



Request For Proposal

STRATEGIC EXECUTIVE ADVISOR TO THE GENERAL MANAGER/CHIEF EXECUTIVE OFFICER AND WMATA BOARD OF DIRECTORS

RFP No.: CQ16068

Release Date: November 9, 2015
Due Date: December 4, 2015

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

RFP: CQ16068

Date: November 9, 2015

SUBJECT: RFP No. CQ16068 - Strategic Advisor

Dear Sir/Madam:

The Washington Metropolitan Area Transit Authority's (WMATA) seeks an organization(s) to serve as a strategic executive advisor to the WMATA General Manager/Chief Executive Officer (GM/CEO) with a dotted line to the Board of Directors through a Special Task Force consisting of 4 Board members (composed of members from each of DC, MD, VA and the federal government) appointed by the Board's Executive Committee and shall represent the Board in all dealings with the Consultant. The advisor shall provide expertise and advice regarding organizational restructure and realignment initiatives, financial and operational business processes, change management, crisis management, and public relations management.

If you have any questions, Technical, Contractual, or Administrative, please e-mail them to ARRobertson@wmata.com no later than Close of Business, November 16, 2015. WMATA will provide written answers on our website at www.wmata.com. If an amendment is issued resulting from questions and answers, it will be posted on our website.

Prospective Offerors shall provide its proposal in accordance with the format detailed herein and not later than **12:00PM (Eastern Time) December 4, 2015**.

Sincerely,

[signature on file]

Contracting Officer
Office of Procurement and Materials

Enclosure:

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

INTRODUCTORY INFORMATION
SOLICITATION CERTIFICATIONS PAGE

CQ16068

STRATEGIC EXECUTIVE ADVISOR

APPROVED FOR RELEASE


Project Manager/Office Designer

9 November 2015
Date


Contracting Officer

11/9/15.
Date


COUM

9 NOV 2015
Date

END OF SECTION

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WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

DIRECTIONS FOR SUBMITTING OFFER

1. Read and comply with the Solicitation Instructions.
2. Envelopes containing Technical and Price proposals must be sealed and separately marked and addressed to:

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
600 5th Street, NW
Washington, DC 20001
Room 3C-02
Attn: Allison Robertson

ALL ENVELOPES OR PACKAGES MUST BE SEPARATELY MARKED WITH SOLICITATION NUMBER AS SPECIFIED HEREWITH.

PROPOSAL SHALL BE TIMELY MAILED OR HAND DELIVERED TO REACH WMATA BEFORE 12:00 P.M. (LOCAL TIME) DECEMBER 4, 2015 ON DAY OF PROPOSAL CLOSING.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

NOTICE TO OFFERORS

IN ORDER TO ENSURE THAT YOUR PROPOSAL COMPLIES WITH THE AUTHORITY'S PROCUREMENT REGULATIONS AND THAT IT WILL BE ACCEPTABLE TO THE AUTHORITY, THE FOLLOWING FORMS MUST BE COMPLETED & SUBMITTED AS SPECIFIED BELOW WITH YOUR OFFER:

- SOLICITATION, OFFER & AWARD FORM (Must be signed.) - VOLUME III
- PRICE SCHEDULE- VOLUME I
- REPRESENTATIONS AND CERTIFICATIONS- VOLUME III
- PRE-AWARD DATA- VOLUME III
- ACKNOWLEDGMENT OF AMENDMENTS (IF ANY)- VOLUME III
- TECHICAL PROPOSAL VOLUME II
- CERTIFICATE OF INSURANCE - VOLUME III
- APPENDIX C (IF APPLICABLE) - VOLUME III

FAILURE TO SUBMIT ANY PORTION OF THESE REQUIREMENTS AS SPECIFIED MAY CAUSE YOUR PROPOSAL TO BE CONSIDERED NON-RESPONSIVE AND SUBSEQUENTLY REJECTED.

Questions concerning this Request for Proposal may be directed to Allison Robertson at ARRobertson@wmata.com.

NOTICE TO ALL VENDORS

Please be advised that all vendors and contractors who do business with the Washington Metropolitan Area Transit Authority (WMATA) must register in the WMATA Vendor Registration System. Registration is located at <http://www.wmata.com>
New Vendor Registration.

If you are a vendor or contractor and *HAVE* done business with WMATA in the past, please electronically request your company's User ID and Password at <http://www.wmata.com>
Forgot User Id/Password.

Registered Vendor Benefits:

- Visibility to WMATA contract administrators and/or purchasing agents during the purchasing decision period;
- Visibility to other 17,500 registered vendors for possible business opportunities;
- Opportunity to update online, company information such as an e-mail address or contact person on-line;
- Sign up for electronic payment option; and
- Ability to electronically reset User Id and Password.

Any questions regarding registration may be addressed to Vendor Relations at (202) 962-1408 or procurement@wmata.com.

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
RFP-CQ15241**



**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SOLICITATION, OFFER AND AWARD**

CONTRACT NO.	SOLICITATION NO. RFP CQ16068	DATE ISSUED November 9, 2015	ADDRESS OFFER TO OFFICE OF PROCUREMENT Office of Procurement 600 Fifth Street NW Washington, DC 20001
	<input type="checkbox"/> ADVERTISED <input checked="" type="checkbox"/> NEGOTIATED		

SOLICITATION

Sealed offer in original and copies for furnishing the supplies or services in the schedules will be received at Authority until 12:00 P.M. local time DECEMBER 4, 2015.
(Hour) (Date)

If this is an advertised solicitation, offers will be publicly opened at that time.

CAUTION – LATE OFFERS: See paragraph 6 of Solicitation Instructions.

All offers are subject to the following:

1. The Solicitation Instructions which are attached.
2. The Terms and Conditions, which are attached.
3. The Schedule included herein and/or attached hereto.
4. Such other provisions, representations, certifications, and specifications, as are attached or incorporated herein by reference.

Offeror's Email _____

Offeror's Phone Number _____

Offeror's Fax Number _____

SCHEDULE

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	See attached Price Schedule format				\$

DUN & BRADSTREET ID NUMBER: _____

OFFEROR

Name and Address (Street, city, county, state, and zip code)	Name and Title of Person Authorized to Sign Offer (Print or Type)
	Signature _____ Offer Date _____
<input type="checkbox"/> Check if remittance is different from above — enter such address in Schedule	

AWARD (To be completed by The Authority)

ACCEPTANCE AND AWARD ARE HEREBY MADE FOR THE FOLLOWING ITEM(S):

ITEM NO.	QUANTITY	UNIT	UNIT PRICE

The total amount of this award is \$ _____

Name of Contracting Officer (Print of Type)

WASHINGTON METROPOLITAN TRANSIT AUTHORITY

AWARD DATE

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
RFP-CQ16068

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SOLICITATION, OFFER AND AWARD

CONTINUATION SHEET

THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF THE FOLLOWING AMENDMENTS

TO SOLICITATION **RFP CQ16068**_____

Amendment Number _____	Dated _____
Amendment Number _____	Dated _____
Amendment Number _____	Dated _____
Amendment Number _____	Dated _____
Amendment Number _____	Dated _____
Amendment Number _____	Dated _____

Failure to acknowledge receipt of all amendments may render the offer unacceptable.

Authorized Signature

Company Name

Date

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
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PRICE SCHEDULE SHEET

Price Schedule Sheet is an Excel attachment. Please use the Excel spreadsheet to insert your proposed Firm Fixed Price by including applicable Labor Categories and Estimated Hours. Email the Excel spreadsheet to ARRobertson@wmata.com. A hard copy of the completed and signed Price Schedule should accompany your proposal.

Authorized Signature

Company Name

Date

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
RFP-CQ16068

RFP SOLICITATION INSTRUCTIONS

1. INTRODUCTION

- (a) The Authority seeks to award a contract(s) to provide executive advisory services regarding organizational restructure and realignment initiatives, financial and operational business processes, change management, crisis management, and public relations management.. To that end, it is issuing this RFP to solicit Proposals from qualified firms and individuals who can satisfy the requirements of the accompanying Contract Documents.
- (b) As this is a Best Value solicitation, award of a Contract hereunder shall be to the Offeror whose Proposal provides the best overall value to the Authority based upon application of the evaluation criteria set forth in paragraph 14.
- (c) The Authority contemplates award of a Firm Fixed Price contract. Unless otherwise specified in the Price Schedule, the Authority reserves the right to make multiple awards pursuant to this Solicitation.
- (d) N/A

2. GOODS TO BE FURNISHED/SERVICES TO BE SUPPLIED

In preparing their Proposals, Offerors are advised that:

- (a) If "Services" are to be performed pursuant to this Solicitation, they must be provided in all respects as specified in the Contract Documents and include the services to be furnished, together with any labor, material or other work necessary for satisfactory and complete performance.
- (b) If "Supplies" are to be provided pursuant to this Solicitation, they must be delivered in all respects as specified in the Contract Documents and include the items to be furnished, together with any labor, service or other work necessary for satisfactory and complete performance.

3. COMMUNICATIONS WITH THE AUTHORITY

Prospective Offerors are advised that any and all communications with WMATA relating to this Solicitation and made by, or on behalf of, a prospective Offeror at any time between release of this Request for Proposals and award of a Contract hereunder, must be directed to the Contract Administrator as follows:

Allison Robertson @ ARRobertson@wmata.com

A violation of this provision, deemed willful by the Authority, may result in a determination that an Offeror is not responsible, and thus ineligible for award, for purposes of this and/or future Authority solicitations.

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4. PREPARATION OF OFFERS

- (a) Offerors shall furnish all information requested by the Solicitation and, in so doing, are expected to examine the Request for Proposals and all referenced documents carefully. Failure to do so will be at the risk of the Offeror.
- (b) The Offeror shall sign the Solicitation and print or type the name of the Offeror on the Price Schedule and each Continuation Sheet on which an entry has been made. Erasures or other changes must be initialed by the person signing the Offer.
- (c) Offerors must state a definite time for delivery of supplies or for performance of services unless otherwise specified in the solicitation
- (d) In preparing their Proposal, Offerors should be aware that all prices for the Work shall be deemed to include the cost of all work, labor and materials required by the Contract Documents including, without limitation, delivery charges, insurance, bond premiums or any other expenses required by the Work, as well as expenses associated with compliance with federal, state or local laws or regulatory requirements. All prices are deemed to be F.O.B. delivery point.

5. EXPLANATIONS TO OFFERORS

- (a) Any Explanation desired by an Offeror regarding the meaning or interpretation of the Solicitation or Contract Documents, including without limitation the Terms and Conditions, technical specifications or scope of work, and contract drawings, must be requested in writing and with sufficient time allowed for a reply to reach all Offerors before the date set for submission of Proposals. Absent extraordinary circumstances, all such inquiries should be transmitted in a time frame such as to ensure their receipt by the Contracting Officer at least ten (10) days prior to the date specified for receipt of proposals. All such requests should be submitted via e-mail or mail to the Contract Administrator identified in Paragraph 3 and include the RFP Number and contract title.
- (b) Any information furnished by the Authority to a prospective Offeror relating to the Solicitation will be provided in writing to all prospective Offerors in the form of an Amendment if, in the judgment of the Authority, the information is necessary to the preparation and/or submittal of Proposals or lack of such information would be otherwise prejudicial to other prospective Offerors.
- (c) Offerors are advised that oral explanations, representations or instructions of any kind relating to the subject matter of this Solicitation and given at any time before award of the Contract by any employee, officer or agent of the Authority, will not be binding upon the Authority; nor does the Authority assume responsibility for the accuracy of any such communication.
- (d) The failure of a prospective Offeror to request an Explanation as here provided will serve to preclude the Offeror from thereafter claiming any ambiguity, inconsistency or error which should have been discovered by a reasonably prudent Offeror.

6. PRE-PROPOSAL CONFERENCE

N/A

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7. AMENDMENTS PRIOR TO DATE SET FOR RECEIPT OF PROPOSALS

- (a) The Authority reserves the right to amend any of the terms of this RFP or the Contract Documents prior to the date set for the opening of Proposals. Copies of any such Amendments as may be issued will be furnished in writing to all prospective proposers.
- (b) If, in the judgment of the Contracting Officer, any such Amendment(s) would require material changes in price proposals and/or other substantive element(s) of the Proposals, the date set for the opening of Proposals may be postponed for such period as in the opinion of the Contracting Officer will enable Offerors to revise their Proposals. In such instances, the Amendment will include an announcement of the new date for the opening of Proposals.
- (c) In the event of an Amendment, all other terms and conditions of the Solicitation shall remain unchanged.

8. ACKNOWLEDGMENT OF AMENDMENTS

Offerors are required to acknowledge receipt of all Amendment(s) to the Solicitation on the designated form to be submitted with their Proposal. Failure to do so may, at the discretion, jeopardize the Offeror's right to have its Proposal reviewed by the Authority.

9. SUBMISSION OF PROPOSALS

Proposals, and any Revisions to Proposal, shall be enclosed in sealed envelopes and addressed to the office specified in the Solicitation. The Proposal shall show the hour and date specified in the Solicitation for receipt, the solicitation number, and the name and address of the Offeror on the face of the envelope. Faxed proposals will not be considered.

10. PROPOSAL FORMAT INSTRUCTIONS/REQUIREMENTS

Offerors shall submit their Proposals as follows:

(a) Proposal Format

The original of Volumes I and 2 shall be unbound, all copies of Volumes 1 and 2, as well as Volume 3 will be separately bound and all copies shall have the RFP number, the Proposer's identity, volume number, and volume title printed on the cover page. Volumes shall be submitted in the following order:

- (1) Volume I – Cost/Price - One (1) original **and** One (1) copy to be provided on a USB thumb drive in Microsoft Excel.
- (2) Volume II – Technical - One (1) original **and** Five (5) copies on separate USB thumb drives. (**Shall not include cost/price information and shall not exceed 25 pages (resumes and other exhibits do not count towards page count)**)
- (3) Volume III – Contractual - One (1) original **and** One (1) copy on USB thumb drive of any required copies of the completed signed solicitation documents to include Representations, Certifications, Pre-Award Data, Certificate of Insurance, DBE requirements per Appendix B and Amendments, if any.

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- (b) **Cost/Price.** All information relating to cost or pricing data must be included in Volume I. Under no circumstances shall cost or pricing data be included elsewhere in the Proposal.
- (c) **Technical Proposal.** The technical proposal should address the stated Evaluation Criteria and be of a nature such as to enable the Authority to engage in a thorough evaluation as to the overall technical merit of the Proposal. Technical proposals shall be specific, detailed and complete and demonstrate that the Offeror has a thorough knowledge and understanding of the requirements of the Contract Documents. Offerors shall avoid generalized statements which, for example, paraphrase the specifications or attest that "standard procedures will be employed". The Authority wishes to be satisfied that the Offeror maintains an understanding of the specific requirements of this Solicitation and maintains the means to fully satisfy the Authority's needs.
- (d) **Contractual.** Contractual documents shall contain a completed signed Solicitation, Offer and Award Form and include Representations, Certifications, Pre-Award Data, Certificate of Insurance, DBE requirements per Appendix B and any Amendments. In the event that the Proposer takes any exception to any of the proposed General or Special Provisions, wishes to propose alternative contract language or is otherwise unwilling or unable to satisfy any of the requirements contained in the Contract Documents, such information should be clearly noted on the first page(s) of Volume III of the Proposal; failure to take exception shall constitute as acceptance by the Offeror.

11. LATE SUBMISSIONS AND REVISIONS OF PROPOSALS

- a. Any Proposal or Revision received at the office designated in the Solicitation after the time specified for receipt will not be considered unless it was sent, properly addressed:
 - (1) By registered or certified U.S. or Canadian mail not later than the fifth Day before the date specified for receipt of Proposal (e.g. a Proposal or Revision relating to a Solicitation with a receipt date of the 20th of a month must have been placed in registered or certified mail by not later than the 15th of such month);
 - (2) By first class mail, if the Authority determines that the late receipt was due solely to mishandling by the Authority after delivery on Authority premises; or
 - (3) By U.S. Postal Service Express Mail Next Day Service , not later than 5:00 p.m. at the place of mailing two business days prior to the date specified for receipt of Proposals; or
- (b) A Revision submitted after the date and time set for opening of Proposals will only be accepted if requested, or otherwise authorized, by the Contracting Officer. A submission in the nature of a Best and Final Offer ("BAFO") received after the time and date specified in the Contracting Officer's request for BAFOs will not be considered unless received before award and, in the judgment of the Contracting Officer; the late delivery was not attributable to an act or omission of the Offeror.
- (c) The only acceptable evidence to establish the time of receipt by the Authority is the time/date stamp of that event on the proposal wrapper or other documentary evidence of receipt maintained by the Authority.

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- (d) Notwithstanding sub-paragraphs "a" and "b" above, (i) a Proposal received after the time specified for receipt may be considered if it is the only Proposal received for the Solicitation; and (ii) a late Revision of any otherwise successful Proposal that makes its terms more favorable to the Authority may be considered and accepted, whenever received.

12. WITHDRAWAL OF PROPOSALS

Proposals may be withdrawn by written notice received by the Authority before award. Proposals may be withdrawn in person by an Offeror or an authorized representative if the representative's identity is appropriately demonstrated and the representative signs a receipt for the Proposal before award; except that absent approval of the Contracting Officer a proposal may not be withdrawn prior to 90 days from receipt of proposals.

13. RECEIPT AND REVIEW OF PROPOSALS BY THE AUTHORITY

- (a) There will be no public opening of Proposals in this Solicitation. Proposals will be opened by the designated Authority representative and copies of the three Volumes of the Proposal distributed for review by Authority designated personnel only, as appropriate. All reasonable efforts will be made to ensure confidentiality of the information contained in the proposals, consistent with applicable provisions of law.
- (b) The Authority may elect to award a Contract on the basis of the initial Proposals as received in accordance with the Evaluation Criteria set forth in paragraph, without Discussions. Accordingly, the initial Proposal should contain the Offeror's best terms from both a price and technical standpoint.
 - (i) Notwithstanding a determination by the Authority to proceed without conducting substantive negotiations or Discussions with Offerors, the Authority may elect to engage in communications with one or more Offerors relating to Clarification(s) of their Proposals.
- (c) As an alternative to the procedure described in sub-paragraph b above, the Authority may, in its discretion, determine to engage in oral and/or written Discussions with one or more Offerors involving information essential or useful to the Authority's understanding of the Proposals and/or to address deficiencies in the initial Proposals. In determining those Offeror(s) with which it chooses to engage in such Discussions, the Authority shall first make a determination as to those initial Proposals which it deems to be within the Competitive Range for award of the Contract and thereupon conduct Discussions with the Offerors submitting Proposals within the Competitive Range.
- (d) In the event that the Authority conducts substantive Discussions with one or more Offerors as set forth in sub-paragraph c above, the Contracting Officer may, following such Discussions, direct those Offerors who's Proposals have been deemed within the Competitive Range to submit Best and Final Offers ("BAFOs"). In such instances, the Authority shall render its determination as to award of the contract based upon its review of the BAFOs in accordance with the Evaluation Criteria; except that nothing contained herein shall be deemed to limit, modify or impair the right of the Authority to engage in any such further or additional oral or written Discussions or other communications relating to the Solicitation as may, in the judgment of the Contracting Officer, be consistent with the best interests of the Authority.

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- (e) The Authority maintains the right to waive informalities and minor irregularities in Proposals at any time during the Solicitation process

14. EVALUATION CRITERIA AND BASIS FOR AWARD

BEST VALUE

Proposals will be evaluated based upon application of the following Evaluation Criteria:

WMATA intends to award a firm fixed price Contract to an Offeror(s) that can provide the service and represents the best value with trade-off analysis evaluation and award provisions. Given the scope and complexity of requested services, Offerors must demonstrate adequate relative, quality and depth of experience(s), past performance successes, and resources executing engagements of similar scope and magnitude including:

- a. **Relevant Technical Experience:** Offeror must have a minimum of ten (10) years relative quality and depth of experience(s) working with large complex public, federal, and private sector organizations, including top transit organizations. The Offeror must demonstrate experience for implementing successful organizational restructure and realignment projects, budget development and execution activities/services. The Offeror must have experience in strategic advisory duties, executive communications, and executive level (i.e. GM/CEO, corporate executive) duties and responsibilities for these large organizations. Experience(s) must be clearly described including situations encountered, assessment methodology used, collaboration and communication techniques used, negotiations conducted and results obtained, strategic plans developed, and overall results attained.
- b. **Technical Approach - Capacity and capability:** The Offeror shall perform the work within the required timeframe. The Offeror shall provide an executive summary of understanding of the challenges and alternatives for this project work; including solution approaches and proposed schedule for the work; The Offeror must clearly describe the goals and objectives, target groups and beneficiaries and also the expected results. Offeror must describe how they envision the collaborative communication and strategic planning with WMATA's existing Efficiency Study Contractor (CQ15241), GM/CEO, and the Board of Directors.
- c. **Key Personnel:** The Offeror must prove the existing professional resources, competencies and qualifications of the proposed project team by supplying resumes of the project personnel that will be assigned to this work and actually be working on the project for the entire duration. The Offeror must have the staffing and other resource capacity to perform multiple tasks simultaneously and the flexibility to respond quickly to assignments. All individuals assigned to this project must have relevant qualifications and expertise.
- d. **Enterprise-wide Executive Communications/Systems Expertise:** The Offeror must demonstrate experience, expertise, and communication and collaboration proficiency amongst executives inside and outside WMATA. Demonstrated experience regarding informal partnering with other contractor solution providers for a wide variety of software applications such as PeopleSoft, Microsoft, Oracle, SharePoint, or other solutions regarding Payroll, General Ledger, Grants Management and Fixed Assets models is an asset. Offeror should demonstrate experience, expertise, and proficiency that reflects quality experience to assess strategic planning, goal setting, operations workflow practices, and performance management methods and metrics management and reporting.

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Proposers should be aware that both price and overall technical merit are of extreme importance to the Authority in this Solicitation. Where its review concludes that two or more Proposals are of substantially similar overall value, the Authority will place greater weight upon the technical aspects of the Proposals.

WMATA intends to make award without conducting discussions, but reserves the right to conduct discussions, and request Proposers to present oral presentations with one or more Offerors and request revised prices.

The Authority will award a contract to the responsible Offeror whose Proposal conforms to the Solicitation and is judged to be the most advantageous to the Authority based on an overall assessment in accordance with the Evaluation Criteria and Best Value Determination.

15. PRICE PROPOSAL EVALUATION

- (a) With respect to this Best Value RFP, the Authority will evaluate price proposals for reasonableness, completeness, and realism as appropriate. Proposal cost will be evaluated in terms of the following:
 - (1) Submittal of proposed prices for both the base award and the options, if any;
 - (2) Any offer which is materially unbalanced may be rejected. An unbalanced offer is one which is based on prices that are significantly overstated for some items and understated for other items;
 - (3) The Authority will compare the price proposals to the Authority estimate and otherwise determine reasonableness by performing a price analysis if adequate competition exists. A cost analysis will be performed if, in the Authority's judgment, adequate price competition does not exist, in order to ascertain whether the proposed price is fair and reasonable;
- (b) The Offeror shall provide certified cost or pricing data if so requested by the Contracting Officer, except as prohibited by FAR 15.4.

16. TECHNICAL PROPOSAL EVALUATION

The Authority will evaluate the technical proposal in accordance with the elements of the Evaluation Criteria set forth in paragraph 14 and render an assessment as to the overall technical merit of the proposal. The failure of a Proposal to demonstrate that it meets or surpasses an acceptable level with respect to any such element may result in a determination that the Proposal is technically unacceptable and thus ineligible for award. Additionally, Offerors within the competitive range may be required to do a (1) one hour presentation to the Source Selection Evaluation team regarding the proposed technical solution to the requirements cited in the technical specifications contained herein. The Offerors presentation shall not be a marketing effort and shall not address cost or pricing detail associated with the proposed solution.

17. PRE AWARD INFORMATION/CONTRACTOR RESPONSIBILITY

- (a) In order to be eligible for award of a contract, a Proposer must affirmatively demonstrate to the satisfaction of the Authority that it is responsible for purposes of this Solicitation, including a showing that it maintains the requisite integrity, overall technical expertise and experience, including prior performance on other Authority contracts or other government agencies, and sufficient financial resources to perform the Work of the contract in a timely, satisfactory and appropriate manner.

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- (b) The Contracting Officer or other Authority Representative(s) may conduct a pre-award survey and/or undertake other actions to obtain information regarding the responsibility of a Proposer whose offer is in the Competitive Range or is otherwise under consideration for award. The Proposer shall promptly supply information requested by the Contracting Officer regarding its responsibility in such manner and form as requested by the Authority.
- (c) Without limiting the general obligations of the Proposer to demonstrate its responsibility to the satisfaction of the Authority as set forth in subparagraphs (a) and (b) above, a Proposer shall furnish the following when so requested by the Contracting Officer or other Authority Representative:
 - (1) A completed and signed Pre-Award Evaluation Data form (copy attached), including all referenced financial statements and information;
 - (2) Evidence of good standing in the System for Award Management (SAM) at www.sam.gov.

18. PRE-AWARD MEETING

The Authority reserves the right to require that a pre-award meeting be held with the apparent successful Offeror prior to award of a Contract in order to review the Offeror's understanding of the contract requirements and/or further assist the Authority in determining the Offeror's responsibility for purposes of award. The Contractor shall be represented at such meeting by individual(s) fully familiar with the contractual requirements including, where so requested by the Authority, representative(s) of one or more major subcontractor(s).

19. SITE VISIT/INSPECTION OFFEROR'S FACILITIES

N/A

20. CONTRACT AWARD

- (a) At the conclusion of the process described in paragraph 14 above, the Authority will award a contract(s) resulting from this Solicitation to the responsible Offeror whose Proposal conforming to the Solicitation will be most advantageous to the Authority based upon its application of the Evaluation Criteria. Such determination shall be based upon the initial Proposals received where the Authority determines not to conduct Discussions in accordance with subparagraph 13(b) or shall be based upon the BAFOs where the Authority directs their submission in accordance with subparagraphs 13 (c) and(d).
- (b) A written award mailed or otherwise furnished to the successful Offeror at any time prior to withdrawal of the Proposal by the Offeror shall result in a binding contract without further action by either party. Discussions conducted after receipt of an Offer do not constitute a rejection or counteroffer by the Authority.
- (c) Notwithstanding the foregoing or anything to the contrary otherwise contained in this Solicitation, the Authority reserves the right to reject and any all Proposals received and decline to enter into a contract pursuant to this Solicitation if it deems such action is in the public interest.

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21. PERFORMANCE/PAYMENT BONDS

N/A

22. OPPORTUNITY FOR SMALL AND LOCAL BUSINESS ENTERPRISES TO PROPOSE

It is the policy of the Authority that small and local businesses shall be given maximum practicable opportunity to receive and participate in performing WMATA non-federally funded contracts, including contracts and subcontracts at any tier.

Note: There is no Small Business or DBE goal requirement on this RFP.

23. WMATA'S TAX EXEMPT STATUS

- (a) Pursuant to Article XVI, Paragraph 78, of the Washington Metropolitan Area Transit Authority Compact, as adopted by the State of Maryland, the District of Columbia, and the Commonwealth of Virginia, with the authorization and consent of the Congress of the United States, the Authority has been accorded exemption from taxes as follows:

"The Authority and the Board shall not be required to pay taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession or supervision, or upon its activities in the operation and maintenance of any transit facility or upon any revenues therefrom, and the property and income derived therefrom shall be exempted from all Federal, State, District of Columbia, municipal, and local taxation. This exemption shall include without limitation, all motor vehicle license fees, sales taxes and motor fuel taxes."

- (b) It has been the practice of the District of Columbia to apply the Authority's tax exempt status to certain purchases of materials required under Authority construction contracts and acquired by contractors for physical incorporation into the project work. This has not been the practice in either Maryland or Virginia. The Authority does not represent or warrant that the District of Columbia practice applies to this project or, if it does, that it will continue in effect during the term of this project. It is the responsibility of the Contractor to determine its liability for any and all taxes applicable to this project. Assessment or payment of taxes by the Contractor, including taxes resulting from changes in existing laws or the application thereof or of new or additional taxes, shall not constitute the basis for an increase in the Contract price, except as otherwise allowed under the General Provisions Article, FEDERAL, STATE AND LOCAL TAXES, of this Contract.
- (c) The Authority's tax exempt numbers are as follows: District of Columbia – 5611 0082187001; Maryland -- 30072210; Virginia -- 5280-0067
- (d) By submission of its Proposal, the Offeror certifies that none of the taxes as to which the Authority is exempt are included in its cost proposal.

24. RESTRICTION ON DISCLOSURE AND USE OF DATA

The Authority shall provide all reasonable precautions to ensure that proprietary, technical and pricing information remains within the review process. Offerors shall attach to any proprietary data submitted with the Proposal the following legend:

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- (a) "This data furnished pursuant to this RFP shall not be disclosed outside the Authority, be duplicated, or used in whole or in part, for any purpose other than to evaluate the offer; provided that, if a contract is awarded on the basis of that offer, the Authority shall have the right to duplicate, use, and disclose this data, in any manner and for any purpose whatsoever.
- (b) This information does not limit the Authority's right to use information contained in this data if it is or has been obtained by the Authority from another independent legitimate source.
- (c) Except for the foregoing limitation, the Authority may duplicate, use, and disclose in any manner and for any purpose whatsoever and have others so do, all data furnished in response to this solicitation."

25. ENGLISH LANGUAGE AND UNITED STATES CURRENCY

With respect to both this Solicitation and the resultant contract:

- (a) All communications (oral, written, electronic and otherwise including but, not limited to software coding) shall be in the English language.
- (b) All pricing shall be in United States dollars.

26. BRAND NAME OR EQUAL

N/A

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REPRESENTATIONS AND CERTIFICATIONS
(NON-FEDERALLY FUNDED SUPPLY/SERVICE/CONSTRUCTION CONTRACTS)

REPRESENTATIONS

Instructions: Check or complete all applicable boxes or blocks on this form and submit it with your offer.

1. TYPE OF BUSINESS ORGANIZATION

By submission of this offer, the offeror represents that it operates as an individual, a partnership, a limited liability company, a joint venture, a nonprofit organization, or a corporation, incorporated under the laws of the State of _____.

2. AFFILIATION AND IDENTIFYING DATA

Each offeror shall complete (a), (b) if applicable, and (c) below, representing that:

(a) It is, is not, owned or controlled by a parent company. For this purpose, a parent company is defined as one which either owns or controls the activities and basic business policies of the offeror. To own another company means the parent company must own at least a majority, i.e., more than 50 percent, of the voting rights in that company. To control another company, such ownership is not required; if another company is able to formulate, determine or veto basic business policy decisions of the offeror, such other company is considered the parent of the offeror. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, contractual arrangements or otherwise.

(b) If the offeror is owned or controlled by a parent company, it shall insert in the space below the name and main office address of the parent company:

Name of Parent Company

Main Office Address (including ZIP Code)

(c) If the offeror has no parent company, it shall provide in the applicable space below its own Employer's Identification Number (E.I.N.), (i.e., number used on Federal Tax Returns or, if it has a parent company, the E.I. No. of its parent company).

Offeror E.I. Number: _____ or, Parent Company's E.I. Number: _____

(d) If a Data Universal Numbering Systems (DUNS), number has not been established for the address entered on the Solicitation, Offer, and Award Form, the Authority will arrange for the assignment of this number after award of a contract and will notify the Contractor accordingly.

3. SMALL BUSINESS & LOCAL PREFERENCE PROGRAM (SBLPP)

This representation is applicable to non-federally assisted contracts. By submission of this offer, the offeror represents that:

(a) It is, is not, a small business and local preference program enterprise certified firm. "Small Business and Local Preference Program" enterprise means a for profit small business concern that is located in the District of Columbia, Maryland, or Virginia and meets the U.S. Small Business Administration small business size standards.

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CERTIFICATIONS

3. COVENANT AGAINST GRATUITIES

By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:

Neither it nor any of its employees, representatives or agents have offered or given gratuities (in the form of entertainment, gifts or otherwise) to any director, officer or employee of the Authority with the view toward securing favorable treatment in the awarding, amending, or the making of any determination with respect to the performing of the contract.

4. CONTINGENT FEE

By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:

- (a) It has, has not, employed or retained any company or persons (other than a full-time, bona fide employee working solely for the offeror) to solicit or secure this contract, and
- (b) It has, has not, paid or agreed to pay any company or person (other than a full-time, bona fide employee working solely for the offeror) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this contract.

5. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

(a) By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:

- (1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or with any other competitor, as to any matter relating to such prices;
- (2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not be knowingly disclosed by the offeror prior to award (in the case of a negotiated procurement), directly or indirectly, to any other offeror or to any competitor; and
- (3) No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.

(b) Each person signing this offer certifies that:

- (1) He or she is the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or
- (2) He or she is not the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein, but that he/she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated; and will not participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify.

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6. NONDISCRIMINATION ASSURANCE

By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, in connection with this procurement that it will not discriminate on the basis of race, color, creed, national origin, sex, age in the performance of this contract. The offeror is required to insert the substance of this clause in all subcontracts and purchase orders. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Authority deems appropriate. The offeror further agrees by submitting this offer that it will include this certification, without modification, in all subcontracts and purchase orders.

7. DISCLOSURES OF INTERESTS OF WMATA BOARD MEMBERS

For purposes of this disclosure, terms in bold are defined by the Code of Ethics for Members of the WMATA Board of Directors a copy of which is available at www.wmata.com. Financial interest includes ownership interests and prospective and actual income. Firm includes parents, subsidiaries and affiliates.

By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that to the best of your knowledge, information and belief in connection with this procurement:

- (a) [] No WMATA **Board Member, Household Member or Business Associate** has a financial interest in this firm, in a **Financial Transaction** with the Authority to which this firm is a party or prospective party, or in an **Actual or Prospective Business Relationship with the Authority** to which this firm is a party.

- (b) [] The following WMATA **Board Member(s), Household Member(s) or Business Associate(s)** has a financial interest in this firm, in a **Financial Transaction** with the Authority to which this firm is a party or prospective party, or in an **Actual or Prospective Business Relationship with the Authority** to which this firm is a party, Include in Nature of Interest below a description of the financial interest and (1) for ownership interests, the value of the interest, the name and address of the firm in which the interest is held, and the total equity or equivalent interest of the firm; and (2) for income, the amount of all income received by the **Board Member, Household Member or Business Associate** in the current and preceding fiscal year for services provided, and the name and address of the firm from which the income was received.

Name of Board Member Household Member or Business Associate	Nature of Interest
_____	_____
_____	_____
_____	_____

- (c) The certification required by subparagraphs (a) and (b) above shall be included in all subcontracts. The prime contractor shall furnish copies of certifications to the contracting officer and retain a copy for inspection upon the contracting officer's request.

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SIGNATURE BLOCK FOR ALL REPRESENTATIONS AND CERTIFICATIONS

Name of Offeror: _____

Name and Title of Authorized
Representative: _____

Print and Sign Name

Title

Date

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PRE-AWARD EVALUATION DATA

PROJECT DESCRIPTION: _____

1. Name of Firm _____

2. Address: _____

3. [] Individual [] Partnership [] Corporation [] Joint Venture

4. Date Organized _____.

State in which incorporated _____.

5. Names of Officers or Partners:

a. _____

b. _____

c. _____

d. _____

e. _____

f. _____

6. How long has your firm been in business under its present name?

7. Attach as SCHEDULE ONE a list of similar current contracts which demonstrates your technical proficiency, each with contract amount, name of contracting party, character or type of work and percentage of completion.

8. Attach as SCHEDULE TWO a list of similar contracts, each with contract amount, name of contracting party, and character or type of work for similar contracts completed in the last two years.

9. In the last two years have you ever been denied an award where you were the Offeror?

If the answer is YES, attach as SCHEDULE THREE the full particulars regarding each occurrence.

10. Have you ever failed to complete, in the last two years, any contract on which you were the successful Offeror to whom a contract was awarded?

If the answer is YES, attach as SCHEDULE FOUR, the full particulars regarding each occurrence.

11. Financial resources available as working capital for the Contract:

a. Cash on hand: \$ _____

b. Sources of credit: _____

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12. Attach as SCHEDULE FIVE financial statements and letters from banks regarding credit as required by the Pre-Award Information article.
13. What percentage of work (contract amount) do you intend performing with your own personnel? %.
14. Attach as SCHEDULE SIX a list of all principal subcontractors and the percentage and character of work (contract amount) which each will perform. Principal items of work shall include, but not be limited to, those items listed in the Pre-Award Information article of the Request for Proposal.
15. If the Contractor or subcontractor is a joint venture, submit PRE-AWARD EVALUATION DATA forms for each member of the joint venture.

The above information is confidential and will not be divulged to any unauthorized personnel.

The undersigned certifies to the accuracy of all information.

COMPANY: _____

SIGNATURE: _____

NAME: _____

TITLE: _____

DATE: _____

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TERMS AND CONDITIONS

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CHAPTER I – GENERAL PROVISIONS

1. AGREEMENT

The Work to be performed under this Contract may briefly be described as a Strategic Advisor to the GM/CEO and WMATA Board of Directors, including all necessary or incidental work, labor and materials. The Contractor agrees to perform the Work in accordance with requirements and terms and conditions hereinafter set forth in the Contract Documents. In consideration for the complete, satisfactory and proper performance thereof by the Contractor, the Authority agrees to pay to the Contractor, and the Contractor agrees to accept as full compensation therefor, the sums of money set forth in the Price Schedule at the time and in the manner and upon the terms and conditions set forth in the Contract Documents.

2. ARRANGEMENT OF CONTRACTUAL PROVISIONS

For ease of reference, the provisions of these Contract Documents are divided into Chapters, Articles, Paragraphs and Subparagraphs. While the Chapters and Articles are titled, it is understood that both the use of such titles and the manner and overall arrangement of the contractual provisions within the Contract Documents are intended solely for the convenience of the parties and are without independent contractual or legal significance.

3. ORDER OF PRECEDENCE

- (a) Any inconsistency in the Contract Documents shall be resolved by giving precedence in the following order: (a) Terms and Conditions (b) the specifications or scope of work; (c) drawings, if any; (d) other documents, exhibits, and attachments generated by the Authority as part of the Contract Documents; (e) the technical proposal, if any, and other submissions of the Contractor generated as part of the Contract Documents. In the event of a conflict within or between provisions entitled to equal precedence pursuant to the foregoing, the more stringent requirement shall apply.
- (b) Notwithstanding paragraph (a), in the event that this Contract is funded in whole or part through funding provided by the Federal Government, all contract terms mandated for inclusion by the Federal Government shall be deemed to supersede any other conflicting or inconsistent provision of the Contract Documents.

4. REQUIREMENTS CONTRACT

N/A

5. AUDIT, AVAILABILITY, AND INSPECTION OF RECORDS

- (a) Authorized persons. The Contracting Officer and his or her representatives, including representatives of the Authority's governing jurisdictions and any other federal, state, or local entity providing funding for this Contract and the Comptroller General of the United States, shall have access and inspection rights described in this Article
- (b) Examination of costs. The Contractor shall maintain, and the Contracting Officer shall have the right to examine and audit, all records sufficient to reflect properly all costs incurred or anticipated to be incurred directly or indirectly in performance of this

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- Contract. This right of examination shall include inspection at all reasonable times of the Contractor's facilities engaged in performing this Contract.
- (c) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this Contract, the Contracting Officer shall have the right to examine and audit all of the Contractor's records related to: (1) any Bid or Proposal for the contract, subcontract, or modification; (2) any Clarifications or Discussions conducted on the Bid or Proposal; (3) pricing of the contract, subcontract or modification; or (4) performance of the contract, subcontract or modification.
 - (d) Availability. The accounts, records and costs information required to be originated under this Contract, and together with all other accounts, records and costs information related to this Contract, shall be maintained and made available by the Contractor and subcontractor(s):
 - (1) At the office of the Contractor or subcontractor(s) at all reasonable times for inspection, audit, reproduction or such other purposes as may be required by the Contracting Officer or by anyone authorized to have access to the records by the Contracting Officer or pursuant to any other provision of this Contract; and
 - (2) Except to the extent otherwise expressly set forth in this Contract, until three years from the date of final payment under this Contract; except that: (i) If the Contract is completely or partially terminated, for a period of three (3) years from either the date of any resulting final settlement or the date of final payment whichever is later; and (ii) If a pricing adjustment is involved in any dispute or litigation related to this Contract, for a period equal to the later of three years from the date of final payment or one year following the final disposition of the dispute or litigation.
 - (e) Subcontracts. The Contractor shall insert an Article containing all the terms of this Article, including this paragraph, in all subcontracts that exceed \$100,000.

6. AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR

Funds are not guaranteed for performance under this Contract beyond the current fiscal year. The Authority's obligation for performance of this Contract beyond that date is contingent upon the availability of funds from which payment for contract purposes can be made. No legal liability on the part of the Authority for any payment may arise for performance under this Contract until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing, by the Contracting Officer. Any option exercised by the Authority that will be performed in whole or in part in a subsequent fiscal year is subject to availability of funds in the subsequent fiscal year and will be governed by the terms of this Article.

7. CONTRACTING OFFICERS TECHNICAL REPRESENTATIVE (COTR)

- (a) The Work will be conducted under the general direction of the Contracting Officer on behalf of the Authority, who may delegate certain responsibilities to a Contracting Officer's Technical Representative (COTR). While the COTR will be thereupon authorized to perform such designated functions, the Authority will not be responsible for actions of the COTR or any other Authority employee or representative which exceeds his or her authority.
- (b) The Contractor will be furnished, upon written request, a copy of the delegation, if any, to a COTR for this Contract.

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CHAPTER II – TIME/DELAYS/LIQUIDATED DAMAGES

1. PERIOD OF PERFORMANCE

The period of performance for this contact shall be for one six (6) month base period and one option period to be exercised at the discretion of the Authority. The Option Period is for an additional twelve (12) months thereafter, subject to satisfactory performance and availability of funds.

2. LIQUIDATED DAMAGES FOR DELAY

N/A

3. EXTENSIONS OF TIME/FORCE MAJEURE

- (a) For purposes of this Article, the term “Force Majeure” shall mean an unforeseen event or circumstance, beyond the control of, and not occasioned by the fault or neglect of, the Contractor (including subcontractors at any tier) or the Authority, which event gives rise to a delay in the progress or completion of the Work of the Contract, including, without limitation, acts of God, acts of war or insurrection, unusually severe weather, fires, floods, strikes, freight embargoes or other events or circumstances of like nature.
- (b) Notwithstanding the provisions of the LIQUIDATED DAMAGES article of the Contract, if the Contractor is delayed at any time during the progress of the Work by the neglect or failure of the Authority or by a Force Majeure, then the time for completion and/or affected delivery date(s) shall be extended by the Contracting Officer, subject to the following conditions:
 - (1) The cause of the delay arises after the award of the Contract and neither was nor could have been anticipated by the Contractor by reasonable investigation before such award;
 - (2) The Contractor demonstrates to the Contracting Officer that the completion of the Work and/or affected delivery(s) will be actually and necessarily delayed;
 - (3) The delay cannot be avoided or mitigated by the exercise of all precautions, efforts and measures reasonably available to the Contractor, whether before or after the occurrence of the cause of delay; and
 - (4) The Contractor makes written request and provides other information to the Contracting Officer as described in paragraph (f) below.
- (c) In the event the Contractor shall be delayed at any time or for any period by two or more of the causes above-mentioned in this Article, the Contractor shall not be entitled to a separate extension for each one of the causes but only one period of extension shall be granted for the cumulative effects of the delay.
- (d) Any reference in this Article to the Contractor shall be deemed to include Suppliers and Subcontractors at any tier, whether or not in privity of contract with the Contractor.
- (e) The Contracting Officer may rescind or shorten any extension previously granted, if the Contracting Officer subsequently determines that any information provided by the

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Contractor in support of a request for an extension of time was erroneous; provided that such accurate information, if known, would have resulted in a denial of the request for an excusable delay. Notwithstanding the foregoing, the Contracting Officer will not rescind or shorten any extension previously granted if the Contractor acted in reliance upon the granting of such extension and if, in the judgment of the Contracting Officer, such extension was based on information which, although later found to have been erroneous, was submitted in good faith by the Contractor.

- (f) The request for an extension of time pursuant to paragraph (a) shall be made within ten (10) days after the Contractor knows or should know any cause for which it may claim an excusable delay and shall provide any actual or potential basis for an extension of time, identifying such cause and describing, as fully as then practicable, the nature and projected duration of the delay and its effect on the completion of that part of the Work identified in the request. Within thirty (30) days of its receipt of all such information, the Authority shall advise the Contractor of its decision on such requested extension; except that, where it is not reasonably practicable for the Authority to render such decision in the thirty (30) day period, it shall, prior to the expiration of such period, advise the Contractor that it will require additional time and the approximate date upon which it expects to render such decision.
- (g) In no event shall a delay in progress or performance of the Work occasioned solely by a Force Majeure or the acts or omissions of any party outside the control of the Contractor be the basis for a Termination for Default pursuant to Article titled TERMINATION FOR DEFAULT; except that in no event shall a subcontractor at any tier be deemed a party outside the control of the Contractor for purposes hereof.

4. AUTHORITY DELAY OF WORK

- (a) If the performance of all or any part of the Work is delayed or interrupted in a material manner or extent by an act or omission of the Authority in the administration of this Contract, which act or omission is not expressly or impliedly authorized by this Contract or by applicable provisions of law, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this Contract caused by such delay or interruption and the Contract modified in writing accordingly. Adjustment shall be made also in the delivery or performance dates and any other contractual provision, as to which compliance was materially affected by such delay or interruption. However, no adjustment shall be made under this Article or otherwise under this Contract for any delay or interruption to the extent that performance was or would have been delayed or interrupted by any other cause, including, without limitation: (i) the fault or negligence of the Contractor or any subcontractor; (ii) the fault or negligence of a third party to the Contract; (iii) an act constituting a Force Majeure pursuant to Article titled EXTENSIONS OF TIME/FORCE MAJEURE; or (iv) any other cause for which an adjustment is provided or excluded under any other provision of this Contract or otherwise at law.
- (b) An adjustment pursuant to paragraph (a) shall not be allowed:
 - (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the applicable act or omission claimed; and

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- (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption and in no event later than 30 days after such termination. Such claim shall be accompanied by appropriate documentation, specifically identifying and supporting the nature and extent of the claimed impact upon the cost and/or time required for performance; except that, in any instance in which it is not reasonably practical for the Contractor to fully determine or project such impact within such 30 day period, the claim shall be accompanied by such supporting documentation as is then reasonably available to the Contractor as well as the anticipated time frame in which the Contractor projects to provide the additional materials. The Contracting Officer shall maintain the right throughout the process to request the preparation and/or submission of such additional materials as it shall reasonably require in consideration of the claim and shall be under no obligation to conclude its consideration of the claim prior to receipt and review of all relevant materials. Any adjustment to the contract price pursuant to this Article must be agreed upon or otherwise determined prior to Final Payment

5. NOTICE TO THE AUTHORITY OF LABOR DISPUTES

- (a) Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.
- (b) The Contractor agrees to insert the substance of this Article, including this paragraph (b), in any subcontract hereunder as to which a labor dispute may delay the timely performance of this Contract.

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CHAPTER III – ACCEPTANCE/INSPECTIONS/DEFICIENCIES

1. INSPECTION OF SERVICES

- (a) The Contractor shall provide and maintain an inspection system acceptable to the Authority covering the Services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Authority during contract performance and in the manner and in accordance with the time periods set forth in the provisions of the AUDIT AND INSPECTION OF RECORDS article of the Contract.
- (b) The Authority has the right to inspect and test all Services called for by this Contract, at all times and places reasonably practicable during the term of the Contract. The Authority shall perform inspection and tests in a manner that will not unduly delay the work.
- (c) If the Authority performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without cost, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.
- (d) If any of the Services performed do not conform to contract requirements, the Authority may require the Contractor to perform the Services again in conformity with contract requirements, without additional cost. When the defects in performance cannot reasonably be corrected by such further performance, the Authority may:
 - (1) Direct the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and/or
 - (2) Reduce the contract price to reflect the reduced value of the Services performed.
- (e) If the Contractor fails to comply with the provisions of paragraph (d), the Authority may:
 - (1) By contract or otherwise, perform the Services and charge to the Contractor any cost thereby incurred by the Authority; and/ or
 - (2) In the event that the Contracting Officer deems such failure to comply a material breach, terminate the Contract for default.
- (f) Nothing contained herein shall be deemed to preclude the Contracting Officer from implementing a price reduction arising from the reduced value to the Authority of Services ultimately corrected in conformity with the contract requirements for the period of their non-conformity.

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2. INSPECTION OF SUPPLIES

N/A

3. ACCEPTANCE OF SUPPLIES

N/A

4. NEW MATERIAL [SUPPLIES]

N/A

5. CORRECTION OF DEFICIENCIES & WARRANTY

N/A

6. FIRST ARTICLE INSPECTION

N/A

7. F.O.B. DESTINATION

(a) Unless otherwise specified, the Contractor shall furnish all supplies to be delivered under this Contract "f.o.b. destination". As used herein, "f.o.b. destination" means:

- (1) Free of expense to WMATA on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and
- (2) Supplies shall be delivered to the destination consignee's warehouse unloading platform, or receiving dock, at the expense of the Contractor. WMATA shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of WMATA acting in its contractual capacity. If the Contractor uses a rail carrier or freight forwarder for less than carload shipments, the Contractor shall assure that the carrier will furnish tailgate delivery if transfer to truck is required to complete delivery to consignee.

(c) The Contractor shall:

- (1) Pack and mark the shipment to comply with contract specification;
- (2) In the absence of specifications, prepare the shipment in conformance with carrier requirements;
- (3) Prepare and distribute commercial bills of lading;
- (4) Deliver the shipment in good order and condition to the point of delivery specified in the contract;
- (5) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the Contract;
- (6) Furnish a delivery schedule and designate the mode of delivering carrier; and
- (7) Pay and bear all charges to the specified point of delivery.

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8. QUALITY ASSURANCE/QUALITY CONTROL

The Contractor shall be responsible for quality assurance and for assuring that the Work conforms to the requirements of the Contract Documents. The Contractor shall maintain an effective and economical quality control program planned and developed in conjunction with other Contractor functions necessary to satisfy the Contract requirements. The quality control program shall establish and implement procedures to ensure that only acceptable Supplies or Services are tendered to the Authority for acceptance, and shall demonstrate both recognition of the quality requirements of the Contract and an organized approach to satisfy these requirements. The program shall ensure that quality requirements are determined and satisfied throughout all phases of Contract performance, including, as applicable, design development, purchasing, fabrication, processing, assembly, inspection, testing, packaging, delivery, storage and systems check and shall provide for the early and prompt detection of actual or potential deficiencies, trends, or conditions which could result in unsatisfactory quality.

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CHAPTER IV—CHANGES/ PRICING ADJUSTMENTS

1. CHANGE ORDERS

- (a) The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, direct and implement change orders, within the general scope of this Contract, including but not limited to one or more of the following:
 - (1) Nature and/or extent of Services to be performed or Supplies to be furnished;
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.); or
 - (3) Place of performance of the Services.
- (b) If, in the judgment of the Contracting Officer or as otherwise determined, any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the Work under this Contract, whether or not directly changed by the order, the Contracting Officer shall make an equitable adjustment in the Contract price, the delivery schedule, or both, and shall modify the Contract accordingly.
- (c) In any instance where the Contractor asserts a right to an adjustment in the Contract price or time required for performance as the result of a change directed pursuant to this Article, it must submit a written claim so advising the Authority within 30 days from the date of receipt of the written order directing the change. The claim shall be accompanied by appropriate documentation, specifically identifying and supporting the nature and extent of the claimed impact upon the contract price and/or time required for performance; except that, in any instance in which it is not reasonably practical for the Contractor to fully determine or project such impact within such 30 day period, the claim shall be accompanied by such supporting documentation as is then reasonably available to the Contractor as well as the anticipated time frame in which the Contractor projects to provide the additional materials. The Contracting Officer shall maintain the right throughout the process to request the preparation and/or submission of such additional materials as it shall reasonably require in consideration of the claim and shall be under no obligation to conclude its consideration of the claim prior to receipt and review of all relevant materials. Any adjustment to the contract price pursuant to this Article must be agreed upon or otherwise determined prior to Final Payment.
- (d) If the Contractor's proposed price adjustment includes the cost of property rendered obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to the right of either party to any adjustment in price or time for performance as the result of a change implemented pursuant to this Article shall be subject to adjudication in accordance with the Disputes Article of this Contract. However, notwithstanding any such failure to agree and/or the pendency of any such dispute, the Contractor expressly acknowledges that it shall remain fully obligated to perform the Work of the Contract as so changed.

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- (f) Notwithstanding any other provision of this Contract, the Contractor shall promptly notify the Contracting Officer of matters, whether implemented as a change order in accordance with this Article or otherwise, which the Contractor believes or asserts may reasonably result in either an increase or decrease in the Contract price or the time required for performance of any part of the Work and shall take action with respect thereto as directed by the Contracting Officer. The Contractor's failure to provide such notification shall constitute a waiver of its right to seek an adjustment in the Contract price or time required for such performance.
- (g) Except to the extent, if any, otherwise expressly set forth in this Contract, in no event shall the Contractor be entitled to payment for change orders, additional or extra supplies or services or other modification to any requirement or term of the Contract unless such has been authorized in writing by the Contracting Officer.

2. PRICING OF ADJUSTMENTS

- (a) The parties agree that, notwithstanding any interpretation of contract cost principles to the contrary, the Authority will not be liable for interest, however represented, on or as a part of any claim, request, bid or adjustment, including equitable adjustments, whether said claim, request, bid or adjustment, including equitable adjustments, arises under the Contract or otherwise.
- (b) As part of its bid for any modification to this Contract requiring a price adjustment involving an aggregate increase or decrease in excess of \$100,000 to the Contract price, the Contractor shall submit to the Contracting Officer, either actually or by specific identification in writing, cost or pricing data under the conditions described in this paragraph and certify that, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete and current as of the date of the bid. The Contractor, at the discretion of the Contracting Officer, may be required to submit cost or pricing data for price adjustments less than \$100,000.
- (c) The Contractor shall ensure that the substantive terms of this Article are included in all subcontracts of any tier as to which the value of the subcontracted work exceeds \$100,000.

3. ACCOUNTING AND RECORD KEEPING FOR ADJUSTMENTS

- (a) Applicability. This Article shall apply to any adjustment in the price of this Contract initiated by the Contractor or the Authority
- (b) Forward Priced Adjustments. Unless waived in writing in advance by the Contracting Officer, the Contractor shall furnish to the Contracting Officer a proposed price adjustment in advance of performance of any Work for which a price adjustment is requested. The Contractor shall generate such records as are necessary to substantiate all elements of the proposed adjustment, which records shall be specifically segregated and identified in the Contractor's accounting system as being applicable to the pricing adjustment request.
- (c) Post Pricing Adjustments. This paragraph shall be applicable with respect to price adjustments which either (i) are expected to exceed \$50,000; or (ii) regardless of the value of the adjustment, arise in connection with a Contract with a base sum in excess of \$1,000,000. In addition to the records required pursuant to paragraph (b) above, in

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the event pricing of an adjustment under this Contract is not agreed upon between the Contractor and the Contracting Officer prior to the commencement of work for which the pricing adjustment is requested, the Contractor and any subcontractor engaged in work for which the pricing adjustment is requested, shall maintain accounts and original cost records specifically segregated and identified by job order or other appropriate accounting procedures approved by the Contracting Officer of all incurred segregable costs related to the work for which the pricing adjustment is requested. The Contractor shall maintain accounts and records which segregate and account for the costs of all work associated with that part of the project for which the pricing adjustment is requested and shall allocate the costs so accumulated between: (1) work required under the base Contract; (2) work requested to be reimbursed under the pricing adjustment; and (3) work claimed or determined to be related to other actual or proposed adjustments, including but not limited to, changes orders, differing site conditions, and the like. The accounts and records so established shall accumulate such costs under logical costs groups, such as material, labor, equipment, subcontracts, field overhead and the like. The Contractor shall record these costs on a form approved by the Contracting Officer.

- (e) Access to Records. As a condition to the Authority's obligation to consider any claim for a potential price adjustment under any provision of this Contract, the Contractor shall grant the Authority access to review and ascertain the validity of the accounting records being maintained for segregation of costs, including base cost records, and to audit any such costs as are deemed appropriate by the Contracting Officer.

- (f) Limitation on Pricing Adjustment. In the event the Contractor or any subcontractor fails to generate, maintain, or make available any records required under the Contract, and in addition to any and all additional rights to which the Authority may thereupon be entitled, the Contracting Officer shall determine whether such failure is willful, deliberate or otherwise precipitated by bad faith on the part of the Contractor, in which event the Contractor shall not be entitled to any price adjustment for the Work in question. Where the Contracting Officer determines that the failure was not the result of the Contractor's bad faith, the Contractor Officer shall determine the reasonable direct cost of the work for which records are not available, and add a single mark-up for indirect expenses not to exceed ten percent (10%) of the direct costs based on:
 - (1) An audit of any records of the Contractor or subcontractor made available to the Authority; and/or
 - (2) An Authority estimate as adopted or modified by the Contracting Officer.

- (a) In no event shall the Contractor and/or subcontractor be allowed any profit on claimed work for which records are not made available in accordance with its obligations under this Article and otherwise in the Contract.

- (h) Flow-down clause. The Contractor shall ensure the inclusion of all the provisions of this Article in all subcontracts issued under this Contract, modified as necessary, for proper identification of the contracting parties and the Contracting

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CHAPTER V – INVOICES/PAYMENTS/ DEDUCTIONS

1. BILLING AND PAYMENT

- (a) Payments shall be made according to the completed and accepted deliverables/milestones/phases as outlined in the Technical Specifications. The Authority shall pay and the Contractor shall accept the amounts set forth in the Price Schedule as full compensation for all costs and expenses of completing the Work in accordance with the Contract, including, but not limited to, all labor and material required to be done or furnished under this Contract; all overhead, expenses, fees and profits including the cost of providing storage yard or facilities; all risks and obligations set forth in the Contract; any applicable fees or taxes; and all expenses due to any unforeseen difficulty encountered in the prosecution of the Work.
- (b) Payments will be made following Acceptance of the Services or Supplies to be provided under this Contract and after receipt of a properly completed invoice. WMATA will accept the submittal of invoices in one of the following methods:
- (1) Email: Invoices may be submitted through email at: apinvoice@wmata.com. Please submit one invoice and supporting documentation per PDF attachment. You may submit more than one PDF attachment per email.
 - (2) Fax: Invoices may be submitted via the following number: 1-866-534-9063. Please submit one invoice and all supporting documentation for this invoice per fax.
 - (3) Regular Mail: Invoices may be submitted via U.S. Postal Service to the following address:

WMATA-Accounts Payable
PO Box 1910
Beltsville, MD 20704-1910
- Note: This address is only for vendor invoices. Correspondence should not be sent to this address.
- (c) Invoices shall contain the vendor name, a unique invoice number for each shipment or service, invoice date, payment terms, total invoice amount, remit to address, Purchase Order Number, freight terms, description of each item being invoiced, quantity, unit item cost, extended cost by item, total freight/handling costs, and contact name and email address. Final invoices must clearly be marked "FINAL" and cite the amount of the contract, amount previously paid, and the balance due totals.
- (d) The Authority shall remit payment, generally within 30 days of its receipt of an invoice satisfying the requirements of paragraphs (b) and (c), at the prices stipulated in the Contract for Supplies delivered and accepted or Services rendered and accepted, less any applicable deductions.

2. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA – MODIFICATIONS

With respect to any modification, change order, or otherwise, of this Contract which involves aggregate increases and/or decreases in costs plus applicable profit in excess of \$100,000,

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in the event that the Contracting Officer ultimately determines that any price, including profit or fee, previously negotiated in connection with any such modification was based upon cost or pricing data furnished by the Contractor (including any prospective or actual subcontractor at any tier) which was not complete, accurate or current, such that the amount paid the Contractor for such price adjustment was thereby greater than that to which the Contractor would have been entitled based upon the submission and utilization of accurate and complete data, the Authority shall be entitled to an adjustment in an amount equal to such overpayment. The right granted the Authority hereunder shall be in addition to any other or additional rights it may have under this Contract or otherwise.

3. SUBCONTRACTOR PAYMENTS

- (a) The Contractor shall, under this Contract, establish procedures to ensure timely payment of amounts due pursuant to the terms of its subcontracts. The Contractor shall pay each subcontractor for satisfactory performance of its contract, or any billable portion thereof, no later than ten (10) days from the date of the Contractor's receipt of payment from the Authority for work by that subcontractor. The Contractor shall also release, within ten (10) days of satisfactory completion of all work required by the subcontractor, any retention withheld from the subcontractor.
- (b) The Contractor shall certify on each payment request to the Authority that payment has been or will be made to all subcontractors in accordance with paragraph (a) above for previous payments by the Authority to the Contractor. The Contractor shall notify the Contracting Officer or other delegated Authority representative with each payment request, of any situation in which scheduled subcontractor payments have not been made.
- (c) In the event of a claim by any subcontractor that the Contractor has failed to comply with the terms of this Article, the Contractor agrees to fully cooperate in any Authority investigation, and, if deemed appropriate by the Authority, to implement appropriate remedial measures to ensure future compliance.
- (d) The Contractor agrees that the Authority may provide information which the Contracting Officer deems appropriate in response to inquiries from subcontractors seeking to determine the status of Authority payments to the Contractor.
- (e) Nothing contained in this Article or elsewhere in this Contract is intended nor be deemed to create a contractual relationship between the Authority and any subcontractor or to alter or affect traditional concepts of privity of contract.

4. GARNISHMENT OF PAYMENTS

Payment under this Contract shall be subject to any garnishment, attachment orders, and or levies issued pursuant to the laws of the United States, Maryland, Virginia, and the District of Columbia.

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CHAPTER VI – CONTRACT TERMINATION/STOP WORK ORDERS/DISPUTES

1. STOP WORK ORDERS

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part of the Work for a period of up to 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a STOP WORK ORDER (“SWO”) issued under this Article. Upon receipt of the SWO, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the SWO during the period of work stoppage. Within a period of 90 days after an SWO is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either:
- (1) Cancel the SWO; or
 - (2) Terminate the work covered by the SWO as provided in the TERMINATION FOR DEFAULT or TERMINATION FOR CONVENIENCE articles of this Contract, as appropriate.
- (b) If a SWO is cancelled or its initial period or any extension thereof expires, the Contractor shall resume work. An equitable adjustment shall be made in the delivery schedule or Contract price, or both, and the Contract modified in writing accordingly, if, in the judgment of the Contracting Officer or as otherwise determined:
- (1) The SWO results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and
 - (2) The Contractor submits a written claim for such adjustment within 30 days after the end of the period of work stoppage; provided that, at the sole discretion of the Contracting Officer, the Authority may elect to consider and act upon any such claim submitted at any time before Final Payment under this Contract.
- (c) If an SWO is not cancelled and the work covered by the Contract is terminated for the convenience of the Authority, the Contracting Officer shall allow reasonable costs, if any, resulting from the SWO in arriving at the termination settlement pursuant to the provisions of the TERMINATION FOR CONVEINENCE article of the Contract.
- (d) If an SWO is not cancelled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order; except that, if the Contracting Officer determines that the SWO was precipitated by, or arose from, a material breach of any term or condition of this Contract on the part of the Contractor, such costs shall not be allowed and the rights and obligations of the parties shall be subject in all respects to the Termination for Default provisions of this Contract.

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2. TERMINATION FOR DEFAULT

- (a) The Contractor shall be in default if it commits a breach of any of its obligations under the Contract deemed material by the Contracting Officer. Without limiting the generality of the foregoing and in addition to those instances specifically referred to in the Contract, the Contractor shall be in default in the following circumstances:
- (1) It fails to begin, or abandons, the Work of the Contract in accordance with the contractual requirements;
 - (2) It fails to deliver the Supplies or perform the Services within the time specified in the Contract or any extension approved by the Contracting Officer;
 - (3) It fails to progress the Work in a manner deemed unreasonable or unnecessary by the Contracting Officer or so as to endanger performance of the Contract; or
 - (4) In the view of the Contracting Officer, the Contractor is willfully violating any of the provisions or obligations of the Contract or is not executing such provisions or obligations reasonably and in good faith.
- (b) In the event of a material breach by the Contractor pursuant to paragraph (a), the Contracting Officer is authorized to direct a written notice to the Contractor, specifying the nature of the breach and providing that, if the Contractor fails to cure such failure(s) within ten days (or such additional time as authorized by the Contracting Officer), the Authority shall proceed to terminate the Contract, in whole or designated part, for default in accordance with the provisions hereof (a "Notice to Cure"). Should the Contractor fail to cure the breach to the satisfaction of the Contracting Officer within the ten day period, or such additional period as may be designated in the Notice to Cure, the Authority may thereupon, immediately upon conclusion of such period or at any reasonable time thereafter, terminate the Contract, in whole or part, by written notice to the Contractor.
- (c) Upon receipt of a notice of default, the Contractor shall immediately cease performance of the Work so terminated. The Authority shall thereupon have the right to take any action necessary to complete the Work, including performing the Work itself, or contracting with another party to do so. In the event the Work is completed directly by the Authority or by a third party, the Contractor shall be liable for the additional costs and expenses necessary to complete the Work, including, without limitation, labor, materials, plant, tools, equipment, supplies and property. The costs and expenses so charged may be deducted by the Authority and paid out of any monies otherwise payable to the Contractor. Nothing contained herein shall be deemed to relieve the Contractor of its continuing obligation to perform any portion of the Work of the Contract which has not been terminated.
- (d) The Authority may, in its sole discretion, waive a default by the Contractor, but such waiver and/or failure by the Authority to take action in respect to any default shall not be deemed a waiver of any subsequent default.
- (e) Upon any termination for default, the Authority may require the Contractor to transfer title and deliver to the Authority, as directed by the Contracting Officer of (1) any

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completed Supplies, and (2) partially completed Supplies, components (including data and intellectual property) and contract rights that the Contractor has specifically produced or acquired for the terminated portion of this Contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Authority has an interest.

- (f) Upon any termination for default, the Authority shall pay for completed Supplies delivered and accepted in accordance with the terms of the Contract, as well as actions reasonably taken by the Contractor at the direction of the Contracting Officer for the protection and preservation of property. . The Authority may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Authority against loss because of outstanding or claimed liens, or other pending or anticipated claims under the Contract.
- (g) If, at any time following the Authority's issuance of a termination for default hereunder, it is determined that the Contractor was not in default or that the default was excusable, the termination shall thereupon be deemed a termination for convenience and the rights and obligations of the parties shall be determined in accordance with the provisions of the TERMINATION FOR CONVEIENCE clause of the Contract.
- (h) Any dispute or failure of the parties to agree with respect to any issue arising under this Article shall be subject to review and adjudication in accordance with the provisions of the DISPUTES clause of the Contract relating to Disputes; except that, in no event shall the Authority's issuance of a Notice to Cure pursuant to paragraph (b) be the basis of a Dispute pursuant to the provisions of the disputes article or be otherwise subject to further review under this Contract or otherwise. Nor shall the pendency of any Dispute constitute a basis for the delay or suspension of, or otherwise affect, the right of the Authority to proceed in accordance with the provisions of this Article, including without limitation its right to complete the Work as above described, or the obligation of the Contractor to complete any portion of the Work which has not .been terminated.
- (i) The rights and remedies of the Authority in this Article are in addition to any other rights and remedies provided by law or under this Contract.

3. TERMINATION FOR CONVENIENCE

- (a) The Authority may terminate performance of Work under this Contract in whole, or from time to time, in part, if the Contracting Officer determines that a termination is in the Authority's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.
- (b) Upon receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall immediately proceed as follows:
 - (1) Stop work as specified in the Notice of Termination;
 - (2) Complete performance of the work not terminated;

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- (3) Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the remaining portion of the Contract;
- (4) Terminate all subcontracts to the extent that they relate to the work terminated;
- (5) Assign to the Authority, as directed by the Contracting Officer, all right(s), title, and interest of the Contractor under the subcontracts terminated; in such event, the Authority shall have the right to settle or pay any termination costs arising out of the subcontracts and have no further liability to the Contractor in connection with the work which was the subject of such subcontracts;
- (6) With approval of the Contracting Officer, settle all outstanding liabilities and settlement costs arising from the termination of subcontracts;
- (7) As directed by the Contracting Officer, transfer title and deliver to the Authority:
 - (1) The fabricated or un-fabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
 - (2) The completed or partially completed plans, drawings, information and other property that, if the Contract had been completed, would be required to be furnished to the Authority.
- (8) Take any action that may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the Authority has or may acquire an interest;
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (b)(7); provided, however, that the Contractor (a) is not required to extend credit to any purchaser and (b) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce payments to be made by the Authority under this Contract, credited to the price or cost of the Work, or paid in any other manner directed by the Contracting Officer.
- (c) The Contractor shall submit complete termination inventory schedules not later than 120 days from the effective date of termination, unless such time is extended in writing by the Contracting Officer.
- (d) As soon as reasonably practicable, and in any event not later than 20 business days following the Authority's issuance of a Notice of Termination pursuant to paragraph (a), the Contractor shall submit a proposal to the Contracting Officer in the form prescribed by the Contracting Officer detailing the costs to which it asserts entitlement pursuant to this Article. If the Contractor fails to submit the proposal within the time prescribed, the Contracting Officer may determine, on the basis of information available,

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the amount, if any, due the Contractor as a result of the termination and shall pay the amount determined.

- (e) Following submission of the Contractor's proposal pursuant to paragraph (d), the parties shall seek to agree upon the whole or any part of the amount to be paid or remaining to be paid as a result of the termination. The amount may include a reasonable allowance for profit on work completed. However, in no event shall the total amount to be paid the Contractor pursuant to this Article exceed the total contract price as reduced by (1) payments previously made and (2) the contract price of the remaining work not terminated.
- (f) If the parties fail to agree on the whole amount to be paid because of the termination, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed upon under paragraph (e):
 - (1) The contract price for completed Supplies or Services accepted by the Authority (or sold or acquired under paragraph (b)(9)) not previously paid for, adjusted for any saving of freight and other charges.
 - (2) The total of:
 - (i) The costs incurred prior to termination in the performance of the Work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any costs attributable to items compensated or to be paid for under sub-paragraph (f)(1);
 - (ii) The cost of settling and paying termination costs under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not excluded in sub-paragraph (f)(2)(i); and
 - (iii) A sum, representing profit on the items described in sub-paragraph (f)(2)(i) determined by the Contracting Officer pursuant to Section 49.202 of the Federal Acquisition Regulation, in effect on the date of this Contract, to be fair and reasonable; however if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the Contracting Officer shall allow no profit under this sub-paragraph and shall reduce the settlement to reflect the projected rate of loss.
 - (3) The reasonable indirect costs of settlement of the work terminated, including:
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

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- (g) Except for normal spoilage, and except to the extent that the Authority expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f), the fair value, as determined by the Contracting Officer, of property that is unavailable or damaged so as to become undeliverable to the Authority or to a third party.
- (h) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this Article.
- (i) The Contractor shall have the right of appeal, under the DISPUTES Article, from any determination made by the Contracting Officer under paragraphs (d) or (f), except that a failure on the part of the Contractor to submit the termination settlement proposal within the time provided in paragraph (d), or timely request an extension thereof, shall constitute a waiver of its right to appeal the determination of the Contracting Officer pursuant to the Disputes Article or any otherwise applicable contractual, legal or equitable remedy.
- (j) In determining any sum due the Contractor under this Article, there shall be deducted:
 - (1) All un-liquidated advances or other payments to the Contractor under the terminated portion of the Contract;
 - (2) The value, as determined or reasonably projected by the Contracting Officer, of any claim which the Authority has against the Contractor under this Contract, including any third-party claim as to which the Contracting Officer is not satisfied that sufficient insurance coverage is in place; and
 - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other items procured by the Contractor or sold under the provisions of this Article and not recovered by or credited to the Authority.
- (k) If the termination is partial and the Contractor asserts that the partial termination has rendered enforcement of the remainder of the Contract at the remaining Contract price inequitable, the Contractor may file a proposal with the Contracting Officer for an adjustment of the price(s) of the continued portion of the Contract, which proposal shall be submitted within 90 days from the effective date of termination, unless extended in writing by the Contracting Officer, and shall be accompanied by appropriate supporting documentation of the claimed inequity.
- (l) The Contractor's responsibilities and obligations under this Article shall apply and remain in full force and effect notwithstanding the pendency of any dispute or other delay relating to determination of the appropriate price adjustment or any other issue arising from the termination for convenience.
- (m) Unless otherwise provided in this Contract or by statute, the Contractor and all subcontractors whose work is encompassed in the termination settlement shall maintain all records and documents relating to the terminated portion of this Contract for three (3) years after final settlement. This includes all books and other evidence bearing on the costs and expenses of the Contractor under this Contract. The

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Contractor shall make these records and documents available to the Authority, its governing jurisdictions and any other federal, state, or local entities providing funding for this Contract, and to the Comptroller General of the United States, or the agents or representatives of any of them, at the Contractor's office, at all reasonable times, without any direct charge.

4. ASSIGNMENT

- (a) Except as otherwise provided in this provision, the Contractor shall not transfer any of its rights and obligations under this Contract to third parties without the prior consent of the Authority. The Authority may recognize a third party as successor in interest to the Contract in the event of a transfer of all or substantially all of the assets of the Contractor, a Division of the Contractor involved in the performance of the Contract, or a Parent company providing a performance guarantee under this Contract, (i.e., sales of assets, transfer of assets pursuant to merger or consolidation, or incorporation of a proprietorship or partnership). Such recognition of the transfer shall be within the discretion of the Contracting Officer after review of the facts and circumstances surrounding each request. At the discretion of the Contracting Officer, the Contracting Officer may conduct an evaluation of the successor party's capability to perform the Contract in the same manner and to the same extent the Contracting Officer was empowered to conduct a responsibility determination as part of the original solicitation for this Contract. Should the Contracting Officer, for any reason, not recognize such a successor in interest, it may terminate this Contract for the convenience of the Authority.
- (b) Any attempt to transfer by assignment not authorized by the Contracting Officer hereunder shall constitute a material breach of the Contract on the part of the Contractor and the Authority may thereupon terminate the Contract in accordance with the TERMINATION FOR DEFAULT provisions set forth in the Contract.
- (c) Nothing contained herein shall be deemed to preclude the Contractor's assignment of claims for monies due or to be become due the Contractor under this Contract to a bank, trust company or other financing institution, including any Federal lending agency, upon written notice of such assignment to the Authority.

5. DISPUTES

- (a) Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under or related to this Contract which is not disposed of by agreement, shall be decided by the Contracting Officer, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within thirty (30) calendar days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written notice of appeal addressed to the Authority Board of Directors. Such notice should indicate that an appeal is intended and should reference the decision and contract number. The decision of the Board of Directors or its duly authorized representative for the determination of such appeals shall be final and conclusive unless in proceedings initiated by either party for review of such decision in a court of competent jurisdiction, the court determines the decision to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or is not supported by substantial evidence. In connection with any

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appeal proceeding under this Article, the Contractor, or the Authority, as the case may be, shall be afforded an opportunity to be heard and offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Contracting Officer's decision. The Armed Services Board of Contract Appeals is the authorized representative of the Board of Directors for final decisions on an appeal.

- (b) This DISPUTES Article does not preclude consideration of questions of law in connection with decisions provided for in paragraph (a) above. Nothing in the Contract, however, shall be construed as making final the decisions of the Board of Directors or its representative on a question of law.

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CHAPTER VII – INDEMNIFICATION/INSURANCE/RISK OF LOSS

1. INDEMNIFICATION

- (a) Contractor shall indemnify, defend and hold harmless the Authority, its directors, officers, employees and agents, from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, and for loss or damage to any property, including the property of the Contractor and the Authority, occurring in connection with, or in any way arising out of the use, occupancy and performance of the work and/or any acts in connection with activities to be performed under this contract, unless the loss or damage is due to the sole negligence of the Authority. Nothing in the preceding sentence shall be deemed to relieve Contractor from ultimate liability for any obligation of Contractor under this Contract.

- (b) If any action or proceeding relating to the indemnification required is brought against the Authority, then upon written notice from the Authority to the Contractor, the Contractor shall, at the Contractor's expense, resist or defend such action or proceeding by counsel approved by the Authority in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same. The Authority reserves the right to use its own counsel under this indemnity at Contractor's sole cost and expense.

- (c) Contractor understands and agrees that it is Contractor's responsibility to provide indemnification to the Authority pursuant to this Section. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the failure of Contractor's insurance to fully fund any indemnification shall not relieve the Contractor of any obligation assumed under this indemnification.

Minimum Insurance Requirements

The following outlines the minimum insurance coverages and limits of insurance for those coverages that Contractor will be required to purchase and maintain. Contractor shall procure, at its sole cost and expense, the minimum required insurance as follows:

General Insurance Requirements

- 1) Contractor is required to maintain the insurance coverage(s) outlined in this Section for a period of time commencing the sooner of the execution of this contract, or the start of Work, and continuing through the completion of all work including any and all punch list and warranty work, without interruption.
- 2) The insurance coverage and limits of insurance outlined herein are minimum coverage and limits. Contractor is encouraged, at its sole cost and expense, to purchase any additional insurance coverages and or limits of insurance that Contractor deems prudent and necessary to manage risk in the completion of this contract.

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- 3) Upon written request from WMATA, contractor shall provide copies of any and all policy(s) required by these Minimum Insurance Requirements, including all endorsement(s), within 5 business days of such request.
- 4) Receipt, review and communications regarding Certificates of Insurance (COI), Insurance Policy(s), endorsements or other materials utilized to document compliance with these Minimum Insurance Requirements does not constitute acceptance by WMATA.
- 5) Insurance Policies must be written on admitted paper, (unless otherwise indicated herein) with insurance companies having an A. M. Best rating of at least A- VII.
- 6) Unless otherwise noted, "Claims Made" insurance policies are not acceptable.
- 7) Any insurance policy utilizing a Self-Insured Retention (SIR) requires written approval from WMATA.
- 8) Contractor is required to incorporate these Minimum Insurance Requirements into contract requirements of all Sub-contractors of every tier. Contractor, at its sole peril, may amend the insurance for its Sub-contractors, but doing so does not relieve Contractor from its respective liability to WMATA.
- 9) Compliance with these Minimum Insurance Requirements does not relieve Contractor from its respective liability to WMATA, even if that liability exceeds the minimum insurance requirements.

Workers' Compensation and Employer's Liability

Required Minimum Limits of Coverage:

Workers' Compensation	Statutory	
Employers' Liability	\$1,000,000	Each Accident
	\$1,000,000	Disease Policy Limit
	\$1,000,000	Disease Each Employee

Required Minimum Coverage(s):

- 1) Workers' Compensation Statutory Coverage must be provided on an "All States" basis.
- 2) Contractor and Sub-contractors of any tier performing work within 500 feet of navigable water must have their Workers' Compensation Policy endorsed to provide coverage for both Jones Act Liability and Longshore and Harbor Workers' Compensation Act Liability.

Commercial General Liability

Required Minimum Limits of Coverage:

\$2,000,000	Each Occurrence Limit
\$2,000,000	General Aggregate Limit
\$2,000,000	Products and Completed Operations Limit

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Required Minimum Coverage(s):

- 1) Commercial General Liability (CGL) coverage form shall be ISO Occurrence Form CG0001 (12/04) or its equivalent. Equivalency determination shall be made in WMATA's sole and unreviewable discretion.
- 2) Required minimum limits of coverage may be achieved through a combination of the aforementioned CGL coverage form and umbrella/excess liability coverage form(s), provided that the umbrella/excess liability coverage form(s) provide the same or broader coverage than the prescribed CGL coverage form.
- 3) Policy shall be endorsed with Additional Insured Endorsement(s) in compliance with the "Additional Insured" Section below. Commercial General Liability and umbrella/excess liability forms must provide defense coverage for additional insureds. The Additional Insured Endorsement shall include Products and Completed Operations Coverage with no limitation on when claims can be made. The coverage provided by the additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured Form CG 20 10 11 85 or CG 20 26 11 85 as determined by WMATA.
- 4) Policy shall be endorsed with a Waiver of Subrogation Endorsement(s) in compliance with the "Waiver of Subrogation" Section below.
- 5) The definition of "Insured Contract" shall be modified to provide coverage for contractual liability for contracts for construction or demolition operations that are within 50 feet of a railroad, and sidetrack agreements.
- 6) Defense Costs (Allocated Loss Adjustment Expense) must be included and in excess of the policy limits for all Primary Liability and Umbrella Excess Liability Policies.
- 7) Policy shall be endorsed with ISO endorsement CG 25 03 03 97; "Designated Construction Project(s) General Aggregate Limit", and designate "Any and all construction projects" as the Designated Construction project.
- 8) Policy shall be endorsed with ISO endorsement CG 25 04 03 97; "Designated Location General Aggregate Limit", and designate "Any and all locations" as the Designated Location.

Business Auto Liability

Required Minimum Limits of Coverage:

\$1,000,000	Combined Single Limit
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Required Minimum Coverage(s):

- 1) Business Auto Liability shall be written on ISO Business Auto Coverage Form CA 00 01 03 06, or its equivalent. Equivalency determination shall be made in WMATA's sole and unreviewable discretion.

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- 2) Policy shall be endorsed with Additional Insured Endorsement(s) in compliance with the "Additional Insured" Section below.
- 3) Policy shall be endorsed with a Waiver of Subrogation Endorsement(s) in compliance with the Waiver of Subrogation" Section below.
- 4) Business Auto Liability minimum Combined Single Limit requirements may be obtained through the combination of a Primary Business Auto Liability policy and an umbrella/excess liability policy provided that the umbrella/excess liability policy complies with items 1 through 3 above.

Professional Liability Insurance

Professional Errors and Omissions Liability Insurance. A separate insurance policy with **limits not less than \$5,000,000** to pay on behalf of the Contractor all costs the Contractor shall become legally obligated to pay as damages due to any claim caused by any negligent act, error or omission of the Contractor or any other person for whose acts the Contractor is legally liable arising out of performance under this contract. Such insurance shall be maintained for five years after the final acceptance of the work by either continuation of the policy every year or if coverage is moved to another carrier, the same prior acts retro date should be continued. If coverage is not renewed, an extended reporting period of five years should be purchased and such coverage should be evidenced on the certificate of insurance.

- 1) Minimum Limits of Coverage of \$5,000,000, each claim.
- 2) Actual coverage or tail coverage must be purchased and maintained for a period of time equal to the statute of repose.
- 3) Coverage can be written on an "Occurrence" or "Claims Made" Basis.

Additional Insured(s)

Contractor and Sub-contractors of every tier are required to add WMATA, WMATA Board of Directors and Montgomery County as additional insured(s) on all insurance policies purchased by Contractor and Sub-contractors of every tier, including excess liability policy(s), with the exception of Workers' Compensation and Professional Liability.

- 1) Coverage provided to any Additional Insured shall be primary and non-contributory to any other insurance available to the Additional Insured, including coverage afforded to the WMATA and Montgomery County as an additional insured by Sub-contractors, and from other third parties.
- 2) Coverage provided to any Additional Insured shall be for claims arising out of both ongoing operations and products and completed operations hazard.
- 3) Coverage available to any Additional Insured under the products and completed operations hazard can only be limited to the applicable statute of repose in the jurisdiction(s) where the contract scope of work takes place.

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- 4) The coverage provided by the additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured Form CG 20 10 11 85 or CG 20 26 11 85 as determined by WMATA.

Waiver of Subrogation

Contractor and Sub-contractors of every tier are required to have all insurance policies required under these Minimum Insurance Requirements endorsed to waive the respective insurance company's rights of recovery against WMATA, and the WMATA Board of Directors.

- 1) Waiver shall be provided on an endorsement that is acceptable to WMATA.

Certificate of Insurance (COI)

Contractor shall provide WMATA an ACORD Certificate of Insurance (COI) and copy of the Additional Insured endorsements as evidence that the insurance requirements of this Section have been satisfied. Certificates of Insurance shall be emailed to COI@WMATA.COM.

The cert holder box should read:

Washington Metropolitan Area Transit Authority
Office of Insurance, Room 8F
600 Fifth Street, NW
Washington, DC 20001

Additionally;

- 1) Proposed material modifications to insurance required under this Section must be received by WMATA at least 30 days prior to the effective date of the proposed modifications to such insurance.
- 2) Satisfactory COI delineating all required insurance coverage requirements under this Section shall be delivered before the execution of this Contract by WMATA
- 3) Failure to provide satisfactory evidence of all required insurance may result in Contractor and/or subcontractors of every tier being denied access to work locations, including, but not limited to WMATA properties.
- 4) COI reflect total limits of insurance purchased by Contractor for the types of insurance required under this Contract.
- 5) Proposed material modifications to insurance required under this Section must be received by WMATA at least 30 days prior to the effective date of the proposed modifications to such insurance.
- 6) WMATA's receipt of copies of any COI, policy endorsements or policies does not relieve Contractor of the obligation to remain in compliance with the requirements of this Section at all times. Contractor's failure to comply with these insurance requirements shall constitute a material breach of this Contract.
- 7) The ACORD COI shall specifically delineate the following:
 - a. Who is an Additional Insured under the policies delineated in this Section.

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- b. That each additional insured(s) as required under this Section is an additional insured on a primary and non-contributory basis.
- c. That each additional insured(s) is an additional insured for ongoing operations of the Contractor in addition to the products and completed operations coverage.
- d. That coverage providing a waiver of subrogation to each Additional Insured is compliant with the Waiver of Subrogation article of this Section.
- e. That the issuing insurance company will mail written notice of cancellation of any of the required insurance policies to WMATA within 30 days of Cancellation. Use of "will endeavor to" as respects this requirement is not acceptable and must be deleted. Such notice shall be sent to:

Washington Metropolitan Area Transit Authority
Office of Insurance, Room 8F
600 Fifth Street, NW
Washington, DC 20001

3. TITLE AND RISK OF LOSS

- (a) Unless this Contract specifically provides for earlier passage of title to deliverables (including documents, reports, and data) or other items resulting from this Contract, title shall pass to the Authority upon Acceptance, regardless of when or where the Authority takes physical possession. Risk of loss, theft, destruction of, or damage to, such deliverables or other items remains with the Contractor until the transfer of title or at the time in which the Authority takes physical possession, whichever is later.
- (b) In the event of loss or damage to any deliverable or other item of Work prior to the time at which the Authority takes physical possession, the Contractor agrees to repair or replace the loss or damage as soon as reasonably practicable so as to restore the item to the same character and condition as pre-existed the loss or damage and in accordance with all requirements of the Contract Documents without cost to the Authority; except that nothing contained herein shall be deemed to require repair or replacement by the Contractor of any loss or damage occasioned solely by the willful or negligent act(s) of the Authority.

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CHAPTER VIII – INTELLECTUAL PROPERTY RIGHTS

1. PATENT INDEMNITY

The Contractor shall indemnify the Authority and its officers, agents and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property under this Contract. This indemnity shall not apply unless the Contractor is informed as soon as practicable by the Authority of the suit or action alleging such infringement, and is given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to:

- (1) An infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner or performance of the Contract not normally used by the Contractor;
- (2) An infringement resulting from addition to, or change in, such supplies or components furnished or construction work performed that was made subsequent to delivery or performance by the Contractor; or
- (3) A claimed infringement which is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

2. SET-OFF

The Authority shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the Authority's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the Authority with regard to this Contract, any other Contract with the Authority, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the Authority for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The Authority shall exercise its set-off rights in accordance with normal practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the Authority, its representatives, or the Federal Government. Payments shall be made according to the completed and accepted deliverables/milestones/phases as outlined in the Technical Specifications.

3. RIGHTS IN TECHNICAL DATA- GENERAL

N/A

4. RIGHTS IN TECHNICAL DATA – UNLIMITED

- (a) The term technical data as used in this article means technical writing, computer software, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether or not copyrighted, which are specified to be delivered pursuant to this Contract. The term does not include financial reports, cost analyses, and other information incidental to Contract

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administration. Computer software as used in this article means computer programs, computer data bases, and documentation thereof.

- (b) The Authority or any third party designated by the Authority to assist it in the administration of this Contract or the inspection or verification of the product produced under this Contract, shall have the right to use, duplicate or disclose technical data, which includes computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so:
- (1) Any manuals, instructional materials prepared for installation, operation, maintenance or training purposes;
 - (2) Technical data pertaining to end items, components or processes which were prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data; e.g., specification control drawings, catalog sheets, outline drawing; except for the computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software);
 - (3) Other technical data which has been, or is normally furnished without restriction by the Contractor or subcontractor;
 - (4) Other specifically described technical data which the parties have agreed will be furnished without restriction;
 - (5) All computer software regardless of whether it is technical data as defined in this Article, including the source code, algorithm, process, formulae, and flow charts, which is developed or materially modified by the Contractor for the Authority or for which the Authority is required by federal law or regulation to provide a royalty-free, irrevocable and nonexclusive license to the federal government.
- (c) The Authority shall have the right to use, duplicate, or disclose technical data other than that defined in paragraph a. in whole or in part, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be
- (1) Released or disclosed in whole or in part outside the Authority,
 - (2) Used in whole or in part by the Authority for manufacture, or
 - (3) Used by a party other than the Authority except for: (i) emergency repair or overhaul, (ii) where the item or process concerned is not otherwise reasonably available to the Authority to enable timely performance of the work, or (iii) administration of this contract or the inspection or verification of the product produced under this contract where the third party has a written contract with the Authority to perform these efforts. In all cases described in this subsection, the release or disclosure outside of the Authority shall be subject to a written prohibition against further use, release or disclosure by the party receiving the technical data.
- (d) Technical data provided in accordance with the provisions of paragraph c. shall be identified by a legend which suitably recites the aforesaid limitation. Nothing herein shall impair the right of the Authority to use similar or identical data acquired from other sources.

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- (e) Where any item is purchased as a separate line item in the contract, that purchase includes all integral parts of that item, including any computer software, source codes, algorithms, processes, formulae, and flow charts. As such, the Authority has full rights to use, duplicate or disclose any or all parts of the item, including computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so. Should disclosure of the computer software be required only under this paragraph, then the Contracting Officer may waive the provisions of this paragraph if he certifies in writing that the item is commercially available from multiple sources and the product from any of those sources will be fully compatible with existing Authority property.
- (f) Material covered by copyright:
 - (1) The Contractor agrees to and does hereby grant to the Authority, and to its officers, agents and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Authority purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all (i) technical data and (ii) computer software covered by subsection (b) (5) now or hereafter covered by copyright.
 - (2) No such copyrighted matter shall be included in (i) technical data or (ii) computer software covered by subsection (b) (5) furnished hereunder without the written permission of the copyright owner for the Authority to use such copyrighted matter in the manner above described.
 - (3) The Contractor shall report to the Authority (or higher-tier contractor) promptly and in reasonable written detail each notice or claim of copyright infringement received by the Contractor with respect to any (i) technical data or (ii) computer software covered by subsection (b)(5) provided to the Authority.
- (g) Relation to patents: Nothing contained in this Article shall imply a license to the Authority under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Authority under any patent.
- (h) Any dispute under this Article shall be subject to the DISPUTES article of this Contract.
- (i) Notwithstanding any other payment provision in this Contract, the Contracting Officer may retain from payment up to 10 percent of the contract price until final delivery and acceptance of the technical data defined in this Article and as required to be furnished by the bid schedule or the contract specification.

5. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

- (a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.
- (b) In the event of any claim or suit against the Authority on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Authority, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or

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claim. Such evidence and information shall be furnished at the expense of the Authority except where the Contractor has agreed to indemnify the Authority.

- (c) The substance of this Article shall be included in all subcontracts.

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CHAPTER IX – ADDITIONAL COVENANTS/LEGAL REQUIREMENTS

1. NONDISCRIMINATION ASSURANCE

- (a) Nondiscrimination Assurance: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the American with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit law at 49 U.S.C. §5332, the contractor, sub-recipient, or subcontractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the contractor, sub-recipient, or subcontractor agrees to comply with applicable Federal implementing regulations and other implementing regulations that the Federal Government may issue.
- (b) Equal Employment Opportunity: The following equal employment opportunity requirements apply to this contract.
- (1) Race, Color, Creed, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49 U.S.C. §5332, the Contractor agrees to comply with all applicable equal opportunity requirements of the U. S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, " 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Contract. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements the Federal Government may issue.
- (2) Age: In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §623 and Federal transit law at 49 U.S.C. §5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements the Federal Government may issue.
- (3) Disabilities: In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the Contractor agrees that it will comply with the requirements of U. S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements the Federal Government may issue.

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- (c) The Contractor also agrees to include all of these requirements in each subcontract financed in whole or in part with Federal assistance provided by the Federal Government, modified only if necessary to identify the affected parties.
- (d) Failure by the contractor, sub-recipient, or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Authority deems appropriate.

2. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION

This Contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

- (a) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, apprentices, trainees, watchmen, and guards shall require or permit any laborer, mechanic, apprentice, trainee, watchman, or guard in any workweek in which he or she is employed on such work to work in excess of 40 hours in such work week on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer, mechanic, apprentice, trainee, watchman, or guard receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 40 hours in such work week.
- (b) Violation. Liability for Unpaid Wages - Liquidated damages. In the event of any violation of the provisions of paragraph (a) the Contractor and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the Authority for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, apprentice, trainee, watchman or guard employed in violation of the provision of paragraph (a) in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of his standard work week of 40 hours without payment of the overtime wages required by paragraph (a).
- (c) Withholding for unpaid wages and liquidated damages. The Contracting Officer may withhold from the Contractor, from any monies payable on account of work performed by the Contractor or subcontractor, such sums as may be administratively determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).
- (d) Subcontracts. The Contractor shall insert paragraphs (a) through (d) of this Article in all subcontracts and shall require their inclusion in all subcontracts of any tier.
- (e) Records. The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three (3) years from the completion of this Contract.

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3. WALSH-HEALEY PUBLIC CONTRACTS ACT

If this Contract is for the manufacture or furnishing of materials, supplies, or equipment in an amount which exceeds or may exceed \$10,000 and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

- (a) All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may be hereafter, be in effect.
- (b) All employees whose work relates to this Contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped worker may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

4. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

N/A

5. CONVICT LABOR

- (a) Except as provided in paragraph (b) , the Contractor shall not employ in the performance of this Contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam or the U.S. Virgin Islands.
- (b) The Contractor is not prohibited from employing persons:
 - (1) On parole or probation to work at paid employment during the term of their sentence;
 - (2) Who have been pardoned or who have served their terms; or
 - (3) Confined for violation of the laws of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—
 - (i) The worker is paid or is in an approved work or training program on a voluntary basis;
 - (ii) Representatives of local union central bodies or similar labor union organizations have been consulted;
 - (iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts or services;
 - (iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
 - (v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in

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conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

6. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Authority shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

7. SEAT BELT USE POLICY

N/A

8. SENSITIVE SECURITY INFORMATION

The Contractor must protect, and take measures to assure that its subcontractors at each tier protect, "sensitive information" made available during the course of administering an Authority contract or subcontract in accordance with 49 U.S.C. Section 40119(b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 CFR Part 15, and with 49 U.S.C. Section 114(s) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 CFR Part 1520.

9. LAWS AND REGULATIONS

The Contractor shall be responsible to fully inform itself of the requirements for and to comply with any applicable State of Maryland, Commonwealth of Virginia, District of Columbia, Federal and jurisdictional laws and regulations governing the service to be provided under the contract. Further, the Contractor shall be responsible to obtain, at its own cost and expense, any and all licenses/permits required to transact business in any political jurisdictions to be serviced.

10. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

N/A

11. LIVING WAGE

The Authority's Living Wage Policy and implementing regulations apply with respect to all contracts for services (including construction) awarded in an amount that exceeds \$100,000 in a 12-month period. To the extent this Contract meets those criteria, the following requirements are applicable:

- (a) The Authority's Living Wage Rate is \$13.48 per hour, and may be reduced by the contractor's per-employee cost for health insurance.
- (b) The Contractor shall:

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- (1) Pay the Authority's Living Wage Rate, effective during the time the work is performed, to all employees who perform work under this Contract;
 - (2) Include the Living Wage provision in all subcontracts that exceed \$15,000 in a 12 month period awarded under this Contract;
 - (3) Maintain payroll records, in accordance with the retention and examination of records requirements in the General Provisions, and shall include a similar provision in affected subcontracts that requires the subcontractor to maintain its payroll records for the same length of time; and
 - (4) Certify with each monthly invoice that the Authority Living Wage Rate was paid to affected employees, or if applicable, certify prior to contract award or contract extension, if any, that one or more of the exemptions in paragraph (d) below applies.
- (c) The Contractor shall not split or subdivide a contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor to avoid compliance with the Living Wage provisions.
- (d) Exemptions to the Living Wage provisions include:
- (1) Contracts and agreements subject to higher wage rates required federal law or collective bargaining agreements;
 - (2) Contracts or agreements for regulated utilities;
 - (3) Emergency services to prevent or respond to a disaster or imminent threat to public health and safety;
 - (4) Contractor employees who work less than full-time; and
 - (5) Contractors who employ fewer than ten employees.
- (e) The Authority may adjust the Living Wage Rate effective in January of each year. The adjustment will reflect the average Living Wage Rate among Metro's Compact Jurisdictions with Living Wage provisions. If after contract award the living wage rate increases, the Contractor is entitled to an equitable adjustment to the contract price in the amount of the increase for employees who are affected by the escalated wage.
- (f) Failure to comply with the Authority's Living Wage provisions shall result in the Authority's right to exercise available contract remedies, including contract termination and/or debarment from future contracts.

12. METRIC SYSTEM

To the extent the Federal Government directs, the Contractor agrees to use the metric system of measurement in its Project activities, in accordance with the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. 205a et seq; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. 205a note; and applicable U.S. DOT or FTA regulations in accordance with applicable Federal directives. As practicable and feasible, the Contractor agrees to supply products and services with dimensions expressed in the metric system of measurement. Metric usage shall not be required to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms.

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13. WHISTLEBLOWER PROTECTION

- (a) The Contractor and its subcontractors shall encourage their employees and independent contractors to report information—without fear of actual or threatened discrimination, retaliation or reprisal—that they in good faith reasonably believe is evidence of gross mismanagement; gross misuse or waste of public resources or funds; fraud; violation of law; abuse of authority in connection with the conduct of WMATA operations or contracts; or a substantial and specific danger to health, security or safety. The Contractor and its subcontractors shall notify their employees that they may make reports under this paragraph to:
- (1) WMATA's Office of Inspector General (OIG), in person, in writing, through the OIG Hotline (888-234-2374) or email wmata-oig-hotline@verizon.net or by any other reasonable means;
 - (2) WMATA's Metro Transit Policy Department (MTPD), in person, by telephone (202-962-2121) or by any other reasonable means, or to the OIG, if the information constitutes a potential violation of criminal law;
 - (3) WMATA's Chief Safety Officer, in person, in writing, through the SAFE Hotline (202-249-7233) or email safety@wmata.com, or by any other reasonable means; or
 - (4) Any other official, office or agency within WMATA or outside WMATA that the employee or independent contractor reasonably believes has the authority to act on the matter.
- (b) The Contractor, its employees, independent contractors and subcontractors shall cooperate with any inquiry or review by an authorized official of WMATA, or by the federal government or any other governmental entity with jurisdiction over WMATA, regarding a matter that would constitute a report under paragraph (a) or a violation of this or any whistleblower provision of this Contract, and with any enforcement or judicial proceeding arising from such inquiry or review.
- (c) The Contractor and its subcontractors shall not interfere with or deny the right of any employee or independent contractor of either the Contractor or any of its subcontractors to make a report under paragraph (a). The Contractor and its subcontractors shall not recommend, take or threaten to take any action having a negative or adverse impact on any employee or independent contractor of either the Contractor or any of its subcontractors because he or she:
- (1) made or is perceived to have made a report under paragraph (a);
 - (2) sought a remedy under applicable law after making a report under paragraph (a);
 - (3) participated in or cooperated with an inquiry or review by an authorized official of WMATA, or by the federal government or any other governmental entity with jurisdiction over WMATA, regarding a matter that would constitute a report under paragraph (a) or a violation of this or any whistleblower provision of this Contract, or with an enforcement or judicial proceeding arising from such inquiry or review;

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- (4) refused to obey an order that would violate law; or
 - (5) refused to work or authorize work when a hazardous safety or security condition presents an imminent danger of death or serious injury, there was no reasonable alternative to refusal, there was not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, notified the Contactor or subcontractor of the condition and of the intent not to perform or authorize work.
- (d) The Contractor shall include, or shall cause to be included, the substance of this Article, including this paragraph (d), in its subcontracts at all tiers.
- (e) The Contractor and its subcontractors shall comply with the National Transit Systems Security Act (NTSSA), which prohibits discharging, demoting, suspending, reprimanding or in any other way discriminating against an employee as a reprisal for the employee lawfully and in good faith—
- (1) reporting a hazardous safety or security condition;
 - (2) refusing to work when a hazardous safety or security condition presents an imminent danger of death or serious injury, there is no reasonable alternative to refusal, there is not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, has notified the Contractor or subcontractor of the condition and of the intent to not perform work;
 - (3) refusing to authorize the use of any safety or security related equipment, track or structures, if the individual is responsible for their inspection or repair and reasonably believes they are in a hazardous safety or security condition, there is no reasonable alternative to refusal, there is not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, has notified the Contractor or subcontractor of the condition and of the intent not to authorize use of hazardous equipment or infrastructure unless corrected;
 - (4) providing information for or directly assisting in an investigation of conduct that the individual reasonably believes to be in violation of federal law regarding safety, security or fraud, waste or abuse of funds intended for safety or security;
 - (5) refusing to violate or assist in violation of federal public transportation safety or security law;
 - (6) cooperating with a safety or security investigation by the U.S. Secretary of Transportation, U.S. Secretary of Homeland Security or the National Transportation Safety Board;
 - (7) furnishing information to law enforcement agencies relating to an accident or incident resulting in damage to property, injury or death; or
 - (8) filing a complaint under the NTSSA or testifying regarding such complaint.
- (f) The Contractor shall notify the Authority of any instance, related to this Contract, of a

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report under sub-paragraph (e)(1) or refusal under sub-paragraphs (e)(2), (3) or (5).

- (g) The enforcement, filing and investigation of complaints, and remedies under this section shall be governed by the NTSSA, applicable federal regulations and federal law.
- (h) This Article shall be interpreted in accordance with the NTSSA. If any provision is found to be in conflict with the NTSSA, the NTSSA shall govern.
- (i) The Contractor shall include, or shall cause to be included, the substance of this Article, including this paragraph, in its subcontracts at all tiers.

14. DRUG AND ALCOHOL TESTING

Contractors who perform safety-sensitive functions shall be subject to compliance with a drug and alcohol testing program according to Federal guidelines published in FTA regulations (49 CFR Part 655).

15. EMPLOYMENT RESTRICTION WARRANTY

- (a) The Contractor warrants that it will not offer employment to, solicit or discuss the interest of prospective employment of, or otherwise engage in substantive employment-related discussions or communications with, any present or former officer or employee of the Authority who has been involved, directly or indirectly, in any matter of financial interest to the Contractor until at least one (1) year after the officer or employee has ceased involvement in or responsibility for the matter. Nor shall the Contractor knowingly engage in communications of the nature described above with any immediate family member or member of the household of any Authority employee during the period in which such employee is involved in any such matter of financial interest to the Contractor.
- (a) The one (1) year requirement described in paragraph (a) may be waived at the discretion of the Contracting Officer if the Authority employee or former employee has been subject to a Reduction in Force; in such case, the Contracting Officer, once he/she has been made aware of the Contractor's interest, will provide the Contractor with a letter to that effect.
- (b) If a waiver is granted, or if a former employee of the Authority is eventually hired, the Contractor shall ensure that the former employee is not involved in negotiating or otherwise dealing with the Authority on any particular matter over which such employee had responsibility during his or her period of employment at Authority.
- (d) Should the Contractor fail to comply with the provisions hereof, the Contracting Officer shall have the right to withhold payment under this Contract in an amount not to exceed 2% of the total Contract amount as liquidated damages to the Authority, such withholding to be in addition to any other withholding or right of the Authority under this Contract. Further, the Contracting Officer shall consider such violation in evaluating the Contractor's responsibility in connection with award of any future Authority contract. Any objections or appeal shall be settled in accordance with the DISPUTE provisions of this Contract.

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16. GRATUITIES

- (a) In connection with performance of work required under this Contract, or any changes or modifications relative thereto, the giving of or offering to give gratuities (in the form of entertainment, gifts or otherwise) by the Contractor, or any agent, representative or other person deemed to be acting on behalf of the Contractor, or any supplier or subcontractor furnishing material to or performing work under this Contractor, or any agent, representative or other person deemed to be acting on behalf of such supplier or subcontractor, to any Director, Officer or employee of the Authority; or to any Director, Officer, employee or agent of any of the Authority's agents, consultants, representatives or other persons deemed to be acting for or on behalf of the Authority with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract is expressly forbidden. The terms of this GRATUITIES Article shall be strictly construed and enforced in the event of violations hereof.
- (b) Reported instances of the giving or offering to give gratuities within the context of this GRATUITIES Article will be investigated by the Board of Directors or its duly authorized representative. A preliminary investigation will be made to determine whether there is probable cause to suspect that a violation of this Article has been committed. If such probable cause is found to exist, the Board of Directors, or its duly authorized representative, shall formally notify the suspected donor corporation or individual in writing of the particulars of the event; and provide such donor the opportunity to be heard on the matter. The aims of the investigations and hearing shall be to ensure due process and to preserve the best interests and rights of all parties by the full and fair disclosure of all relevant and material information. Accordingly, the Board of Directors, or its duly authorized representative, shall require production of all pertinent documents and records, and sworn testimony from witnesses. During the pendency of any investigation or hearing treating with a violation of this GRATUITIES Article, the Board of Directors, or its duly authorized representative may exercise its power granted by the Washington Metropolitan Area Transit Authority Compact, Public Law 774, 80 Stat. 1324, Article V, General Powers, Subparagraph (k), by issuing subpoenas to compel the attendance of necessary witnesses, and to compel production of papers, records, accounts, ledgers and documents. The subpoenas shall be enforceable by order of an appropriate United States District Court. If, after notice and hearing, or notice of the opportunity to be heard, the Board of Directors, or its duly authorized representative, finds that a violation of this GRATUITIES Article has been committed, the Authority shall have the right to:
- (1) Require that the individual(s) giving or offering the gratuity be removed from further participation on any Authority projects (be terminated);
 - (2) Deny the Contractor any G & A (general and administrative) mark-ups for all changes and/or modifications found to be tainted by the giving of or offering to give gratuities;
 - (3) Preclude the Contractor from bidding on, receiving or participating as joint venturer, subcontractor or otherwise in any Authority project for a period of five (5) years;

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- (4) Have complete access to all the Contractor's financial books, records and accounts for the purpose of performing a comprehensive audit of the entire project; and/or
- (5) In the event of repeated violations of this GRATUITIES Article or of gross or extreme conduct indicative of a corrupt intent to gain special advantage, by written notice to the Contractor, terminate the Contract for default in accordance with the provisions of the TERMINATION FOR DEFAULT article of the Contract.
- (c) The existence of the facts upon which the Board of Directors, or its duly authorized representative, makes findings in connection with investigations and hearings in consonance herewith, shall be an issue and may be reviewed in any competent court.
- (d) In the event this Contract is terminated as provided in sub-paragraph (b)(5), the Authority shall be entitled:
 - (1) To pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor; and
 - (2) As a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in any amount (as determined by the Board or its duly authorized representative) which shall be not less than three (3) nor more than ten (10) times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.
- (e) The rights and remedies of the Authority provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

17. OFFICIALS NOT TO BENEFIT

- (a) No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Contract, or to any benefit that may arise there from; but this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.
- (b) No member, officer or employee of the Authority or of a local public body during his tenure or one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.
- (c) Enforcement of this Article shall be consistent with 18 U.S.C. §431.

18. ORGANIZATIONAL CONFLICT OF INTEREST

- (a) An organizational conflict of interest exists when the nature of the work to be performed under a proposed contract or subcontract may, without some restriction on future activities (1) result in an unfair competitive advantage to the contractor or subcontractor; or (2) impair the contractor's objectivity in performing the contracted work. Most typically this would arise when a contractor prepares a design or specification for work that is to be procured competitively. It may also arise when a

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contractor or one of its affiliates would have an economic interest in the outcome of a contract or project. Conflicts of interest may be either real or apparent.

- (b) In the event that the Contractor believes that it or any of its potential subcontractors may have an organizational conflict of interest, it shall notify the Contracting Officer, in writing, within five (5) work days after it becomes aware of the potential or actual organizational conflict of interest. The written notification shall identify the nature and circumstances of the perceived conflict and propose appropriate measures to eliminate or mitigate the situation. The Contracting Officer will review the circumstances and the proposed mitigation and notify the Contractor accordingly, determining that: (1) no mitigation is required; (2) the conflict cannot be mitigated; or (3) the conflict can be mitigated and accepts the proposed measures, or recommends other and/or additional measures.
- (c) The failure of the Contractor to identify such perceived conflicts may result in the contract award being rescinded or the Contract terminated for default.
- (d) Should the Contractor identify or become aware of a conflict during the term of this Contract, including any extension of the Contract, which it could not reasonably have anticipated prior to award, it shall notify the Contracting Officer in accordance with paragraph (b) above, or request an exception to the restriction with supporting rationale. The Contracting Officer shall consider the Contractor's proposed measures to mitigate or eliminate the conflict, or the request for an exception.
- (e) If the proposed measures are not determined to be feasible or are otherwise not acceptable to the Contracting Officer, the Contracting Officer may terminate the Contract in accordance with the TERMINATION FOR CONVENIENCE OF THE AUTHORITY provisions of the Contract; or
- (f) If the request for an exception is not granted by the Contracting Officer, and the Contract is not terminated for convenience, the Contractor shall be notified in writing and be given ten (10) days from the date of the written notification to take all necessary action to comply with the requirements of this provision.
- (g) If the proposed measures are determined acceptable to the Contracting Officer, the Contracting Officer may grant a specific exception to this restriction, when in the Contracting Officer's judgment, the exception will not create a conflict between the Contractor's duties and obligations under this Contract and the duties and obligations imposed on the Contractor under the contractual or other relationship for which an exception is requested.
 - (1) If the Contractor fails to comply with the terms of this Article, the Contracting Officer, may withhold payments due under the contract until such time as the Contractor is in compliance or, should the non-compliance remain uncorrected at the expiration of ten (10) days from written notice from the Contracting Officer as provided in sub-paragraph (d)(2) , terminate the contract for default pursuant to the provisions of the TERMINATION FOR DEFAULT Article of the Contract.
 - (2) The Contractor, in performing this Contract, shall avoid any conduct which might result in or give the appearance of creating for Directors, Officers, or employees of the Authority in their relationship with the Contractor, any conflicts of interest or favoritism and/or the appearance thereof and shall

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avoid any conduct which might result in a Director, Officer, or employee failing to adhere to the Standards of Conduct adopted by the Authority's Board of Directors.

- (3) Any determination by the Contracting Officer under this Article shall be final and shall be considered a question of fact within the meaning of the Disputes Article of this Contract.

19. CONTRACTOR PERSONNEL

- (a) The Authority may direct the replacement of employees of the Contractor reasonably deemed to be unsuitable by the Contracting Officer, or whose continued participation in the Work is deemed contrary to the best interests of the Work. Except in circumstances deemed exigent by the Contracting Officer, the reason for replacement will be discussed between the Contractor and the Authority before a replacement directive is issued. Upon receipt of a written replacement directive from the Authority specifying the date by which the replacement must occur, the Contractor shall proceed with the replacement and shall do so in a manner that minimizes to the greatest extent practicable any impact upon any aspect of the Work.
- (b) Contractor personnel required to work on WMATA property must obtain a WMATA vendors' badge and successfully complete the mandatory safety training which must be renewed yearly. Affected personnel should be advised by the Contractor that, to obtain a vendor's badge, a signed waiver to perform a background check is required.

20. FALSE STATEMENTS, CLAIMS OR SUBMISSIONS

- (a) The Contractor acknowledges its responsibility to undertaken its obligations under this publicly-funded contract with full integrity and, to that end, to take all reasonable steps to ensure that statements, claims and submissions made pursuant to the Contract are provided in good faith and with a reasonable belief as to their truthfulness, accuracy and completeness.
- (b) In the event that it is finally determined that any statement, claim, submission, or certification made by or on behalf of the Contractor pursuant to a material element of the Contract was knowingly false, fictitious or fraudulent, the Authority shall be entitled to recover from the Contractor an amount equal to not more than two times the monetary value of the benefit derived or sought to be derived by the Contractor through its false statement, claim or submission .For purposes hereof, an element of the Contract shall be deemed material if it impacted or could reasonably have been intended to impact the disposition of any claim, Dispute, proposed or implemented Change Order, proposed pricing or schedule adjustment of any nature, or other substantive issue directly affecting the rights of the parties under the Contract.
- (c) Where the Authority believes that there exist reasonable grounds to conclude that the Contractor has engaged in one or more violations of paragraph (b), it shall so notify the Contractor in writing, describing the nature of the potential violation(s). The Contractor shall thereupon have 30 days following its receipt of such notification to provide its written response. Absent resolution between the parties, the Authority shall be authorized to initiate suit in a court of competent jurisdiction, asserting the Contractor's violation(s) of paragraph (b) of this Article and the Authority's consequent entitlement to monetary relief. Claims relating to an alleged violation of

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this Article shall be subject exclusively to judicial adjudication and shall not be subject to the Disputes Article of this Contract or other administrative disposition, except as may be expressly agreed upon between the parties

- (d) The rights of the Authority set forth in this Article are in addition to any such additional contractual, legal or equitable rights which may arise upon the Contractor's submission of a knowingly false claim or statement, including without limitation the Authority's right to terminate the Contract for default. Nor shall the provisions of this Article serve in any respect to limit, waive or modify any liability, civil or criminal, of the Contractor or any of its officers, agents or employees which such conduct may precipitate.

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CHAPTER X – MISCELLANEOUS ADDITIONAL PROVISIONS

1. FEDERAL, STATE, AND LOCAL TAXES

- (a) Except as may be otherwise provided in this Contract, the Contract price shall be deemed to include all applicable Federal, State and Local taxes and duties.
- (b) Notwithstanding paragraph (a), with respect to any Federal excise tax or duty on the transactions or property covered by this Contract, if a statute, court decision, written ruling or regulation takes effect after the Contract date, and:
 - (1) Results in the Contractor being required to pay or bear the burden of any such Federal excise tax or duty or increase in the rate thereof which would not otherwise have been payable on such transactions or property, the Contract price shall be increased by the amount of such tax or duty or rate increase, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the Contract price as a contingency reserve or otherwise; or
 - (2) Results in the Contractor not being required to pay or bear the burden of, or in his obtaining a refund or drawback of, any such Federal excise tax or duty which would otherwise have been payable on such transactions or property or which was the basis of an increase in the Contract price, the Contract price shall be decreased by the amount of the relief, refund, or drawback, or that amount shall be paid to the Authority, as directed by the Contracting Officer. The Contract price shall be similarly decreased if the Contractor, through his fault or negligence or his failure to follow instructions of the Contracting Officer, is required to pay or bear the burden of, or does not obtain a refund or drawback of, any such Federal excise tax or duty.
- (c) Paragraph (b) above shall not be applicable to social security taxes or to any other employment tax.
- (d) No adjustment of less than \$250 shall be made in the Contract price pursuant to paragraph (b).
- (e) As used in paragraph (b) , the term “Contract date” means the date the Contract was executed by the Authority. As to additional Supplies or Services procured by modification to this Contract, the term “Contract date” means the effective date of such modification.
- (f) The Contractor shall promptly notify the Contracting Officer of matters which may result in either an increase or decrease in the Contract price under this Article and shall take action with respect thereto as directed by the Contracting Officer.

2. FEDERAL/LOCAL/STATE SALES TAX

The Solicitation Instructions giving rise to award of this Contract advised of the nature and extent of the Authority’s exemption from Federal, State, District of Columbia, municipal and local taxation and, by submission of its Bid or Offer, the Contractor certified that none of the taxes as to which the Authority is exempt were included in its bid price(s) or the final Contract Price. In the event that the Authority learns that, notwithstanding this certification, any taxes

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to which the Authority is exempt are included in the final Contract Price, the Authority shall be entitled to a reduction in the Contract Price reflecting such amount and a refund of monies paid related to such taxes, plus applicable interest.

3. PUBLIC COMMUNICATION

The Contractor shall not issue communications to the media, place advertisements, nor publicize through any means the services or goods they are providing WMATA under this Contract without prior written consent of the Contracting Officer. The Contractor shall not publish, in print or online, any communications products such as newsletters, press releases, blogs or other communications to WMATA employees without prior written consent of the Contracting Officer. Approval of any such requests shall be at the sole discretion of WMATA.

4. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

- (a) This Contract shall be deemed to be executed in the District of Columbia, regardless of the domicile of the Contractor and shall be governed by and construed in accordance with the laws of the District of Columbia except to the extent, if any, superseded by federal law.
- (b) The parties agree that any and all claims asserted by or against the Authority arising hereunder or related hereto shall be heard and determined either in the courts of the United States located in the District of Columbia, the state of Maryland or the Commonwealth of Virginia or in the courts of the District of Columbia, state of Maryland or Commonwealth of Virginia which maintain jurisdiction over such claims and in which venue properly resides.

5. SEVERABILITY

If the Contract contains any unlawful provisions, the same shall be deemed of no effect, and shall upon the application of either party be stricken from the Contract without affecting the binding force of the Contract as it shall remain after omitting such provision.

6. SURVIVAL

In addition to any provision expressly set forth as surviving the expiration or termination of this Contract, any provision of this Contract whose purpose would be defeated or rendered meaningless by the expiration or earlier termination hereof shall be deemed to survive any such expiration or termination.

7. ALL NECESSARY PROVISIONS DEEMED INCLUDED

It is the intent of the parties that each and every provision of law required to be inserted in this Contract should be and is inserted herein. Every such provision is to be deemed to be inserted herein, and if any such provision is not inserted or is not inserted in correct form, then this contract shall be deemed amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
RFP-CQ16068

CHAPTER XI-WMATA POLICIES

1. SAFETY REQUIREMENTS

N/A

2. PRE-EMPLOYMENT CRIMINAL BACKGROUND CHECK REQUIREMENT

Pursuant to Metro Policy Instruction 6.10/5, WMATA requires that all contractor employees and candidates for employment undergo and pass criminal background screenings before being eligible to work on WMATA property and facilities. Contractor employees and candidates who pass the background screenings are eligible to enter WMATA property once WMATA issues them a contractor badge. Contractor employees and candidates who do not authorize background screenings or whose background screenings are unsatisfactory will not be granted contractor badges or access to WMATA property. Successful background checks are valid for one year from the date of inquiry.

3. WORKPLACE VIOLENCE/ZERO TOLERANCE

Pursuant to Metro Policy/Instruction 7.8.3, WMATA's Chief Procurement Officer is responsible for ensuring that all Metro contracts contain provisions that: (1) establish zero tolerance for acts and Workplace Violence for the employees of contractors and subcontractors at any tier, and (2) Provide that contractors and subcontractors will not retaliate against any of their employees or independent contractors for cooperating with investigations.



MID-ATLANTIC PURCHASING TEAM RIDER CLAUSE

USE OF CONTRACT(S) BY MEMBERS COMPRISING Mid –Atlantic Purchasing Team COMMITTEE

Extension to Other Jurisdictions

The [issuing jurisdiction] extends the resultant contract (s), including pricing, terms and conditions to the members of the Mid-Atlantic Purchasing Team, as well as all other public entities under the jurisdiction of the United States and its territories.

Inclusion of Governmental & Nonprofit Participants (Optional Clause)

This shall include but not be limited to private schools, Parochial schools, non-public schools such as charter schools, special districts, intermediate units, non-profit agencies providing services on behalf of government, and/or state, community and/or private colleges/universities that required these good, commodities and/or services.

Notification and Reporting

The Contractor agrees to notify the issuing jurisdiction of those entities that wish to use any contract resulting from this solicitation and will also provide usage information, which may be requested. The Contractor will provide the copy of the solicitation and resultant contract documents to any requesting jurisdiction or entity.

Contract Agreement

Any jurisdiction or entity using the resultant contract (s) may enter into its own contract with the successful Contractor (s). There shall be no obligation on the party of any participating jurisdiction to use the resultant contract (s). Contracts entered into with a participating jurisdiction may contain general terms and conditions unique to that jurisdiction Including, by way of illustration and not limitation, clauses covering minority participation, non-discrimination, indemnification, naming the jurisdiction as an additional insured under any required Comprehensive General Liability policies, and venue.

Mid-Atlantic Purchasing Team:

- List of participating jurisdictions including Alexandria Public Schools, Frederick, Maryland, Northern Virginia Community College, etc.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
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TECHNICAL SPECIFICATIONS

STRATEGIC EXECUTIVE ADVISOR TO THE GENERAL MANAGER/CHIEF EXECUTIVE OFFICER AND WMATA BOARD OF DIRECTORS

Purpose. The Contractor will serve as a strategic executive advisor to the WMATA General Manager/Chief Executive Officer (GM/CEO) with a dotted line to the Board of Directors through a Special Task Force consisting of 4 Board members (composed of members from each of DC, MD, VA and the federal government) appointed by the Board's Executive Committee and shall represent the Board in all dealings with the Consultant. The contractor shall provide professional advice and counsel to the GM/CEO and Board of Directors, which shall be deemed to be pre-decisional work for purposes of WMATA's Public Access to Records Policy until such time as the Board approves the work product as Board policy and, where provided by attorneys and covering legal work, shall be subject to the attorney-client and/or attorney work product privileges under the laws of DC, MD and VA, regarding organizational restructure and realignment initiatives, financial and operational business processes, change management, crisis management, and public relations management.

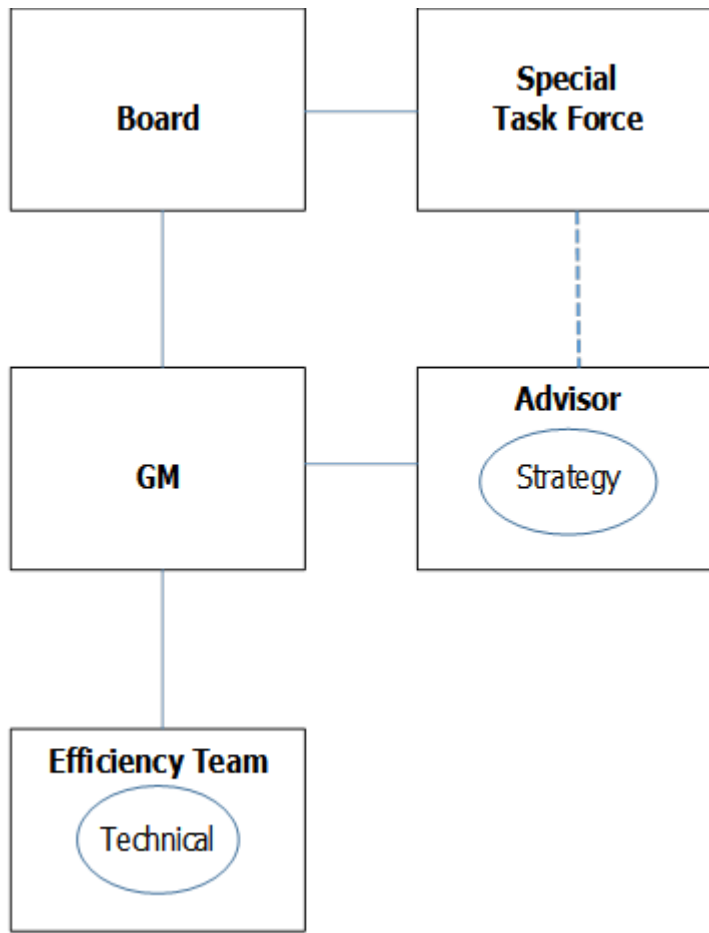
Duties. The contractor will be expected to provide for, among other duties, and not limited to, performance of the following key tasks:

- Advise the GM/CEO and Special Task Force regarding implementation strategies to address recommendations for Corrective Action Plans arising from the Management Study being conducted by a management study contractor working under contract number CQ15241 for Financial Systems and Management Operations Analysis (the "Efficiency Study"). The contractor will be kept apprised, by the Chief Procurement Officer, of those recommendations in order for the contractor to provide observations, comments, and advice to the WMATA GM/CEO and Special Task Force as appropriate. The contractor will not manage Authority operations vested with the GM/CEO;
- Advise the GM/CEO and Special Task Force with respect to design and implementation of specific restructuring initiatives that will lead to safety and efficiency improvements;
- Advise the GM/CEO and Special Task Force on the development and implementation of operational and financial restructuring initiatives, ensuring consistent relationships and controls in accordance with the by-laws of the Board to allow the Authority to operate and maintain a safe, reliable and effective transit system that enhances mobility, improves the quality of life, in order to stimulate economic development in the Washington metropolitan area;
- Advise and collaborate with the Chief Financial Officer (CFO), as needed and with approval of the GM/CEO, in negotiations with the Authority's creditors and stakeholders, including, among others, the Authority's funded debt holders, employees, retirees, constituent entities, and others;
- Advise the GM/CEO and Special Task Force on resolution strategies for potential complex financial and operational restructuring matters that may arise from initial review and analysis stage. Such advice may include collaboration with the Authority General Counsel on negotiation and or mediation, and, if necessary, preparing any necessary pleadings as approved by the Authority, and, if necessary support for litigation from inception through final appeal, up to and including counsel about appropriate litigation resolution of any such litigation;
- In collaboration with the GM/CEO and Special Task Force, participate in meetings with Authority staff, the public, and other key public and private stakeholders,

- interested parties, and regulatory authorities; and
- Utilizing existing data and reports, produce a comprehensive public report, which upon approval by the Special Task Force and the GM/CEO, will be submitted to the Board of Directors for its approval, outlining, among other things, the following:
 - Key objectives for WMATA's financial restructuring and operational revitalization;
 - Comparison of WMATA with other transit systems on various performance and operational metrics (e.g. accidents, on-time performance, railcar maintenance, pensions, collective bargaining and labor cost, insurance, internal compliance, and legal policies). Such comparisons shall be based on the work/report prepared by the contractor under the "Efficiency RFP"; the strategic advisor's responsibility is to provide recommendations regarding the comparative data.
 - Proposal to revitalize WMATA operations and restructure WMATA finances;
 - High-level overview of a transition plan; and
 - Calendar of events, public meetings and contact information for coordinating next steps.

A draft of the comprehensive public report shall be due to the Board on the 90th day after contractor begins work. The report shall not be made public until approved by the Board by public vote after consultation with the GM/CEO. The comprehensive public report should establish the narrative surrounding, and set the table for, WMATA's restructuring, upon acceptance by the GM/CEO and the Board following collaboration with the efficiency study contractor regarding restructuring recommendations of the efficiency contractor. The report should serve as the blueprint that guides future restructuring phases and negotiations with creditors and other stakeholders. With approval and participation by the GM/CEO, the report should be taken on a "road show" and be presented to creditors and other stakeholders, and the general public.

Reporting Structure: The below cited organization chart depicts the chain of command and communications flow to be used by the efficiency contractor; the strategic advisor to the General Manager/CEO; the Special Task Force, and the Board of Directors during the conduct of contract performance.



As depicted, the contractor is a direct report to the GM/CEO; with informal communication and access to the Board, the Special Task Force, and the efficiency contractor. The contractor’s formal advice and recommendations are presented to the GM/CEO for approval in collaboration with the Special Task Force. The contractor is expected to work collaboratively and keep all these parties informed of major Board initiatives to be undertaken in furtherance of this contract before their public announcement.

Reports. The contractor will meet, at a minimum, weekly with the GM/CEO and once every other week with the Board or the Board-designated Special Task Force. The Contractor shall file monthly reports to the Chief Procurement Officer through his designated Contracting Officer’s Technical Representing (the GM/CEO). These reports shall be filed with the WMATA Board Chairman, and members of the Board’s executive committee, and distributed by the Board Secretary to all Board members. The reporting shall begin 30 days after receipt of award notification on this contract and shall establish and maintain an appropriate protocol for ongoing communications with officials of the WMATA Board, jurisdictional representatives, and the media. These reports will include specific performance updates against all agreed upon corrective action plans. The advisor will recommend to the Board and the GM/CEO a public release of information strategy, including message framing, and prioritization of issues, etc.

Period of Performance: The period of performance for this contact shall be for one 6-month base period and one option period. Option one period is for an additional 12 months. The “Option One” period extension may be exercised by the request of the Board to WMATA no later than 60 days prior to the end of the initial 6 month base period. The intent of the option

period one is to facilitate testing, implementation, evaluation, and refinement of restructuring and revitalization initiatives and seek value propositions and ideal scenarios with creditors and other stakeholders. Option period one will also focus on transition plan and ongoing oversight strategies that support GM/CEO authority over day-to-day activities of WMATA's finances and operations; structured withdrawal of professional advisors and wind-down of restructuring efforts by implementing monitoring and control mechanisms to identify or anticipate problems such that WMATA can address them at their nascent, or beginning, stages.

COMPENSATION FOR SERVICES PROVIDED

The Contractor shall be paid a retainer for top level expertise and multi-disciplinary team expertise to ensure a coordinated approach to any task is efficient and cost-effective. It is understood that an hourly rate per team member is acceptable.

Retainer and expenses for this contract, as proposed by the contractor are cited below:

Retainer and team member rates

Estimated expenses

If this Contract is terminated after the Contractor has provided services for a portion of a month, he/she shall be entitled, for that portion of that month, for which services and resources were provided on contract tasking. The contractor shall not receive or accept any compensation from the WMATA Board except as provided for in this contract.

Payment for Services. The contractor shall be paid on a monthly basis consistent with the established written policies and procedures of the contract.

Reimbursement for Actual and Necessary Expenses. The actual and necessary expenses of the Contractor, including customary expenses related to travel, meals, and lodging which are incurred in connection with service to WMATA will be reimbursed by WMATA. No reimbursement will be made for overtime, local meals, postage, fax, copying and printing expenses. The contractor shall provide a projected travel and expense budget to the Chief Procurement Officer/Contracting Officer for approval in advance of projected travel and expenses.

The Contractor shall provide original copies of all receipts for meals, lodging, and travel reimbursement with any request for reimbursement. Any reimbursement for expenses under this contract shall be reviewed and approved in writing by the Contracting Officer. First class air travel expenses shall not be reimbursed by WMATA.

GLOSSARY OF DEFINITIONS

As used throughout this Contract, except to the extent otherwise expressly specified, the following terms shall have the meanings set forth below:

Acceptance: Acknowledgment by the Authority that the supplies, services, or other Work conform to the applicable contract requirements.

Acceptance Period: The number of Days available to the Authority to award a Contract pursuant to this Invitation from the date of opening of Bids in accordance with the terms of this solicitation, during which period Bidders may not withdraw their Bids.

Agreement: The Authority's form titled "Construction Contract Form" in this Invitation for Bid (IFB) that, upon execution by the Contractor and the Authority, creates the Contract between the two parties.

Amendment: Written instructions issued prior to the date set for receipt of Proposals or Best and Final Offers to clarify, revise, add or delete requirements of the Request for Proposals.

Amendment: Written or graphic instructions issued to clarify, revise, add, or delete requirements issued prior to the Bid opening date.

Approval of a Submittal or any other item shall be solely for the purpose of establishing conformance to the Contract Documents.

Approved equal: An item or service approved by WMATA as equivalent to brand name item or other service originally specified.

Article: One of the provisions of this Contract, each identified separately by number and title, which may contain subdivisions denominated as Paragraphs and Subparagraphs.

As shown, as indicated, as detailed or words of similar import: Shall be understood to mean that the reference is made to the Contract Documents.

As specified, as described, or words of similar import: Shall be understood to mean that the reference is made to the Contract Documents.

Authority or WMATA or Metro: The Washington Metropolitan Area Transit Authority, created effective February 20, 1967, by Interstate Compact by and between Maryland, Virginia and the District of Columbia pursuant to Public Law 89-774, approved November 6, 1966.

Best and Final Offers: A Revision to the initial Proposal submitted at the request of the Contracting Officer, generally following Discussions, upon review of which the Authority will render a determination as to the successful Offeror for purposes of contract award.

Board of Directors: The Board of Directors of the Washington Metropolitan Area Transit Authority.

Brand name: Identification of an item or service that is produced or controlled by one or more entities, including trademarks, manufacturer names, or model names or numbers that are associated with a manufacturer.

Breach: An unexcused and unjustifiable failure or refusal of a party to satisfy one or terms of the Contract which, if material, shall constitute a basis for potential default.

Chapter: one of the eleven principal divisions of the Contract terms, each identified by separate name and roman numeral, and each containing multiple numbered Articles.

Change or Change Order: A written alteration issued, upon agreement of both parties or unilaterally by the Authority, to modify or amend the Contract, generally directing changes to the Scope of Work and/or contract terms.

Claim: A written demand or assertion by the Contractor seeking, as a legal right, the payment of money, adjustment or interpretation of Contract terms, or other relief, arising under or relating to this Contract.

Clarifications: Exchanges between the Authority and one or more Offerors of a limited nature, whereby Offerors may be given the opportunity to clarify certain aspects of their Proposals or to resolve minor irregularities, informalities or clerical errors.

Competitive Range: Those initial Proposals which are determined by the Authority to have a reasonable chance of being selected for award and which may thereupon be selected for additional negotiations or Discussions to the extent deemed appropriate by the Contracting Officer. Proposals not in the competitive range are given no further consideration.

Constructive Change: An act or omission by the Authority that, although not identified as a Change Order, does in fact cause a change to the Work of the Contract.

Contract or Agreement: The written agreement executed between the Authority and the Contractor awarded pursuant to this Solicitation and covering the Work as set forth in the Contract Documents.

Contract Administrator: the Authority representative designated to serve as its primary point of contact for pre-award activities relating to this Solicitation as well as such post-award activities as are set forth in the Contract Documents.

Contract Documents: All of the documents encompassed within and accompanying this Request for Proposals, including the Offer and Award sheets, Price Schedule, Solicitation Instructions, Representations and Certifications, General and Special Provisions, Scope of Work, Change Orders issued subsequent to award of the Contract, and the Contractor's Proposal to the extent finally accepted by the Authority.

Contracting Officer: An employee with authority duly delegated from the powers of the Chief Procurement Officer to legally bind the Authority by signing a contractual instrument. The Contracting Officer is the Authority's primary point of contact for pre-award administration, Modifications above the limits of the Contracting Officer Representative, and Final Settlement.

Contracting Officer Representative: The person to whom the Contracting Officer delegates the authority and responsibility for post award execution of the Contract. The Contracting Officer Representative is the Authority's primary point of contact with its Contractor.

Contractor: The individual, partnership, firm, corporation, or other business entity that is contractually obligated to the Authority to furnish, through itself or others, the Supplies, Services and/or construction services described in the Contract, including all incidentals which are necessary to complete the Work in accordance with the Contract.

Contract Price: The amount payable to the Contractor under the terms and conditions of the Contract based on lump sum prices, unit prices, fixed prices, or combination thereof, with any adjustments made in accordance with the Contract.

Data: Recorded information, regardless of form or the media on which it may be recorded, including technical data and computer software.

Day: Calendar day, except where the term business day, work day or like term is used.

Designer: The individual, partnership, firm, corporation or other business entity that is either the Contractor, or employed or retained by the Contractor, to manage and perform the design services for the Project.

Descriptive literature: Information provided by an Offeror , such as cuts, illustrations, drawings, and brochures that shows a product's characteristics or construction of a product or explains its operation. The term includes only that information needed to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

Discussions: Negotiations or exchanges relating to the Solicitation between an Offeror and the Authority that may occur after receipt of Proposals (generally after establishment of the Competitive Range) and before award, that may, at the Contracting Officer's discretion, result in the Offeror being allowed to revise its Proposal or be followed by a request by the Contracting Officer for receipt of Best and Final Offers.

Evaluation Criteria: Those factors to be considered by the Authority, as set forth in the Solicitation Instructions accompanying this RFP, in determining the successful Proposal.

Explanation: Additional information or clarification provided by an Authority representative to one or more prospective Bidders [**Proposers**] in response to an inquiry relating to the Solicitation, which information or clarification shall be binding upon the Authority only to the extent specified in the Solicitation Instructions.

Equivalent: Of equal or better quality and/or performance to that specified in the Contract Documents, as determined by the Authority.

Final Acceptance: Final acceptance of the work occurs when the work is fully, completely, and finally accomplished in strict compliance with the contract documents to the satisfaction of the Authority.

Final Payment: The last payment to the Contractor for Work performed under the Contract, made following Final Acceptance.

Force Majeure: An unforeseen event or circumstance, beyond the control of, and not occasioned by the fault or neglect of, the Contractor (including subcontractors at any tier) or the Authority, which event gives rise to a delay in the progress or completion of the Work of the Contract, including, without limitation, acts of God, acts of war or insurrection, unusually severe weather, fires, floods, strikes, freight embargoes or other events or circumstances of like nature.

General Conditions: A compilation of contractual and legal requirements that lists the rights, responsibilities, and relationships of the parties to a contract and defines duties and limits of authority for design professionals and construction management in performance of contract administration.

Industry Standards: Drawings, documents, and specifications or portions thereof published by industry organizations. Industry Standards are not Contract Documents unless specifically listed as such in a WMATA Standard Specification or WMATA Guide Specification.

Jurisdictional Authority: Refers to Federal, State, and local authorities or agencies having approval authority over work to which reference is made.

Legal Requirements: All federal, state and local laws, ordinances, rules, orders, decrees, and regulatory requirements such as: building codes, mechanical codes, electrical codes, fire codes, Americans with Disabilities Act Accessibility Guidelines (ADAAG) regulations and other regulations of any government or quasi-government entity that are applicable to the Project.

Milestone: A specified date in the Contract by which the Contractor is required to complete a designated portion or segment of the Work.

Minor Irregularity: A variation from the Solicitation contained in a Proposal that does not affect the price or other material term of the Contract and does not confer a competitive advantage or benefit not enjoyed by other Offerors or adversely impact the interests of the Authority.

Notice to Proceed: Written notice issued by the Authority establishing the date on which the Contractor may commence Work and directing the Contractor to proceed with all or a portion of the Work.

Offeror: A party submitting a Proposal in response to this Solicitation.

Option: A unilateral right in the Contract by which, for a specified time, the Authority may elect to purchase, at a predetermined specified price, additional Supplies, Services and/or Work called for by the Contract or to extend the term of the Contract.

Organizational conflict of interest: A circumstance in which, because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Authority, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Paragraph: A subdivision of an Article contained in this Contract, generally introduced through a non-capitalized letter (e.g. "(a)").

Period of Performance: The time allotted in the Contract Documents for completion of the Work. The Period of Performance begins upon the effective date of the Notice to Proceed and ends on the date of Acceptance. Period of Performance incorporates the Milestones established for the Contract.

Pre-award Survey: An evaluation of a prospective Contractor's capability to perform a proposed Contract, including an assessment of matters relating to its responsibility.

Product Data: Information furnished by the Contractor to describe materials used for some portion of the Work, such as written or printed descriptions, illustrations, standard schedules, performance charts, instructions, brochures, and diagrams.

Project: The construction of the facility described in the Contract Documents.

Proposal: A submission by an Offeror to the Solicitation that, if accepted by the Authority, would bind the Offeror to perform the resultant Contract.

Punch List: Work that remains to be completed after Substantial Completion. This Work must be completed as a condition of Final Completion and Acceptance.

Records: Books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

Request for Information (RFI): The document by which the Offerors or Contractor request clarification, verification, or information concerning a portion of the RFP or the Work.

Revision: A change to a Proposal made by an Offeror, at the request of or as allowed by the Contract Administration or Contracting Officer, often as a result of Discussions. Best and Final Offers are one form of Revision.

Services: The performance of Work by a person or legal entity under contract with the Authority, including without limitation: maintenance; overhaul; repair; servicing; rehabilitation; salvage; modernization or modification of supplies, systems or equipment; routing recurring maintenance of real property; housekeeping; operation of Authority-owned equipment, facilities and systems; communication services; Architect-Engineering services; professional and consulting services; and transportation and related services.

Subparagraph: A subdivision, at any tier, of a Paragraph contained in an Article of this Contract.

Supplies: The end item(s) required to be furnished by the Contractor in fulfillment of its obligation under this Contract as well as any and all related services and required performance.

Statement of Work/Scope of Work (“SOW”). The portion of a contract or Request for Proposal that describes specifically what is to be done by the contractor. It may include specifications, performance outcomes, dates and time of performance, quality requirements, etc.

Solicitation: This Request for Proposals (RFP) and the accompanying Contract Documents.

Shop Drawings: Fabrication, erection, layout, setting, schematic, and installation drawings prepared by the Contractor for permanent structures, equipment, and systems designed by it to comply with the Contract Documents.

Similar: Generally the same but not necessarily identical; details shall be worked out in relation to location and relation to other parts of the Work.

Site: The areas that are occupied by or used by the Contractor and Subcontractors during performance of the construction of the Project as indicated in the Contract Documents.

Subcontract: An agreement between the Contractor and another party, or between other subcontractors at any tier, to perform a portion of the Work of the Contract through the acquisition of specified supplies, materials, equipment or services.

Subcontractor: An individual, firm, partnership, or corporation that has a contractual obligation with the Contractor or other Subcontractor or Supplier.

Submittal: Written or graphic document or Sample prepared for the Work by the Contractor or a Subcontractor or Supplier and submitted to the Authority by the Contractor, including Shop Drawings, Product Data, Samples, certificates, schedules of material, or other data.

Substantial Completion: Work or a portion thereof that has progressed to the point where it is sufficiently complete in accordance with the Contract Documents (including receipt of test and inspection reports) so that the Work, or a specified portion thereof, can be utilized for the purpose for which it is intended, and only incidental work remains for physical completion of the Work in accordance with the Contract Documents.

Substitution: An item offered by the Contractor of significant difference in material, equipment, or configuration, which functionally meets the requirements of the Contract Documents but is submitted in lieu of item specified therein.

Supplementary Conditions: The term Supplementary Conditions means modifications to the General Conditions for requirements unique to a specific project.

Supplier: A Subcontractor who is a manufacturer, fabricator, supplier, distributor, or vendor having a contract with the Contractor or with another Subcontractor to furnish items, materials or equipment to be utilized or incorporated in the Work of the Contract.

Utility: A public and private facility or installation, other than a WMATA system facility, which relates to (1) the conveyance and supply of water, sewage, gas, chemicals, steam, petroleum products, and other piped installations, or (2) electrical energy, telephone, telegraph communications, radio, television, and cellular or wireless communications.

Utility Standards: Drawings and specifications for Utilities published or issued by municipalities or Utility companies.

Wherever in the Contract, the words directed, ordered, designated, prescribed or words of like import are used, it shall be understood that the direction, requirement, order, designation or prescription of the Contracting Officer is intended and similarly the words approved, acceptable, satisfactory or words of like import shall mean approved by, or acceptable to, or satisfactory to the Contracting Officer, unless otherwise expressly stated.

WMATA Safety Manual: A compilation of the appropriate safety and reporting requirements for the Project as specified in, WMATA SAFETY AND SECURITY REQUIREMENTS.

WMATA Safety and Security Certification Program Plan: A compilation of the appropriate System safety and security certification requirements for the Project.

Work: All of the services of any kind, as well as any and all goods, supplies, equipment, labor, material, delivery and other work of any type and nature to be furnished and/or performed pursuant to a Contract awarded through this Solicitation such as to accomplish the Contract's stated objectives in a timely and fully satisfactory manner.