until the lowest bidder having a responsive Proposal is found.

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	Design Build

4.10 NEGOTIATIONS

Unless all Proposals are rejected, the MBTA may either enter into non fee negotiations or seek to enter into a contract without negotiations with the Responsible Proposer with the lowest responsive bid. If MBTA enters into negotiations but MBTA determines that the negotiations are unsuccessful, MBTA may enter into negotiations with the Responsible Proposer with the next lowest responsive bid or MBTA may seek to enter into a contract with the Responsible Proposer with the next lowest responsive bid without negotiations.

4.11 RECOMMENDATION FOR AWARD

Unless all Proposals are rejected, the Selection Committee will recommend to the delegated authority, as applicable, that the contract be awarded to the Responsible Proposer with the lowest bid that has a responsive Proposal.

After signing a Design Build contract, the MBTA shall notify in writing all other Proposers that their Proposals were not accepted.