

## Questions and Answers #5

1. **Liquidated damages** – p. 12 and p. 26 – Will any liquidated damages be imposed if a Contractor fails to complete a route, or if any similar (post-commencement) service failure occurs? If yes, can language allowing the Contractor to contest the imposition of liquidated damages be added to the agreement?
  - a. Both the RFP and appended form of contract provide for liquidated damages upon a failure to perform the work required by the contract. The City believes that liquidated damages are an easier way to quantify the financial damage caused by failure to timely perform the work. Proposers are free to propose an alternative fine schedule with their Proposals, and the City will consider such alternative proposals, but Proposers must also be willing to accept the liquidated damages provisions should an alternative fine schedule not be acceptable to the City after negotiations with the selected Proposer cease.
  - b. With respect to contesting the imposition of the assessment of liquidated damages, the contractor will be able first to simply provide the City with its arguments and factual records to demonstrate performance did occur per the contract. Failing agreement at an informal level, the contractor would have all legal remedies available to it to challenge any imposition of liquidated damages by way of court action.
  - c. While the City has previously indicated that it would not impose liquidated damages based solely on the failure to provide service on a given day, the City would consider the failure to provide services for an entire route to be subject to liquidated damages.