



# **Request For Proposal**

**[Non-Federal]**

## **Various Inventory Items for CMNT**

**RFP No.:CQI16034**

**Publish Date: September 16, 2015**

**Proposal Due Date: October 13, 2015, 2:00 PM**

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

RFP: CQ116034

Date: September 16, 2015

Washington Metropolitan Area Transit Authority (WMATA) is seeking proposals from qualified firms to provide various inventory items. When possible, WMATA will evaluate alternate parts to potentially add to WMATA's Quality Product List (QPL).

A pre-proposal conference will not be held. Your proposal must be submitted in accordance with RFP terms and emailed to [prmt\\_inventory@wmata.com](mailto:prmt_inventory@wmata.com). Proposals must be emailed no later than 2:00 PM on October 13, 2015.

If you have any questions, Technical, Contractual or Administrative, please email them to the Contract Administrator, Lily Cheung at [prmt\\_inventory@wmata.com](mailto:prmt_inventory@wmata.com) no later than 12:00 Noon on October 2, 2015. WMATA will provide written answers via amendment published on the same web address.

Required proposal documents from vendors offering products on WMATA's Quality Product List:

1. Solicitation, Offer & Award Form
2. Acknowledgement of Amendment(s) (if any)
3. Price and Delivery Schedule
4. Pre Award Survey
5. Representations and Certifications
6. Certificate of Insurance

Required documents from vendors who has not previously sold WMATA the proposed parts:

1. Items 1 through 6 above
2. Letter stating you are an authorized distributor / supplier for the manufacturer, and
3. Physical characteristics, properties, specifications and drawing of the proposed part

Required documents from vendors seeking to be added to WMATA's QPL for each part to be included under Technical Proposal, Volume II:

- A. Items 1 through 6 above
- B. Submission of proof which illustrates that the product complies and adheres to appropriate industry standards for form, fit and function, including but not limited to ASTM, FMVSS, MIL, SAE or UL;
- C. Accredited Independent Laboratory analysis report on the proposed part;
- D. Physical characteristics, properties, specifications and drawing of the proposed part;
- E. Copy of Quality Assurance Program and Quality Assurance Manual for the proposed part; or,
- F. Contact names and telephone numbers of other Municipalities with Transit fleets and/or other users that utilize the proposed part.

Sincerely,

Contracting Officer  
Office of Procurement and Materials

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

INTRODUCTORY INFORMATION  
SOLICITATION CERTIFICATIONS PAGE

CQI16034

Various Inventory Items

APPROVED FOR RELEASE

  
Project Manager/Office Designee

15 Sept 2015  
Date

  
Contracting Officer

Sept 15, 2015.  
Date

  
COUN

14 SEP 2015  
Date

END OF SECTION

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**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 online;
- 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](mailto:procurement@wmata.com).



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SOLICITATION, OFFER AND AWARD

CONTRACT NO.	SOLICITATION NO. RFP CQ116034	DATE ISSUED Sept 16, 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 0 copies for furnishing the supplies or services in the schedules will be received at Authority until 2:00 P.M. local time October 13, 2015  
(Hour) (Date)

**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 General Provisions, 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 Phone Number** \_\_\_\_\_ **Offeror's Fax Number** \_\_\_\_\_

**SCHEDULE**

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
					\$

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
See Price Sheet			

The total amount of this award is \$ See Price Sheet

Lily Cheung \_\_\_\_\_ WASHINGTON METROPOLITAN TRANSIT AUTHORITY \_\_\_\_\_ AWARD DATE \_\_\_\_\_  
Name of Contracting Officer (Print of Type)



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SOLICITATION, OFFER AND AWARD

**ACKNOWLEDGEMENT OF AMENDMENT**

THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF THE FOLLOWING AMENDMENTS

TO SOLICITATION   **RFP CQI16034**  

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

**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**

**1. 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.

**2. 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.

**3. 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.

**4. 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

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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.

5. **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](http://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.

SIGNATURE BLOCK FOR ALL REPRESENTATIONS AND CERTIFICATIONS	
Name of Offeror: _____	
Name and Title of Authorized Representative: _____	
_____	_____
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 Offeror?

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: \_\_\_\_\_

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? %.

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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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**PRICE SCHEDULE SHEET INSTRUCTIONS**

Electronic spreadsheets have been included with the solicitation to be used as the worksheet for the Offeror’s submittal of pricing, lead times, comments regarding packaging or other relevant item information, and basic technical information. **Please submit Price Schedule Sheet as an Excel format.**

**Part Number (P/N)** – The approved WMATA part numbers are shown in the columns labeled “**Vendor P/N 1, Vendor P/N 2, Vendor P/N 3, etc.**”

Offeror shall indicate the Manufacturer/Brand Name, the part number, and the delivery/lead time for each item proposed. Failure to do so may necessitate rejection of the proposal in part or in its entirety.

If Offeror is proposing an alternate part rather than one of the approved part numbers, then Offeror must provide the following documentation as part of the Technical Volume 2:

- 1) Submission of proof which illustrates that the product complies and adheres to appropriate industry standards for form, fit and function, including but not limited to ASTM, FMVSS, MIL, SAE or UL
- 2) Accredited Independent Laboratory analysis report(s) on the proposed part.
- 3) Physical characteristics, properties, specifications and drawing of the proposed part.
- 4) Copy of Quality Assurance Program and Quality Assurance Manual for the proposed part.
- 5) Contact names and telephone numbers of the other Municipalities with Transit fleets and other users that utilize the proposed part.

Space is provided on the price sheet for you to indicate that you have provided these documents. Please indicate for each part that you are proposing an alternate, that you have provided the required documentation.

**First Article Inspection (FAI).** For Non Approved Suppliers of a Part(s) which is not provided by the OEM or a previous supplier and/or which is not an approved P/N, will be required to go through an engineering qualification and FAI process. The costs incurred for this process will be the responsibility of the Offeror, whether approved or disapproved.

During the process of a new supplier becoming qualified for a particular part, WMATA reserves the right to purchase from the originally approved supplier or OEM until the engineering qualifications and FAI are completed.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Date

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

**RFP SOLICITATION INSTRUCTIONS**

**1. INTRODUCTION**

- (a) The Authority seeks to award a contract to various inventory items. 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) The Authority contemplates award of an Indefinite Delivery Indefinite Quantity contract. IDIQ will be for a minimum quantity specified on the Price Sheet and maximum amount of \$250,000, inclusive of options. Unless otherwise specified in the Price Schedule, the Authority reserves the right to make multiple awards pursuant to this Solicitation. The Contractor shall honor any order exceeding the maximum order limitations in paragraph.
- (c) This Solicitation seeks to award an IDIQ Contract for the supplies/equipment or services specified, and effective for the period of one year from award date. Offerors are advised that the quantities of supplies or services specified in the Price Schedule are estimates only, included for purposes of price evaluation and in order to provide information to assist the Offerors in formulating their Proposals. While they represent the Authority's best such estimate as of the time of the solicitation, they do not constitute a commitment on the part of the Authority to procure supplies or services at the estimated level.

**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:

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.

**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.



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- (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 general and special provisions, technical specifications or scope of work, and contract drawings, must be requested in writing by October 2, 2015, Noon, 12:00PM. All such requests should be submitted via e-mailed 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. 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.

**7. ACKNOWLEDGMENT OF AMENDMENTS**

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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.

8. **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.

9. **PROPOSAL FORMAT INSTRUCTIONS/REQUIREMENTS**

Offerors shall submit their Proposals via email only as follows:

(a) Proposal Format

Volumes shall be submitted in the following order with RFP number and the Proposer's identity clearly identified:

(1) Volume I – Cost/Price - One (1) original and any required copies of the cost/price proposal

(2) Volume II – Technical - One (1) original and any required copies of the technical proposal (**Shall not include cost/price information**). **If Offeror is proposing alternate part, then please include:**

- A. Submission of proof which illustrates that the product complies and adheres to appropriate industry standards for form, fit and function, including but not limited to ASTM, FMVSS, MIL, SAE or UL;
- B. Accredited Independent Laboratory analysis report on the proposed part;
- C. Physical characteristics, properties, specifications and drawing of the proposed part;
- D. Copy of Quality Assurance Program and Quality Assurance Manual for the proposed part; or,
- E. Contact names and telephone numbers of other Municipalities with Transit fleets and/or other users that utilize the proposed part.

(3) Volume III – Contractual - One (1) original and any required copies of the completed signed solicitation documents to include Representations, Certifications, Pre-Award Data, Certificate of Insurance, and Amendments, if any.

(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) Contractual. Contractual documents shall contain a completed signed Solicitation, Offer and Award Form and include Representations, Certifications, Pre-Award Data, Certificate of Insurance, 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.

10. **LATE SUBMISSIONS AND REVISIONS OF PROPOSALS**

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- (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 via email to PRMT\_inventory@wmata.com.
- (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.
- (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.

**11. 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.

**12. 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.

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

**13. EVALUATION CRITERIA AND BASIS FOR AWARD**

**TECHNICALLY ACCEPTABLE – LOW PRICE**

- (a) The Authority will award a contract resulting from this Solicitation to the responsible Offeror(s) whose Proposal conforms to the Solicitation and is determined to be the lowest priced among those Proposals rated “Technically Acceptable.” For purposes of determining whether a Proposal is “Technically Acceptable” for this Solicitation, the following Evaluation Criteria shall apply if Offeror is proposing an alternate part:
  - 1) Submission of proof which illustrates that the product complies and adheres to appropriate industry standards for form, fit and function, including but not limited to ASTM, FMVSS, MIL, SAE or UL;
  - 2) Accredited Independent Laboratory analysis report(s) on the proposed part;
  - 3) Physical characteristics, properties, specifications and drawing of the proposed part;
  - 4) Copy of Quality Assurance Program and Quality Assurance Manual for the proposed part; or,
  - 5) Contact names and telephone numbers of the other Municipalities with Transit fleets and other users that utilize the proposed part.

Required documents from vendors proposing a part on a QPL but who has not previously sold the part to WMATA:

- 1) Letter stating you are an authorized distributor / supplier for the manufacturer, and
- 2) Physical characteristics, properties, specifications and drawing of the proposed part

The Authority will award to technically acceptable lowest price and may also issue delivery orders to those Offerors who during the period of performance become approved and placed on the Authority’s QPL.

- (b) As the Authority reserves the right as described above to award the Contract without Discussions or further communication concerning the Proposals received, the Proposal should contain the Offeror’s best terms from both a price and technical standpoint. Notwithstanding the foregoing, the Authority reserves the right to engage in oral or written communications with Proposers to the extent, if any, so determined by the Contracting Officer.
- (c) Price evaluation will be based on the total cost to the Authority for base year requirements plus any options.
- (d) The elements of the technical proposal will be rated in accordance with the Evaluation Criteria. Only those Proposal(s) as are deemed acceptable in terms of their overall technical merit shall remain eligible for potential award.

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**14. PRICE PROPOSAL EVALUATION**

- (a) With respect to Lowest Price-Technically Acceptable RFPs, 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.

**15. TECHNICAL PROPOSAL EVALUATION**

The Authority will evaluate the technical proposals in accordance with the elements of the Evaluation Criteria set forth in paragraph 13 above. A Proposal which fails to demonstrate that it meets or surpasses an acceptable level with respect to each such element may be deemed technically unacceptable and thus ineligible for award regardless of price.

**16. 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.
- (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](http://www.sam.gov).

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- (3) Disadvantaged Business Enterprise data as set forth in Appendix B. Note: As described above, the submittal of certain items and request for waiver (if applicable) are required if the Proposal is \$100,000 or greater. Failure to submit forms B-12, B-13, and/or request for waiver (if applicable) may cause the Proposal to be rejected. A failure on the part of an Offeror to supply the information requested in this paragraph or otherwise fully cooperate with the Authority's inquiry may result in a determination that the Offeror is not responsible for purposes of this Solicitation and thereby ineligible for award.

**17. CONTRACT AWARD**

- (a) At the conclusion of the process described in paragraph 14 above, the Authority will award a contract resulting from this Solicitation to the responsible Offeror(s) 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.

**18. 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

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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.

**19. 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:

- (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."

**20. 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.

**21. BRAND NAME OR EQUAL**

- (a) If items called for by this RFP have been identified in the Price Schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Proposals offering "equal" products including products of the brand name manufacturer other than the one described by brand name will be considered for award if such products are clearly identified in the proposals and are determined by the Authority to meet fully the salient characteristics (physical, functional, or performance) requirements in the RFP.
- (b) Unless the Offeror clearly indicates in its Proposal that it is offering an "equal" product, the Proposal shall be considered as offering a brand name product referenced in the RFP.
- (c) If the Offeror proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished in the space provided in the RFP, or such product shall be otherwise clearly identified in the Proposal. The determination as to equality of the product offered shall be at the sole discretion of the Authority.

CAUTION TO OFFERORS. WMATA is not responsible for locating or securing any information which is not identified in the Proposal and reasonably available to the Authority. Accordingly, to ensure that sufficient information is available, the Offeror must furnish as a part of its Proposal all descriptive

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material (such as cuts, illustrations, drawings, or other information) necessary for the Authority to determine whether the product offered meets the salient characteristics requirements of the RFP.

The information furnished may incorporate by specific reference information previously furnished or otherwise available to the Authority. If the Offeror proposes to modify a product so as to make it conform to the requirements of the RFP, it shall (i) include in the Proposal a clear description of such proposed modifications, and (ii) clearly mark any descriptive material to show the proposed modifications.



**TERMS AND CONDITIONS**

## **CHAPTER I – GENERAL PROVISIONS**

### **1. AGREEMENT**

The Work to be performed under this Contract may briefly be described as various inventory items. 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) Special Provisions; (b) General Provisions; (c) the specifications or scope of work; (d) drawings, if any; (e) other documents, exhibits, and attachments generated by the Authority as part of the Contract Documents; (f) 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. 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 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.

**5. 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.

**6. 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.

## **CHAPTER II – TIME/DELAYS/LIQUIDATED DAMAGES**

### **1. PERIOD OF PERFORMANCE**

The period of performance is one year commencing on the date of award with one option period.

### **2. 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.

## **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.

### **2. INSPECTION OF SUPPLIES**

- (a) The Contractor shall provide and maintain an inspection system acceptable to the Authority covering Supplies under this Contract and shall tender to the Authority for Acceptance only Supplies that have been inspected in accordance with the inspection system and found by the Contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing the nature and result of all inspections. These records shall be made available to the Authority during the term of the Contract and thereafter in accordance with the

provisions of the AUDIT AND INSPECTION OF RECORDS article of the Contract. The Authority may perform reviews and evaluations as reasonably necessary to ascertain compliance with this Article. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of its obligations under the Contract.

- (b) The Authority has the right to inspect and test all Supplies called for by the Contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The Authority shall perform inspections and tests in a manner that will not unduly delay the work. The Authority assumes no contractual obligation to perform any inspection and/or test nor shall the Authority's failure to perform any inspection or test relieve the Contractor of any obligation under the Contract.
- (c) If the Authority performs inspection(s) or test(s) on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional cost, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (d) When Supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor any additional associated cost. The Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes re-inspection or retest necessary.

### **3. ACCEPTANCE OF SUPPLIES**

- (a) The Authority shall accept or reject tendered Supplies as promptly as practicable after delivery, unless otherwise provided in the Contract. In no event shall a failure of the Authority to inspect and/or accept or reject the Supplies relieve the Contractor from responsibility, nor impose liability upon the Authority, for nonconforming supplies.
- (b) Acceptance by the Authority shall be deemed conclusive, except for latent defects, fraud, willful misconduct or as otherwise provided in the Contract. In such instances, the Authority, in addition to any other rights and remedies provided by law, or under other provisions of this Contract, shall have the right:
  - (1) To direct the contractor, at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or, if so determined by the Contracting Officer, at the Contractor's facility, and in accordance with a reasonable delivery schedule as may be agreed upon between the parties; provided, that the Contracting Officer may effectuate an adjustment reducing the contract price if the Contractor fails to meet such delivery schedule. The Authority may request Return Merchandise Authorization (RMA) for nonconforming shipment or warranty returns. Contractor's RMA will also include a pre-paid return shipping label. Supplier may select shipment method. Contractor shall issue RMA and pre-paid return shipping label within 5 business days of notification by the Authority.; or
  - (1) Within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, effectuate an appropriate price adjustment, reducing the contract price, as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the associated costs of transportation.

**4. NEW MATERIAL [SUPPLIES]**

Unless this Contract specifies otherwise, the Contractor represents that any supplies and components to be provided under this Contract are new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety). If at any time during the performance of this Contract, the Contractor believes that furnishing supplies or components which are not new is in the Authority's best interest, the Contractor shall notify the Contracting Officer immediately in writing. The Contractor's notice shall include the reasons for the request, along with the proposed price reduction, if any, in the event the Contracting Officer agrees to authorize the use of such supplies or components. The Contracting Officer's determination with respect to whether to so authorize the use of such supplies or components shall be final and binding and not subject to further review pursuant to the provisions of the DISPUTES article of the Contract or otherwise.

**5. CORRECTION OF DEFICIENCIES & WARRANTY**

- (a) Notwithstanding anything to the contrary otherwise set forth in this Contract, all workmanship, parts and materials furnished for all the Work shall be unconditionally warranted against failures or defects for a period of one (1) year after the item supplied is accepted, or placed in service, by the Authority, whichever is earlier. The Contractor shall accept the Authority's records with respect to the date the item was placed in service.
- (b) In the event that any Work covered by the warranty provisions fails during the warranty period, the Contractor shall repair or replace the work within five (5) days without cost or expense to the Authority.
- (c) The warranty will not apply to the extent that such failure is caused by user abuse.
- (d) Should the Contractor shall fail to repair or replace any part or do any Work in accordance with the terms of the warranty, or if immediate replacement or Work is necessary to maintain operation of the item supplied, the Authority shall have the right to cause such replacement to be made, utilizing its own forces and/or those of third parties as the Authority shall reasonably deem appropriate, such work being at the expense of the Contractor.
- (e) Each piece of equipment, component or part thereof that is replaced, repaired, adjusted or serviced in any manner under the terms of warranty by the Contractor during the warranty period shall be reported to the Contracting Officer on forms supplied by the Authority. Each report shall indicate in detail all repairs, adjustments and servicing to each and every component, unit or parts thereof.
- (f) Any warranty or retrofit work shall be accomplished with minimum disruption to Authority operations and its maintenance and service facilities. The Authority shall at its sole discretion determine the availability of facilities for warranty or retrofit work.
- (g) The Contractor shall make available adequate service facilities, including spare parts, for all the items supplied. Trained technical service personnel shall be available to the Authority sufficient to meet its warranty obligations.
  - (1) The Contractor shall provide field service representatives who are competent and fully qualified in the maintenance and operation of the supplied items. These field service representatives shall assist the Authority in overcoming any difficulties in the operation or maintenance of the items supplied. They shall further serve as on-site representatives of the Contractor for any component failure claims or warranty claims against the Contract.

- (2) During the warranty period, a field service representative shall be available within 24 hours.
- (h) The rights of the Authority set forth in this Article shall be in addition to those set forth elsewhere in this Contract or otherwise at law or equity.

**6. FIRST ARTICLE INSPECTION**

- (a) If required by the technical specifications, the Contractor shall deliver one (1) unit to the Authority for first article (pre-production sample) tests. The shipping documentation shall contain this contract number and the Lot/Item identification. The Characteristics that the first article must meet and the testing requirements are specified in the technical specifications. Contractor will be responsible for all costs associated with First Article Inspection.
- (b) Within 10 days after the Authority receives the first article, the Contracting Officer shall notify the Contractor, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of conditional approval or approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite the reasons for the disapproval.
- (c) If the first article is disapproved, the Contractor, upon Authority request, shall submit an additional first article for testing. After each request, the Contractor shall make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the Contractor. The Contractor shall furnish any additional first article to the Authority under the terms and conditions and within the time specified by the Authority. . The Authority reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule or for any additional costs to the Authority related to these tests.
- (d) Unless otherwise provided in the Contract, the Contractor—
  - i. May deliver the approved first article as a part of the contract quantity, provided it meets all contract requirements for acceptance and was not damaged or impaired in testing; and
  - ii. Shall remove and dispose of any first article from the Authority test facility at the Contractor's expense.
- (e) The Contractor is responsible for providing operating and maintenance instructions, spare parts support, and repair of the first article during any first article test.
- (f) The Authority will inspect the first article (pre-production sample) in accordance with the contract requirements. A written report will be forwarded to the Contractor in accordance with (b) above.

**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.

(b) Unless otherwise Authorized / Directed by WMATA or the Authorities Representative, packing and markings will, at a minimum, be compliant with industry commercial standards in accordance with ASTM-D3951-98, Practice for Commercial Packing.

(c) All packing slips shall contain the following information at minimum unless otherwise Authorized / Directed by WMATA or the Authorities Representative:

- Supplier Name and Address,
- Supplier Contact Information,
- Delivery Order Release (DOR) Number,
- WMATA Stock Number,
- Item Number from the DOR,
- Manufacturers Part Number,
- Quantity Ordered,
- Quantity Shipped and Unit of Measure,
- Shipping Date, Contract Number,
- Purchase Order Number,
- Shipping Weight,
- Expiration Date, if applicable
- MSDS Identifier, if applicable
- Serial Number, if applicable
- Lot Traceability information, if applicable

## **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.

## **CHAPTER IV – INVOICES/PAYMENTS/ DEDUCTIONS**

### **1. BILLING AND PAYMENT**

- (a) 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](mailto: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. 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.

**3. 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.

## **CHAPTER V – CONTRACT TERMINATION/STOP WORK ORDERS/DISPUTES**

### **1. 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 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.

## **2. 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;
  - (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, 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.
- (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 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.

### **3. 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.

#### **4. 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 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.

**CHAPTER VI – INDEMNIFICATION/INSURANCE/RISK OF LOSS**

**1. INDEMNIFICATION**

Vendor 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), including bodily injury or death of any person or persons, and for loss or damage to any property, caused by Vendor in connection with this contract.

**GENERAL INSURANCE REQUIREMENTS**

Vendor is required to maintain the insurance coverages outlined below over the period of performance of this agreement. Insurers must have an A. M. Best rating of at least A- VII:

- Workers’ Compensation/Employer’s Liability
- Business Auto Liability
- Commercial General Liability (CGL)

**Required Minimum CGL Limits:**

\$1,000,000	Each Occurrence Limit
\$1,000,000	General Aggregate Limit
\$1,000,000	Products and Completed Operations Limit

**CGL policy shall be endorsed to add WMATA as an Additional Insured.**

**Certificate of Insurance (COI)**

Vendor shall provide WMATA a Certificate of Insurance (COI) as evidence that the insurance requirements have been satisfied. Certificates of Insurance shall be emailed to [COI@WMATA.COM](mailto:COI@WMATA.COM).

1. The Certificate Holder box should read:

Washington Metropolitan Area Transit Authority  
Office of Insurance, Room 8F  
600 Fifth Street, NW  
Washington, DC 20001
2. COI shall state the PO# and the name of the WMATA procurement contact.
3. The COI shall provide the following:
  - a. WMATA as an Additional Insured under the CGL policy.
  - b. Required insurance is primary and non-contributory.
  - c. WMATA will be provided with written notice of cancellation of any of the required insurance policies within 30 days of cancellation. Such notice shall be sent to: [COI@wmata.com](mailto:COI@wmata.com).
4. Insurance will be considered as acceptable upon receipt of a current COI meeting the requirements as listed above.

**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.

## **CHAPTER VII – 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.

- (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.

**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**

If this Contract is for the construction, alteration, or repair of a public building or public works, it is subject to the Davis-Bacon and Related Acts. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**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 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**

The Contractor agrees to comply with terms of Executive Order No. 13043 "Increasing Seat Belt Use in the United States" and is encouraged to include those requirements in each subcontract awarded for work relating to this contract.

**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**

- (a) The Contractor agrees to submit a Material Safety Data Sheet (Department of Labor Form OSHA-20), as prescribed in Federal Standard No. 313B, for all hazardous material five days before delivery of the material, whether or not listed in Appendix A of the Standard. This obligation applies to all materials delivered under this Contract which involve exposure to hazardous materials or items containing these materials.
- (b) "Hazardous material," as used in this Article, is as defined in Federal Standard No. 313B, in effect on the date of this contract.
- (c) Neither the requirements of this Article nor any act or failure to act by the Authority shall relieve the Contractor of any responsibility or liability for the safety of Authority, Contractor, or subcontractor personnel or property.
- (d) Nothing contained in this Article shall relieve the Contractor from complying with applicable Federal, state, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

- (e) The Authority's rights in data furnished under this Contract with respect to hazardous material are as follows:
- (1) To use, duplicate and disclose any data to which this Article is applicable. The purposes of this right are to (i) apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous material (ii) obtain medical treatment for those affected by the material; and (iii) have others use, duplicate, and disclose the data for the Authority for these purposes.
  - (2) To use, duplicate, and disclose data furnished under this Article, in accordance with subparagraph (e)(1) above, in precedence over any other provision of this Contract providing for rights in data.
  - (3) That the Authority is not precluded from using similar or identical data acquired from other sources.
  - (4) That the data shall not be duplicated, disclosed, or released outside the Authority, in whole or in part for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this Article applies -  
  
"This is furnished under Authority Contract No. \_\_\_\_\_ and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of ..... This legend shall be marked on any reproduction of this data."  
(End of legend)
  - (5) That the Contractor shall not place the above legend or any other restrictive legend on any data which (i) the Contractor or any subcontractor previously delivered to the Authority without limitations; or (ii) should be delivered without limitations under the conditions specified in the Article entitled Rights in Technical Data.
- (f) The Contractor shall insert this Article, including this paragraph, with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase designations or purchase orders) under this Contract involving hazardous material.

## **11. 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.

## **12. 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](mailto: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](mailto: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;
  - (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 Contractor 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 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.

**13. 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).

**14. 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.

**15. 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;
  - (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.

**16. 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.

**17. 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 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 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.

**18. 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 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.

## **CHAPTER VIII – 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 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.

## **CHAPTER IX-WMATA POLICIES**

### **1. SAFETY REQUIREMENTS**

- (a) The Contractor shall be responsible for ensuring compliance with the most stringent provisions of the applicable statutes and regulations of the District of Columbia, State of Maryland, Commonwealth of Virginia or political subdivision in which the work is being performed, as well as the METRO Construction Safety Methods Manual (1984 et. seq.) issued by the Authority, and the Department of Labor OSHA standards pertaining to the safe performance of the work. In the absence of a specific Construction Industry Standard, the Contractor would be required to comply with either an established OSHA General Industry Standard, National Institute for Occupational Safety and Health (NIOSH) guidelines, American Conference of Governmental Industrial Hygienists (ACGIH) guidelines, American National Standards Institute (ANSI) guidelines, the WMATA System Safety Program Plan, the WMATA Construction Safety Methods Manual, or the Metrorail Safety Rules and Procedures Handbook. For contracts in which work is performed on, or interfaces with the Metrorail System, the Contractor shall also comply with the publication titled Metrorail Safety Rules and Procedures Handbook. Further, the Contractor shall ensure that all methods of performing the work do not involve danger to the personnel employed thereon, the public and private property, whether or not these methods are cited or indicated in the Contract documents. Should charges of violation of any of the above be issued to the Contractor in the course of the work, a copy of each charge shall be immediately forwarded to the Authority Representative.
- (b) The contractor shall employ and assign full time to the work a Safety Superintendent. The Safety Superintendent shall have specialized training and experience in construction safety supervision and have a working knowledge of all OSHA regulations. He shall have the ability to develop and conduct safety training courses. He shall be familiar with industrial hygiene equipment and testing as required for the protection of all employees. The Safety Superintendent shall be employed exclusively for the purpose of supervising the safety of persons on or about the work and the property affected thereby. The Safety Superintendent shall also be responsible for providing first aid at the site and must have a current Red Cross First Aid Certificate. If, at any time, the work site is without the services of an approved Safety Superintendent for a period of 15 calendar days or more, the work may be closed down at the discretion of the Contracting Officer. The Safety Superintendent must be acceptable to the Contracting Officer and his performance will be reviewed by the Contracting Officer on a continuing basis. If the Safety Superintendent's effectiveness is below standard, the Contractor shall provide immediate replacement at the Contracting Officer's direction. Once employed, the Safety Superintendent shall not be changed without permission of the Contracting Officer.
- (c) The contractor shall provide, at the site of the work, a first aid kit which shall be fully equipped to meet the needs of the anticipated work force.
- (d) The contractor shall follow all appropriate RAIL Operational Rules, OAPs, SOPs and General and Special Orders while on the operational railroad and all Start-Up Rules and Manager's Notices when in a declared start-up area.

### **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.

# TECHNICAL SPECIFICATIONS

## TECHNICAL REQUIREMENTS

### 1.1 Contracting Officer's Technical Representative (COTR)

All Packaging, Handling, Storage, Transportation and Quality issues shall be directed to WMATA's designated Contracting Officer's Technical Representative (COTR). Suppliers shall be diligent in enforcing the elimination of paper debris, metal shavings, dirt, etc. within new and reusable shipping containers. Packaging, Packing Changes or Questions affecting preservation and packing shall be forwarded to the WMATA COTR for disposition through the QAAW department.

### 1.2. Shipping Information to be furnished by Supplier

**Advance Shipping Notice:** Supplier must provide WMATA's COTR with advance shipping notice no later than shipment date. Advance shipping notice shall include at a minimum a packing sheet and bill of lading containing:

#### **Packing Sheet Requirements:**

Name and Address of the Supplier

WMATA Purchase Order Number

WMATA Stock Number as it appears on the Purchase Order

The Manufacturer's Part Number Quantity Shipped and Unit of Measure

Other product specific information as applicable to each shipment. This information shall include, but not be limited to:

Rejection tag number

Variation Request number

Condition of Supply Authorization, etc.

#### **Bill of Lading Requirements:**

Supplier Name and Address

Carrier Routing

Description of freight according to the applicable freight classification (North American Freight Classification Guide)

WMATA Purchase Order Number

Number and Type of Containers

Total Weight of Shipment

### 1.3 Shelf Life (Batteries, Compressed Gases, Decals, Foams, Paints, Sealers/Adhesives, Rubber, Seat Belts and Webbing, Tapes, Tires, etc.)

Supplier shall ship items with the maximum manufacturer shelf life, guaranteeing 90% of that shelf life after receipt by WMATA. Shelf Life items are to be marked with the Date of Manufacture (DOM), Date of Expiration (DOE) and Manufacturer's suggested shelf life for product.

Rubber products shall include, but not be limited to, all types of seals and gaskets. This material shall not be kinked when packaged and/or packed for shipment. Cure dates and/or shelf life dates shall be marked on the unit, any intermediate packaging, and shipping containers.

## 1.4 Supplier Shipping and Delivery Requirements

### Product Preservation

Packaging, packing, and shipping requirements for materials, parts, and assemblies shall meet, at

a minimum, best commercial practice in accordance with ASTM D 3951-Standard Practice for Commercial Packaging. All materials, parts, and assemblies shall be able to be stored in an enclosed facility for a minimum period of one (1) year without damage or degradation to the item. If an item has a shelf life of less than one year, that shelf life will be clearly marked on the packing slip and the item will have at least 90% of its shelf life remaining upon WMATA's receipt.

Preservation and packaging factors shall include, but not be limited to:

Fragile/Non-Fragile

Sensitive to vibration or shock (electronic components, gauges, test equipment, etc.)

Hazardous material

Temperature sensitive (Sealers, Adhesives, Paints, Rubber products, etc.)

Light sensitive (Rubber, Fabrics, Foams, etc.)

Special orientation requirements, i.e. directional vertical/horizontal marking on the container.

Sensitive to electrostatic discharge, electromagnetic, magnetic, or radioactive fields

Special storage or clean environment

Special handling equipment, handling techniques, stacking, blocking devices, or engineered containers

Other considerations shall include evaluation of industrial (commercial) packaging compared to International Specifications to ensure all required levels of protection.

**Cleanliness** - Items shall be free of dirt and other contaminants which would require cleaning by WMATA prior to use. Coatings and preservatives to the item for protection are not considered contaminants.

**Preservation** - Items susceptible to moisture, corrosion or deterioration shall be provided protection such as preservative coatings, volatile corrosion inhibitors (VCI) or desiccant unit packs in accordance with best commercial practice.

**Major Assemblies** - Shall be double-wrapped with 4-mil (minimum) polyethylene sheeting and all seams shall be entirely sealed with waterproof tape. Major assemblies shall be protected from moisture with MIL-D-3464 Desiccant or equivalent. (Desiccant shall not be positioned directly against assembly surface).

**Wrapping/Cushioning** - Items requiring protection from physical and mechanical damage, or which are fragile by nature shall be protected by wrapping, cushioning, compartmentalization, or other means to mitigate shock and vibration during shipment and storage.

**Packing Materials** - Kraft paper, plastic sheeting, bags or sleeves, bubble wrap, polyethylene foam, polyurethane foam-in-place, nylon netting (for tubes, cylinders, etc.), plastic, tubing (bolt thread protection), and plastic caps/plugs are acceptable types of packaging materials.

Loose polystyrene material (i.e., peanuts, chips), shredded paper and starch materials (e.g., edible popcorn) shall not be used as packaging materials. Loose materials for hazardous packaging (e.g., vermiculate) are acceptable only when shipping hazardous materials.

**Plastic Bag Closure** - Plastic bags used for inner packaging shall be closed by heat sealing, zip-loc, fold and fasten (tape), or tie (zip-ties, string). Use of staples is not permitted. The closure shall be adequate to retain items within the bag and prevent intrusion of contaminants or foreign objects. The bag closure shall be adequate to prevent escape of any contained liquids. Plastic bags shall not be used for preserved (greased or oiled) items. Bags fabricated from wax-coated to heavy duty kraft paper are an acceptable alternative to plastic bags.

### **Packaging; Unit and Intermediate**

**Unit Package** - The unit package shall provide protection from shock, vibration, and other hazards during transportation, storage and handling.

**Unit Package Quantity** – All items shall be suitable for redistribution without additional repackaging or marking unless otherwise specified. The standard unit package quantity shall be one (1) each part, set, kit or assembly. Exceptions are small lightweight items, such as industrial hardware, which shall be unit packaged in quantities that are standard, as listed below. Bulk packaging is specifically excluded unless specified in the contract or purchase order. If bulk is specified in the contract or purchase order, maximum weight per bulk unit container (industrial hardware items) is five pounds (5lb).

**Intermediate Package** - The use of an intermediate package/container (bag, fiberboard carton) is encouraged particularly when such use enhances handling and transportation. Intermediate package/container standard increments shall be 10, 25, 50 and 100 Maximum. (Size and weight of the unit package shall be considered when determining quantity) The Maximum load for a fiberboard carton shall be 50 pounds.

**Packing** - Unit and intermediate packages not meeting the requirements for a shipping container shall be packed in shipping containers.

**Kits** – Packaging and packing shall be in accordance with best commercial practice. Each kit having unlike items, but identified by a single part number (kit number) shall have a packaging list identifying and detailing each item within the kit.

**Shipping Containers** - The shipping container (including any necessary blocking, bracing, cushioning, or waterproofing) shall comply with the regulations of the carrier used and shall provide safe delivery to the destination. It shall be capable of multiple handling and storage under favorable conditions for a minimum of one (1) year.

**Fiberboard Cartons** - Corrugated fiberboard cartons, meeting ASTM D 5118-Standard Practice for Fabrication of Fiberboard Shipping Boxes requirements, are the preferred shipping container. The maximum weight limit for fiberboard shall be 50 pounds (for ease of handling, safety, and to minimize crushing due to stacking during transport).

**Wood-Cleated Panelboard Shipping Crate** - These types of crates may be used as intermediate packaging/containers as well as standalone unit containers. These crates shall meet ASTM D 6251-Standard Specification for Wood-Cleated Panelboard Shipping Boxes or equivalent.

**Weather-Resistant Containers** - A weather-resistant container (wood, metal, fiberglass or fiberboard) shall be used for shipping items subject to moisture damage.

**Major Assembly Containers** - Major assembly containers, requiring load bearing capabilities, shall comply with ASTM D 6256 or equivalent. Contour blocking and bracing and/or Foam-In-Place cushioning (.5 pound minimum) are an acceptable means of packing. All containers shall have fork lift access on sides and ends. Metal banding (.5"-75"), meeting ASTM 3953-Standard Specification for Strapping, Flat Steel and Seals or equivalent, is required around the circumference (to side, bottom, side) of all wood containers. Major assembly containers shall be over-packed (placed inside) in a land-sea container to protect from outside elements for transportation to WMATA in accordance with this procedure. The supplier shall specify the preferred mode of transport depending upon schedule and circumstance, contingent on WMATA approval.

### **Containerization Weight and Size Limitations**

**Raw Stock-Skid** - Bundled, or palletized raw stock material shall not exceed 4,000 pounds per unit of pack and no pallet height shall exceed six (6) feet.

**Purchase Parts** - Properly protected parts containerized onto a skid, bundle, or palletized load shall not exceed 2,000 lbs. per unit of pack and no pallet height shall exceed four (4) feet.

### **Marking, Labeling and Documentation**

**Box or Package Marking** - Remove or obliterate the "old" markings from reusable shipping cartons, crates and containers. **EXCEPTION:** Special handling markings (i.e., "Fragile", "UP", "Do Not Drop", "ESD", "Hazardous markings", etc.) and ISPM-15 markings are required. These markings may remain on reusable shipping containers so long as they are verified as being applicable to the product and are accurate and legible prior to re-shipment.

**First Article Inspection** - All shipments containing items for First Article Inspection (FAI) shall be marked with a FAI identification label. If there are several orders in the shipment, each order containing an item for FAI shall be marked with a FAI identification label. Place the label(s) on the identification side of the package only. Do not place on the top or bottom of the item(s).

**Source Inspection Items** - All shipments containing Source Inspected items shall be marked with a Source Inspected identification label. If there are several orders in the shipment, each containing Source Inspected items, each order shall be marked with a Source Inspected identification label. Place the label(s) on the identification side of the package only. Do not place on the top or bottom of the item(s).

**Documentation** - When Certificates of Compliance, tests, and/or reports are specified as a requirement on the purchase order, these documents shall be placed in a plastic sealed bag and be affixed on the same side as, and near the shipping label.

**Tests and Reports** - When specified in the Contract or Purchase Order, the Supplier shall furnish WMATA QAAW with all test results, certificates, chemical and physical test reports and any and all required documentation. Test reports and/or certification for materials supplied under this contract or purchase order shall be retained by the Supplier for a period of not less than five (5) years after shipment of materials. Use of the English language is required for all tests and reports. The Supplier agrees to furnish written reports regarding schedule compliance upon the

COTR's request. Only original or copies of original documents shall be supplied for the item(s). Transcribed data onto supplier documentation shall not be accepted.

**Hazardous Materials - Compliance** - Hazardous materials shipped to WMATA shall be compliant with all applicable DOT 49 CFR Regulations and as allowed by 49 CFR 171.22, the IATA/ICAO Regulations (Air Transportation), IMDG (Vessel), and UN Model Regulations.

**Regulatory Organizations:**

DOT-Department of Transportation

IATA-International Air Transportation Association

ICAO-International Civil Aviation Organization

IMDG-International Maritime Dangerous Goods

UN Model Regulations-Recommendations on the Transport of Dangerous Goods Hazardous Chemicals shall be labeled, tagged or marked with the identity of the material and appropriate hazard warning per (29 CFR 1910.1200 Appendix E, A.-Labels and Other Forms of Warning).

**Hazardous Materials Marking and Labeling**

**Identification Requirements** - As regulated by the 49 CFR 172 Hazardous Material Table:

Proper Shipping Name (Assigned)

Hazard Class (1-9)

Identification Number (UN, ID, NA)

Packing Group (I, II, III, or None)

**Communication Requirements** - As regulated by 49 CFR 172 subpart D and E. Mark and Label Package with:

Proper Shipping Name

Identification Number

Orientation markings or other applicable markings

Diamond-shaped handling labels (cargo aircraft only, etc.)

Rectangular-shaped handling labels (cargo aircraft only, etc.)

**Describe the shipment on Shipping Papers** - As regulated by 49 CFR 172 subpart C:

Proper Shipping Name

Hazard Class

Identification Number

Packing Group (when applicable)

In addition to the basic description there may be other required information such as:

DOT-Exemption

EX Numbers

Warning Indications

**Material Safety Data Sheets (MSDS)** - As entitled by 29 CFR 1910.1200 Appendix E (B), WMATA requires that all shipments which meet the definition of a hazardous material per OSHA or DOT regulations shall include the most current MSDS with each shipment.

**HAZMAT Packaging** - All hazardous material packages shall meet or exceed the required specifications of 49-CFR 173-Shippers-General Requirements for Shipments and Packaging.



**Bulk Chemicals, Compressed Gases, and Petroleum Products** - The delivery of bulk chemicals and petroleum products (e.g., fuel oil, gasoline, etc.) into above or below ground tanks at a WMATA facility shall be supervised by an authorized WMATA employee to minimize the potential for release of hazardous substances during delivery, except the delivery of bulk compressed gases. All deliveries, including compressed gases, shall be accepted only during normal working hours, or as specified within the contract or purchase order.

**Packaging of Cylinders** - Shall meet all requirements of compressed gases in accordance to 49 CFR 178; Specification for packaging; Subpart C-Specifications for cylinders. Filling of cylinders and re-qualification requirements shall also meet the detail of 49 CFR 173.300 Subpart G; Gases; Preparation and Packaging or their equivalents. **NOTE:** Compressed Gas containers shall display a Recertification date as well as the Service Life Date of the Cylinder.

**Bulk** is defined as a product delivered in a transport container and transferred at WMATA to a storage container.

## **CUSTOMS AND FOREIGN SUPPLIERS**

**Marking Requirements** - Follow shipping instructions as printed on the contract or purchase order.

### **Special Marking Requirements for Imported Merchandise:**

Seller shall comply with U.S. Customs and Border Protections (US CBP) marking requirements by marking either the article and/or its container with the Country of Origin (Country of Manufacturer); in accordance with 19 CFR 134.11-Country of origin marking required. Imported shipping containers fabricated from solid wood lumber (including interior blocking and bracing shall be fabricated and marked in accordance with ISPM-15-International Standards of Phytosanitary Measures (Guidelines in Regulating Wood Packaging Measures in International Trade).

The Packing slip shall reference the purchase order number, part(s) shipped, country of origin and a copy of the commercial invoice shall be located on the outside of the container. Non-compliance to this requirement may result in rejection of a shipment and return of that shipment at the Supplier's expense. This action shall be at WMATA's sole discretion.

The Supplier shall be responsible, in the full amount, for any fines or penalties levied against WMATA by US CBP for failure to comply with US CBP regulations.

## **1.7 Supporting Documentation**

### **Federal:**

19 CFR 134.11, Country of Origin Marking Required

29 CFR 1910.1200, Appendix E, A Labels and Other Forms of Warning

29 CFR 1910.1200, Appendix E, B Material Safety Data Sheet (MSDS)

49 CFR Title 49, Code of Federal Regulations (Transportation; Parts 100 to 180)

49 CFR 171.22, Authorization and Requirements for the Use of International Transport Standards and Regulations

49 CFR 172, Hazardous Material Table

49 CFR 172, Subpart C Shipping Papers

49 CFR 172, Subpart D Marking

49 CFR 172, Subpart E Labeling

49 CFR 173, Shippers-General Requirements for Shipments and Packaging's

49 CFR 173.300 (301), Subpart G Gases; Preparation and Packaging

**Commercial and Industry:**

ASTM D 3951, Standard Practices for Commercial Packaging

ASTM D 3953, Standard Specification for Strapping, Flat Steel and Seals

ASTM D 5118, Standard Practice for Fabrication of Fiberboard Shipping Boxes

ASTM D 6251, Standard Specification for Wood-Cleated Panelboard Shipping Boxes

ASTM D 6256, Wood-Cleated Shipping Boxes with Skidded, Load-Bearing Bases International Standards of Phytosanitary Measures (Guidelines in Regulating

Wood Packaging Measures in International Trade)

JEDEC JESD 625-A, Requirements for Handling Electrostatic Discharge Sensitive (ESDS) Devices

## COMBINED 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.