



Washington
Metropolitan
Area
Transit
Authority

Invitation For Bid

CONSTRUCT AND INSTALL DATA CENTER & OPERATION CONTROL CENTER HVAC ROOFTOP WORK PLATFORMS

IFB NO.: FQ16140/LP

IFB ISSUED DATE: JUNE 23, 2016

IFB DUE DATE: JULY 20, 2016 – 2:00 P.M.

Volume 1, Bidding and Contracting Requirements

TABLE OF CONTENTS

Volume 1 - Bidding and Contracting Requirements

LETTER TO BIDDERS	7
TABLE OF CONTENTS.....	ERROR! BOOKMARK NOT DEFINED.
BIDDING REQUIREMENTS.....	6
CARE IN BIDDING	7
NOTICE TO ALL VENDORS	8
INVITATION FOR BIDS.....	9
SOLICITATION INSTRUCTIONS.....	10
1. Definitions: As used herein:	10
2. Explanation to Offeror.....	10
3. Prior Representations.....	10
4. Pre-Bid Conference and Site Visit.....	10
5. Revisions Prior to Date Set for Receipt of Offers.....	10
6. Acknowledgment of Amendments.....	10
7. Preparation of Bids.....	11
8. Submittal of Bids.....	11
9. Late Bids and Modifications or Withdrawals (12/03).....	11
10. Contract and Bonds:.....	12
11. Bidding Documents.....	12
12. Bidder's Qualifications.....	13
13. Award of Contract.....	13
14. Pre-Award Information	13
15. Opportunity for Small Business Enterprises to Bid.....	15
16. Representations, Certifications, and Acknowledgments.....	16
17. Conditions Affecting the Work (12/03).....	16
18. Notice of Protest Policy (09/03).....	16
19. Requirement for Cost Data for Contract Award (12/03).....	17
20. Davis-Bacon Wage Determination Decision.....	17
21. Bid Guarantee.....	17
22. Licenses – N/A	18
23. Advance Cost Agreement – N/A.....	18
24. WMATA's Tax Exempt Status.....	18
25. Order of Precedence.....	19
26. Contractor Performance Evaluation.....	19
SOLICITATION, OFFER AND AWARD.....	20
BID FORM	21
REPRESENTATIONS & CERTIFICATIONS	23
1. TYPE OF BUSINESS ORGANIZATION	23
2. AFFILIATION AND IDENTIFYING DATA.....	23
3. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS	24
4. DISADVANTAGED BUSINESS ENTERPRISE.....	24
6. AFFIRMATIVE ACTION COMPLIANCE	25
7. COVENANT AGAINST GRATUITIES.....	26
8. CONTINGENT FEES	26
9. CLEAN AIR ACT AND CLEAN WATER ACT CERTIFICATION	27
10. DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION	27

11.	CERTIFICATION OF INDEPENDENT PRICE DETERMINATION.....	28
12.	CERTIFICATION OF NONSEGREGATED FACILITIES	29
13.	NONDISCRIMINATION ASSURANCE	30
14.	CERTIFICATION OF RESTRICTIONS ON LOBBYING.....	30
15.	BUY AMERICA ACT CERTIFICATION.....	31
16.	CERTIFICATION OF NON-DELINQUENT TAXES	32
17.	DISCLOSURES OF INTERESTS OF WMATA BOARD MEMBERS.....	33
	UNIT PRICE SCHEDULE	35
	NOTES TO BIDDERS:.....	36
	BID BOND.....	37
	CONTRACTING REQUIREMENTS.....	40
	PRE-AWARD EVALUATION DATA	42
1.1	Definitions (07/03).....	49
1.2	Contract Documents.....	50
1.3	Changes	51
1.4	Differing Site Conditions.....	52
1.5	Termination For Default, Damages For Delay And Time Extensions	52
1.6	Disputes.....	55
1.7	Payments To Contractor	56
1.8	Assignment	58
1.9	Material And Workmanship.....	58
1.10	Inspection And Acceptance	59
1.11	Project Management And Superintendence By Contractor.....	60
1.12	Permits And Responsibilities.....	60
1.13	CONDITIONS AFFECTING THE WORK.....	60
1.14	Other Contracts	60
1.15	Patent Indemnity	60
1.16	Bonding for Construction Projects Exceeding \$100,000.....	60
1.18	Officials Not To Benefit.....	63
1.19	Notice To The Authority Of Labor Disputes	63
1.20	Convict Labor.....	63
1.21	Civil Rights	63
	STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)	64
1.22	Utilization of Small Business Concerns.....	68
1.23	Gratuities	69
1.24	Federal, State, and Local Taxes.....	70
1.25	Termination for Convenience of the Authority	71
	TERMINATION FOR CONVENIENCE- FTA	71
1.26	Notice and Assistance Regarding Patent and Copyright Infringement.....	74
1.27	Composition of Contractor.....	74
1.28	Site Investigation.....	74
1.29	Protection of Existing Vegetation, Structures, Utilities and Improvements.....	74
1.30	Operations and Storage Areas.....	75
1.31	Progress Schedules and Requirements for Maintaining Progress.....	75
1.32	Subcontractors	76
1.33	Use and Possession Prior To Completion.....	76
1.35	Contract Modifications - Requirements for Proposals, Price Breakdown and Negotiation of Profit	76

1.36	Accident Prevention.....	78
1.37	Equipment.....	79
1.38	Suspension of Work.....	79
1.39	Audit and Inspection of Records.....	80
1.40	Rights in Technical Data - Unlimited.....	80
1.41	Price Reduction for Defective Cost or Pricing Data - Price Adjustments.....	82
1.42	Audit - Price Adjustments.....	82
1.43	Subcontractor Cost or Pricing Data and Price Adjustments.....	83
1.44	Value Engineering Incentive – N/A.....	83
1.45	Variations in Estimated Quantities.....	86
1.46	Contract Prices - Price Schedule.....	86
1.47	Progress Payment for Lump Sum Items.....	86
1.48	Warranty of Construction.....	86
1.49	Time and Materials Work.....	87
1.50	Equitable Adjustment for Minor Contract Modifications.....	89
1.51	Cost or Pricing Data.....	90
1.52	Pricing of Adjustments.....	91
1.53	Accounting and Record Keeping.....	91
1.54	Cargo Preference, Use of United States-Flag Vessels.....	93
1.55	Buy America.....	93
1.56	Certificate of Current Cost or Pricing Data.....	93
1.57	EMPLOYMENT RESTRICTION WARRANTY	94
1.58	WALSH-HEALEY PUBLIC CONTRACTS ACT.....	94
1.59	Conflict Of Interest (07/03).....	95
1.60	DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS.....	95
1.62	Changes to Federal Requirements	102
1.63	No Obligation by the Federal Government.....	103
1.64	Program Fraud, False or Fraudulent Statements or Claims or Civil and Criminal Fraud.....	103
1.65	Incorporation Of Federal Transit Administration (FTA) Terms (07/03).....	103
1.66	Seat Belt Use Policy (November 2000).....	103
1.67	Contract Work Hours and Safety Standards Act (07/03).....	104
1.68	Access to Records.....	105
1.69	Fly America Requirements -.....	105
1.70	Seismic Safety -	106
1.71	Energy Conservation -.....	106
1.72	Recycled Products/Recovered Materials -.....	106
1.73	Contracts Involving Federal Privacy Act Requirements -.....	106
1.74	Pre-employment Criminal Background Check Requirement.....	106
1.75	Availability of Funds For the Next Fiscal Years.....	107
1.77	Government Wide Debarment and Suspension.....	108
1.79	Clean Air.....	109
1.80	Clean Water.....	109
1.81	Notification of Federal Participation	110
1.82	Whistleblower Protections.....	110
1.83	Non Discrimination Assurance.....	112
1.84	Drug and Alcohol Testing.....	113
1.85	Veterans Preference.....	113
1.86	National Intelligent Transportation System (ITS) Architecture and Standards	113
1.87	Americans with Disabilities Act Accessibility.....	113
	CONSTRUCTION SPECIAL PROVISIONS.....	114
2.1	COMMENCEMENT, PROSECUTION AND PERIOD OF PERFORMANCE.....	114
2.2	LIQUIDATED DAMAGES N/A.....	113

2.2	CONTRACT AND BONDS	114
2.4	AUTHORITY-FURNISHED DOCUMENTS	114
2.5	CONTRACTOR'S SUBMITTALS – as required	115
2.6	WORK TO BE PERFORMED BY THE CONTRACTOR.....	120
2.7	AUTHORITY REPRESENTATIVE (AR).....	120
2.8	PROGRESS SCHEDULES - N/A.....	121
2.9	DETERMINATION OF PROGRESS – N/A.....	124
2.10	LAYOUT OF WORK – as required.....	124
2.11	PHYSICAL DATA - NOT USED.....	125
2.12	TEMPORARY UTILITY AND ELECTRICAL SERVICES.....	125
2.13	INDEMNIFICATION AND INSURANCE.....	126
2.14	N/A	131
2.15	SAFETY REQUIREMENTS.....	131
2.16	SANITARY PROVISIONS	142
2.17	SUBCONTRACTS	142
2.18	PAYMENT FOR USE OF EQUIPMENT – N/A.....	143
2.19	HISTORICAL AND SCIENTIFIC SPECIMENS – N/A	144
2.20	SALVAGE OF MATERIALS AND EQUIPMENT – N/A	144
2.21	ENVIRONMENTAL CONTROL	144
2.22	SIGNS.....	145
2.23	CONSTRUCTION SEQUENCE AND STAGING	145
2.24	MEASUREMENTS.....	145
2.25	OPERATION AND MAINTENANCE	145
2.26	ABBREVIATIONS.....	149
2.27	CONTRACT RECORD DRAWINGS.....	155
2.28	CERTIFICATION OF NONSEGREGATED FACILITIES BY CONTRACTORS AND SUBCONTRACTORS.....	156
2.29	WAGE RATES.....	156
2.30	AFFIRMATIVE ACTION PROGRAM.....	157
2.31	TECHNICAL REFERENCES	159
2.32	COMMUNITY RELATIONS - NOT USED.....	159
2.33	DEFINITION OF TERMS.....	159
2.34	IDENTIFICATIONS.....	160
2.35	ENGINEER'S FACILITY - NOT USED	160
2.36	PRECONSTRUCTION INSPECTION.....	160
2.37	DETECTION OF MOVEMENT - NOT USED.....	161
2.38	PHOTOGRAPHS -.....	161
2.39	WORK BY OTHERS.....	161
2.40	UTILITIES.....	162
2.41	ACCESS TO FIRE HYDRANTS AND FIRE ALARM BOXES.....	162
2.42	CONTRACTOR'S PLANT.....	163
2.43	CONTRACTOR'S EMPLOYEES (07/03).....	163
2.44	HOURS OF WORK.....	164
2.45	NOISE CONTROL – N/A	164
2.46	WORK, STORAGE AND PARKING AREA.....	167
2.47	HAZARDOUS MATERIALS.....	167
2.48	MOBILIZATION AND PREPARATORY WORK – N/A	168
2.49	MAINTENANCE OF TRAFFIC - NOT USED.....	169
2.50	POLLUTION ABATEMENT	169
2.51	RESTORATION OF EXISTING FACILITIES.....	172
2.52	ACCESS TO ADJACENT PROPERTY.....	172
2.53	PAVEMENT RESTORATION.....	172

2.54	LICENSES.....	172
2.55	ENGINEER'S CHANGE HOUSE FACILITY - NOT USED.....	172
2.56	WORK ON OR UNDER NATIONAL PARK SERVICE LAND - NOT USED.....	172
2.57	BASIS OF PAYMENT.....	172
2.58	QUALITY ASSURANCE COMPLIANCE.....	173
2.59	EXISTING SURFACES.....	184
2.60	EMBEDDED ITEMS – N/A.....	184
2.61	PROTECTIVE DEVICES.....	184
2.62	WORKING AREA WOODEN FENCING - NOT USED.....	185
2.63	AUTHORITY-FURNISHED PROPERTY - NOT USED.....	185
2.64	SPARE PARTS – NOT USED.....	185
2.65	RELIABILITY – N/A.....	185
2.66	CORRECTION OF DEFICIENCIES – N/A.....	186
2.67	CLEANING UP.....	189
2.68	CONTRACTOR'S QUALIFICATIONS – N/A.....	190
2.69	TIME EXTENSIONS DUE TO AUTHORITY ACTIONS.....	190
2.70	PROJECT MANAGEMENT SOFTWARE SYSTEM – N/A.....	191
2.71	PRE-INSTALLATION MEETINGS – N/A.....	192
2.72	PRODUCT WARRANTIES – if applicable.....	192
2.73	PRODUCT SUBSTITUTION PROCEDURES – N/A.....	193
2.74	MANUFACTURING'S INSTALLATION INSTRUCTIONS.....	198
2.75	MANUFACTURER'S FIELD REPORTS.....	198
2.76	MANUFACTURING'S FIELD SERVICES.....	198
2.77	MOCK-UP REQUIREMENTS.....	198
2.78	TESTING AND INSPECTION SERVICES.....	198
2.79	PRODUCT DELIVERY REQUIREMENTS.....	201
2.80	PRODUCT STORAGE AND HANDLING REQUIREMENTS.....	201
2.81	SPARE PARTS AND MAINTENANCE PRODUCT – N/A.....	201
2.82	MAINTENANCE SERVICE- N/A.....	201
2.83	CUTTING AND PATCHING.....	202
2.84	PROTECTING INSTALLED CONSTRUCTION.....	203
2.85	FINAL CLEANING.....	203
2.86	TESTING, ADJUSTING, AND BALANCING.....	203
2.87	STARTING OF SYSTEMS- N/A.....	204
2.88	PROTECTION OF EXISTING BUILDINGS AND EQUIPMENT.....	204
2.89	SITE SPECIFIC WORK PLANS.....	204
2.90	TEMPORARY STORAGE AND STAGING AREAS.....	205
2.91	BARRIERS.....	205
2.92	CONTRACTOR WORKING HOURS.....	206
2.93	PROJECT PROGRESS AND SAFETY MEETING – if applicable.....	206
	APPENDIX A – INDEX OF DRAWINGS.....	209
	APPENDIX B-1.....	210
	COMBINED GLOSSARY OF DEFINITIONS.....	210
	APPENDIX D - WAGE RATES.....	
	APPENDIX G - SAFETY AND SECURITY CERTIFICATION PROCESS.....	

INVITATION FOR BID NO.: FQ16140/LP

BIDDING REQUIREMENTS

**CONSTRUCT AND INSTALL DATA CENTER & OPERATION CONTROL CENTER HVAC ROOFTOP
WORK PLATFORMS AT CARMEN TURNER FACILITY, CTF**

June 2016

CARE IN BIDDING

(CONSTRUCTION IFB CONTRACT)

IMPORTANT
PLEASE READ CAREFULLY

To insure submission of complete bids and to avoid irregularities that could result in a non-responsive bid, please check your bid for each of the following common responsiveness problems:

1. Have you checked your bid? Are all items included and checked for math errors?
2. Have you acknowledged and recorded the number of amendments on the bid envelope and Amendment Form?
3. Does your Bid Guaranty conform to the requirement of the solicitation? A Bid Bond is required for bids in excess of \$100,000. (5% OF BID PRICE)
4. Have you signed and submitted the Solicitation, Offer and Award Form?
5. Have you properly completed and checked the appropriate box for each Certification and Representation? Have you included the Representations and Certifications with your bid?
6. Have you properly executed the Buy America Certificate? Only sign in one place either for compliance or non-compliance.
7. Have you familiarized yourself with the applicable contract provisions pertaining to the WMATA Small Business Enterprises (SBE) Set Aside program for bids \$500,000 or less? (See Appendix B-1)
8. Have you familiarized yourself with the Davis-Bacon Labor Standard Provisions that mandate the payment of minimum wages as determined by the Secretary of Labor?
9. Have you registered as a WMATA Vendor?

NOTICE TO ALL VENDORS

Please be advised that all vendors and contractors who have *NOT* done 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>

Attention to Small Business Enterprise (SBE) and Local Preference Program (SBLPP) companies:

Minority and women owned businesses who are interested in becoming a WMATA SBE should complete an online SBE application. Self-certification is required for Small Business and Local Preference as a part of the Vendor Registration.

Registered Vendor Benefits:

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

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

INVITATION FOR BIDS

DATE OF INVITATION: June 23, 2016

PROJECT DESCRIPTION: IFB FQ16140/LP
Construct and Install Data Center & Operation Control Center HVAC
Rooftop Work Platforms at Carmen Turner Facility, CTF IAW Technical
Specifications and Drawings

A Pre-Bid Conference and Site Visit will be conducted on **June 29, 2016 – 9:00 a.m.** local time at 3500 Pennsy Drive Building B, Lobby, Hyattsville, Maryland 20785.

SEALED BIDS in singular for the work described herein will be received at or before **2:00 PM** on **July 20, 2016** at the **Washington Metropolitan Area Transit Authority**, in the **Meeting Room at the Lobby Level, 600 Fifth Street, N. W., Washington, DC 20001.**

INFORMATION REGARDING BIDDING MATERIAL, BID GUARANTEE AND BONDS:

A bid guarantee as herein specified is required for a bid price in excess of \$100,000, and the penal amount shall be **5 percent of the bid price**. If the guarantee is submitted in the form of a bid bond, the bid bond penalty may be expressed in terms of a percentage of the bid price or may be expressed in dollars and cents.

Bonds: As required by the Specifications.

Bidding Material:

Solicitation Offer and Award Form
Representations and Certifications
Price Schedule
Bid Bond (see Note #I)
Appendix B-1: Small Business Enterprise Set-Aside (Applies only if bid price is \$500,000 and less)

ALL BIDDING MATERIALS SHALL BE UPLOADED ONTO A FLASH/THUMB DRIVE AND SUBMITTED WITH THE HARD COPIES.

BID MUST SET FORTH FULL, ACCURATE AND COMPLETE INFORMATION AS REQUIRED BY THIS INVITATION FOR BIDS, INCLUDING ATTACHMENTS.

SOLICITATION INSTRUCTIONS

1. Definitions: As used herein:

- a. The term "solicitation" means "Invitation for Bids (IFB)" where the procurement is advertised, and "Request for Proposal (RFP)" where the procurement is negotiated.
- b. The term "offer" means "bid" where the procurement is advertised and "proposal" where the procurement is negotiated.
- c. The term "offeror" means "bidder" where the procurement is advertised and "proposer" where the procurement is negotiated.

2. Explanation to Offeror

- a. Any explanation desired by a bidder regarding the meaning or interpretation of this Invitation for bid, specifications, drawings, and other bidding documents must be requested in writing and with sufficient time allowed for a reply to reach all bidders before the time set for the opening of bids.
- b. Any interpretation made will be in the form of an amendment of this Invitation for Bid, specifications, or other bidding documents and will be furnished to all prospective bidders.
- c. Oral explanations or instructions given before the award of the contract will not be binding.

3. Prior Representations

The Authority assumes no responsibility for any understanding or representations concerning this solicitation made by any of its officers or agents prior to the issuance of the solicitation, the specifications, or related documents.

4. Pre-Bid Conference and Site Visit

A Pre-Bid Conference and Site Visit will be conducted on **June 29, 2016 – 9:00 a.m.** local time at 3500 Pennsy Drive Building B, Lobby, Hyattsville, Maryland 20785.

5. Revisions Prior to Date Set for Receipt of Offers

- a. The right is reserved by the Authority to revise or amend the specifications and/or Drawings prior to the date set for the opening of bids. Such revisions and amendments, if any, will be announced by an amendment or amendments to this Invitation for Bid. Copies of such amendments as may be issued will be furnished to all prospective bidders.
- b. If the revisions and amendments require material changes in quantities or prices bid, or both, the date set for the opening of bids may be postponed by such number of days as in the opinion of the Authority will enable bidders to revise their bids. In such cases, the amendment will include an announcement of the new date for the opening of bids.

6. Acknowledgment of Amendments

- a. Offerors are required to acknowledge receipt of all amendments to this Invitation on the Bid Form in the space provided, or by separate letter or telegram prior to opening of bids.
- b. Failure to acknowledge all amendments may cause the bid to be considered not responsive to the invitation, which would require rejection of the bid. The outside of the envelope containing the offer shall also be marked to show the amendments received.

7. Preparation of Bids

- a. Bids shall be submitted on the Solicitation Offer and Award (Bid) Forms furnished, or copies thereof, and must be manually signed. If erasures or other changes appear on the forms, such erasures or changes must be initialed by the person signing the bid. Unless specifically authorized in this Invitation for Bid, telegraphic bids will not be considered.
- b. The Price Schedule Form may provide for submittals of a price or prices for one or more items which may be lump sum bids, alternate prices, and scheduled items resulting in a bid on a unit of construction or a combination thereof, or other bidding arrangements. Bidders must bid on all line items on the Price Schedule, failure to do so will disqualify the bid. When submittal of a price on all items is not required, bidders shall insert the words NO BID in the space provided for any item on which no price is submitted.
- c. Unless specifically called for, alternate bids will not be considered.
- d. Amendments/Modifications of bids already submitted will be considered if received at the office designated in this Invitation for Bid by the time set for the opening of bids. Telegraphic modifications will be considered, but not reveal the amount of the original or revised bid. Neither telegraphic nor teletype facilities are located in the offices of the Authority.

8. Submittal of Bids

- a. Offers and amendments/modifications thereof shall be enclosed in sealed envelopes and addressed to the office specified in the solicitation. The offeror 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.
- b. Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified or withdrawn by written or telegraphic notice, provided such notice is received prior to the hour and date specified for receipt.
- c. Facsimile offers, modifications or withdrawals will not be considered unless authorized by the Authority.

9. Late Bids and Modifications or Withdrawals (12/03)

- a. Any offer received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—
 - (1) Was sent by registered or certified U.S. mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been sent by registered mail by the 15th);
 - (2) Was sent by U.S. mail or a recognized commercial carrier, and it is determined by the Authority that the late receipt was due solely to mishandling by the Authority after receipt;
 - (3) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office or similar express service from a recognized commercial carrier to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of offers. The term "working days" excludes weekends and U.S. Federal holidays; or
 - (4) Is the only offer received.

- b. Any modification of an offer, except a modification resulting from the Contracting Officer's request for "best and final" offer, is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.
- c. A modification resulting from the Contracting Officer's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Authority.
- d. The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by registered or certified mail is the U.S. or Canadian Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.
- e. The only acceptable evidence to establish the time of receipt by the Authority is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the Authority.
- f. The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph d. of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors or quoter should request the postal clerk to place a legible hand cancellation bulls eye postmark on both the receipt and the envelope or wrapper.
- g. Notwithstanding paragraph "a" above, a late modification of any otherwise successful offer that makes its terms more favorable to the Authority will be considered at any time it is received and may be accepted.
- h. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and that person signs a receipt for the bid.

10. Contract and Bonds:

The bidder whose bid is accepted shall, within the time established in the bid, enter into a written contract with the Authority and furnish performance and payment bonds on standard Authority forms in the amount indicated in this Invitation for Bid or in the Contract Documents.

11. Bidding Documents

Free of charge on the WMATA website in Adobe Acrobat (.pdf) format at http://www.wmata.com/business/procurement_and_contracting/solicitations/index.cfm. In order to avoid IFB download problems, please immediately download the latest version of Adobe Acrobat Reader (Currently Version X (10.1)) available for free at <http://get.adobe.com/reader/>. If any amendments are issued, they will be posted on the WMATA website along with the solicitation.

12. Bidder's Qualifications

- a. Before a bid is considered for award, the bidder will be required to submit a completed Pre-Award Evaluation Data form showing his previous experience in performing comparable work, his business and technical organization, his financial resources and plant available for performing this Contract work.
- b. In accordance with the provisions of the IFB article titled Pre-Award Information, the apparent lowest responsive bidder shall submit satisfactory evidence of the following:
 - (1) Adequate financial resources.
 - (2) Ability to comply with required performance schedule.
 - (3) Satisfactory record of performance.
 - (4) Satisfactory record of integrity
 - (5) Necessary organization, experience and expert technical skills, including, quality assurance measures and safety programs applicable to the construction to be performed.
 - (6) Affiliation with satisfactory subcontractors capable of meeting the above requirements.
 - (7) Small Business Enterprise data as set forth in Appendix B-1. The submittal of certain items with the bid is required.
 - (8) Insurability.
- c. Doubt as to technical ability, productive capability and financial strength which cannot be resolved affirmatively may result in a determination of non-responsibility by the Contracting Officer.

13. Award of Contract

- a. Award of Contract will be made to that responsive and responsible bidder whose bid, conforming to this Invitation for Bid, is most advantageous to the Authority, price and other factors considered.
- b. The Authority may, when in its interest, reject any or all bids or waive any informality in bids received.
- c. The Authority may accept any item or combination of items of a bid, unless precluded by this Invitation for Bid or the bidder includes in his bid a restrictive limitation.

14. Pre-Award Information

- a. In accordance with the provisions of the Solicitation Instructions article titled "Bidder's Qualifications", the Contracting Officer may conduct a pre-award survey to determine if the bidder eligible for award is responsible both financially and technically and has the capability to perform the work of the Contract in accordance with the requirements of the Specifications and the Drawings and within the time or times specified.
- b. Accordingly, the apparent lowest responsive bidder is required to furnish, within five calendar days after bid opening, pre-award data as required by the "Bidder's Qualifications" article as follows:

(1) Pre-Award Evaluation Data Form

A completed and signed Pre-Award Evaluation Data Form (PED-1) that is furnished with the solicitation.

(2) Past Experience and Qualifications

The Bidder shall furnish, in addition to the information required in the Pre-Award Evaluation Data Form (PED-1), satisfactory evidence of past experience, qualifications and capabilities required by the contract plans and specifications. The following information must be included:

- (a) List of all previous contracts of similar work including, but not limited to: owner, address, phone number, architect-engineer, contract name, amount, duration, character and type of work and the portions of the work accomplished with the bidder's own forces.
- (b) Copies of all necessary certifications, licenses and other documentation, including any specialized licenses required to meet health and safety rules and regulations, required by the plans and specifications demonstrating that the bidder has the necessary capabilities to perform the work.
- (c) Documentation including resume(s) for performing the specified engineering functions, training and providing qualified personnel to work in the necessary Authority areas.

The following information shall be submitted regarding how the bidder proposes to accomplish the work:

- (a) A detailed narrative description of how the bidder proposes to accomplish the work of the Contract including an organization chart with responsibilities including subcontractors.
- (b) In accordance with the articles for Progress Schedules, the bidder shall submit its proposed preliminary schedule in sufficient detail to demonstrate that the bidder can accomplish the work within the prescribed period of performance including, if required, any interim completion dates or milestones.
- (c) A list of major materials, including model numbers and catalog data, for each of the project items and other major elements of the work to include any long lead times for delivery.
 - 1. Buy America compliance – Provide a statement that each major material item complies with the Buy America Act.
- (d) A list of all major equipment that the bidder expects to use to accomplish the work of this contract.

(3) Financial Statements

Complete financial statements for the last two (2) years, including Statement of Financial Position (Balance Sheet), Results of Operations (Income Statement), Statement of Changes in Financial Position (Net Change in Resources) and Statement of Current and Retained Earnings. These statements shall be certified indicating disclosure of all facts which could impair or affect the statements presented.

(4) Affirmative Action Program

An affirmative statement by the Contractor as to its intent and ability to comply with articles for Affirmative Action or Equal Opportunity.

(5) Safety Program

The following information regarding his safety program and his past safety performance:

- (a) Accident incident rates for the past twelve months for lost time accidents and for medical cases only on comparable work.
- (b) Experience Modification Rating which compares the number of OSHA recordable injuries and illnesses for the bidder to the average for the bidder's standard industry code. **Bidders with an EMR factor greater than 1.2 will be determined to be not responsible.**
- (c) Copy of the organizational Health and Safety Program to be followed by the Contractor and all Subcontractors.
- (d) Copy of organizational Temporary Fire Protection Plan to be followed by the prime contractor and all subcontractors.
- (e) Name and address of present compensation and liability insurance carrier.
- (f) Name, address and telephone number of person in charge of the organizational safety program.

(6) Quality Assurance Program

A detailed statement in compliance with Special Conditions, Clause 2.58 Quality Assurance Program for approval by the Contracting Officer of methods to achieve a Contract Quality Assurance Program, including coordination and quality control. Relevant quality associations and certifications for all tiers to include products and materials are to be provided.

(7) Insurance

The bidder shall submit as evidence of insurability a letter from an insurance agent or broker indicating that a commitment, valid for 90 days, exists from a specific insurance carrier or carriers to provide the coverages, with limits and insured as specified therein, can be bound upon award of the contract at a price known and acceptable to the bidder. The letter shall specifically reference the IFB and Special Conditions 2.13 Indemnification and Insurance. Failure to establish insurability may result in a determination of non-responsibility.

Doubt as to technical ability, productive capability, "good faith effort - SBE," and financial strength which cannot be resolved affirmatively may result in a determination of non-responsibility by the Contracting Officer

15. Opportunity for Small Business Enterprises to Bid

- a. It is the policy of the Authority (WMATA), the Federal Transit Administration (FTA) and the U. S. Department of Transportation (US DOT) that Small Business Enterprises (SBE's) shall have an equal opportunity to receive and participate in performing federally assisted contracts, including contracts and subcontracts at any tier. The SBE requirements are set forth in Appendix B-1 to

this solicitation and are applicable, if the bid is \$500,000 or less for construction contracts, or if the bid is \$100,000 or more for supply and service contracts.

- b. The documentation requirements of Appendix B-1 should be completed and submitted at the time set forth for the submittal of bids to the Authority. Any bidder/proposer who fails to complete and return this information with their bid may be deemed to be not responsible and may be ineligible for contract award.

16. Representations, Certifications, and Acknowledgments

The offeror shall check or complete all applicable boxes or blocks on the attached "Representations and Certifications" form.

- a. Ineligible Offeror. All offerors will be required to certify that they are not on the Comptroller General's list of ineligible bidders.
- b. Parent Company. A parent company for the purposes of this offer is a company 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 (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 company of the offeror. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, contractual arrangements, or otherwise.
- c. Employer's Identification Number (E.I. No.). The offeror shall insert in the applicable space on the form, if it has no parent company, its own E.I. No. (Federal Social Security Number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941), or, if it has a parent company, the E.I. No. of its parent company.

17. Conditions Affecting the Work (12/03)

- a. Bidders should visit the site and take such other steps as may be reasonably necessary to ascertain the nature and location of the work and the general and local conditions which can affect the work or the cost thereof.
- b. Failure to do so will not relieve bidders from the responsibility for estimating properly the difficulty or associated risks and cost of successfully performing the work.

18. Notice of Protest Policy (09/03)

- a. WMATA policy and procedure for the administrative resolution of protests is set forth in Chapter 17 of the Procurement Policy Manual (PPM) The PPM contains strict rules for filing a timely protest, for responding to a notice that a protest has been filed, and other procedural matters. The Contracting Officer can furnish a copy of Chapter 17 upon request.
- b. FTA Circular 4220 latest version, paragraph 7.I addresses Bid Protests. Review of protests by FTA is discretionary and will be limited to:
 - (1) a grantee's failure to follow its protest procedures, or its failure to review a complaint or protest; or
 - (2) violations of Federal law or regulation.

A protester must exhaust all administrative remedies with the Authority before filing an appeal to the FTA. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester learned or should have learned of an adverse decision by the grantee of other basis of appeal to FTA.

- c. Alleged violations on other grounds must be submitted to the Contracting Officer who will decide the protest.

- (1) The judicial authorities having jurisdiction over court actions concerning protest decisions are the United States District Courts for the Districts of Maryland, Virginia, and the District of Columbia, and the local courts in Maryland, Virginia, and the District of Columbia.

19. Requirement for Cost Data for Contract Award (12/03)

- 1. Bids received hereunder shall be subject to a price analysis to determine price reasonableness. A price analysis involves a comparison of the overall price to WMATA's estimate and to other prices for comparable items, either prior purchases by WMATA or by other agencies.
- 2. Should WMATA determine that there is not adequate price competition or that a price analysis does not provide an acceptable basis for determining price reasonableness, it may conduct a cost analysis. A cost analysis involves an evaluation of the various cost elements (labor, materials, overhead and profit) which constitute the proposed price or prices. It may include an audit of the proposer's overhead, general and administrative expenses, and profit. Such cost analysis and audit will be conducted in accordance with applicable Federal cost principles.
- 3. Refusal of a Bidder to provide the required information and access to its records to conduct a cost analysis, including an audit if conducted, may result in the Bidder's bid being rejected as unreasonably priced.

20. Davis-Bacon Wage Determination Decision

The Authority's Compact requires that all mechanics and laborers employed by contractors and subcontractors on construction and maintenance contracts be paid wages not less than those prevailing on similar contracts in this locality as determined by the Secretary of labor in accordance with Davis-Bacon and related Acts. **These wages are set forth under Appendix D of the IFB/Contract.** The applicable Labor Standards Provisions are included in the articles and appendices of this solicitation.

21. Bid Guarantee

- a. A bid guarantee is required by this Invitation for Bid. Failure to furnish a bid guarantee in the proper form and amount, by the time set for the opening of bids, may be cause for rejection of the bid. **The Bid Guarantee amount shall be 5% of the bid price.**
- b. A bid guarantee shall be in the form of a firm commitment, such as a bid bond, postal money order, certified check, cashier's check, irrevocable letter of credit from a State or Federally chartered bank or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Corporations executing the bid bond as sureties must be among those appearing on the Treasury Department's list of approved sureties and must be acting within the limitations set forth therein. Bid guarantees, other than bid bonds, will be returned as follows:
 - (1) To unsuccessful bidders: As soon as practicable after the opening of bids.
 - (2) To the successful bidder: Upon execution of such further contractual documents and bonds as may be required by the bid as accepted.

- c. If the successful bidder, upon acceptance of his bid by the Authority within the period specified therein for acceptance (90 days if no period is specified) fails to execute such further **contractual documents, if any, and give such bond(s) as may be required by the terms the bid as** accepted within the time specified (10 days if no period is specified) after the receipt of forms by him, his Contract may be terminated for default. In such event, he shall be liable for any cost of procuring the work which exceeds the amount of his bid, and the bid guarantee shall be available toward offsetting such difference.

22. Licenses – N/A

- a. If the work described in this IFB is to be performed in Virginia, bidders are required to show evidence of a certificate of registration obtained from the State of Virginia before a bid may be received and considered.
- b. Each bidder shall place on the outside of the envelope containing the bid, and on the bid form, one of the following notations:

(1) REGISTERED VIRGINIA CONTRACTOR: CLASS A, NUMBER _____

(2) REGISTERED VIRGINIA CONTRACTOR: CLASS B, NUMBER _____

23. Advance Cost Agreement – N/A

Within 30 days after Notice of Award, the Contractor shall make available for audit review, information on its accounting system used to project fixed and variable overhead rates applicable to possible Contract changes. The Authority's Office of the Auditor General, to the extent possible, will review and approve said accounting system. When appropriate and if possible, as a result of the audit review, Advance Cost Agreements should be executed between the Contracting Officer or other delegated Authority's Representative and the Contractor. The Cost Agreements shall be a supplemental agreement to the Contract.

24. WMATA's Tax Exempt Status

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

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

- b. It has been the practice of the District of Columbia to apply the Authority's tax exempt status to certain purchases of materials required under Authority construction contracts and acquired by contractors for physical incorporation into the project work. This has not been the practice in either Maryland or Virginia. The Authority does not represent or warrant that the District of Columbia practice applies to this project or, if it does, that it will continue in effect during the term of this project. It is the responsibility of the Contractor to determine its liability for any and all taxes applicable to this project. Assessment or payment of taxes by the Contractor, including taxes resulting from changes in existing laws or the application thereof or of new or additional taxes, shall not constitute the basis for an increase in the Contract price, except as otherwise

allowed under the General Provisions Article, FEDERAL, STATE AND LOCAL TAXES, of this Contract.

- c. By submission of its bid, the bidder certifies that none of the taxes as to which the Authority is exempt are included in its bid price(s).

25. Order of Precedence

In the event of an inconsistency between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following order:

- (a) The Solicitation, Offer and Award Form,
- (b) Solicitation Instructions and Conditions,
- (c) General Provisions,
- (d) Other provisions of the contract, whether incorporated by reference or otherwise,
- (e) The Specifications, and
- (f) Drawings.

26. Contractor Performance Evaluation

The Bidder is advised that a Performance Evaluation will be completed at the end of the contract. Factors to be included in the Performance Evaluation are as follows: Quality of Work, Timely Performance, Effectiveness of Management, Compliance with Labor Standards, Compliance with Safety Standards and an Overall Evaluation. The Performance Evaluation may be used in determinations of responsibility for future WMATA contracts.

* * *

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SOLICITATION, OFFER AND AWARD

CONTRACT NO. FQ16140	SOLICITATION NO. IFB FQ16140/LP <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"><input checked="" type="checkbox"/> ADVERTISED</div> <div style="text-align: center;"><input type="checkbox"/> NEGOTIATED</div> </div>	DATE ISSUED June 23, 2016	ADDRESS OFFER TO OFFICE OF PROCUREMENT Office of Procurement 600 Fifth Street NW Washington, DC 20001
-----------------------------	---	----------------------------------	--

SOLICITATION

Sealed offer in original and TWO (2) copies and one (1) copy on electronic media (flash drive or computer disk) for furnishing the supplies or services in the schedules will be received at Authority until 2:00 P.M. local time July 20, 2016.
(Hour) (Date)

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

All offers are subject to the following:

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

Bidder's E-mail _____ **Bidder's Phone Number** _____ **Bidder's Fax Number** _____

SCHEDULE					
ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
001 & 002	Construct and Install Data Center & Operation Control Center HVAC Rooftop Work Platforms for Carmen Turner Facility (CTF) IAW Technical Specifications and Drawings(attached) (See continuation of price schedule on page 42)	See	Price	Schedule	

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)
<input type="checkbox"/> Check if remittance is different from above — enter such address in Schedule	<div style="display: flex; justify-content: space-between;"> <div style="width: 60%;">Signature</div> <div style="width: 40%;">Offer Date</div> </div>

AWARD (To be completed by The Authority)

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

ITEM NO.	QUANTITY	UNIT	UNIT PRICE

The total amount of this award is \$ _____

Kunj Behari <small>Name of Contracting Officer (Print of Type)</small>	WASHINGTON METROPOLITAN TRANSIT AUTHORITY	AWARD DATE
---	---	------------

BID FORM

June 23, 2016

PROJECT DESCRIPTION: Construct and Install Data Center & Operation Control Center HVAC
Rooftop Work Platforms at Carmen Turner Facility, CTF

In compliance with your Invitation for Bid of the above date, the undersigned hereby offers and agrees to furnish all labor, equipment and materials and perform all work as stated in the Technical Specification/Drawings.

IFB FQ16140/LP

In strict accordance with the Specifications, appendices, certifications, Contract Drawings, schedules, insurance specifications and conditions for the consideration of the amounts listed on the attached Price Schedule. The undersigned further agrees that, upon written acceptance of this bid, mailed or otherwise furnished, within 10 calendar days after receipt of the prescribed forms, execute the Contract and furnish, if required, performance and payment bonds on standard Authority forms with good and sufficient surety or sureties.

The undersigned agrees that if awarded the Contract, he will commence the work within ten (10) calendar days after the receipt of Notice to Proceed and that he will complete the work within the time specified (45 cal. Days).

The undersigned acknowledges receipt of the following amendments to the Solicitation Documents (Give number and date of each):

Amendment Number____, dated_____

Amendment Number____, dated_____

Amendment Number____, dated_____

Amendment Number____, dated_____

Failure to acknowledge receipt of all amendments may cause the bid to be considered not responsive to the solicitation, which would require rejection of the bid.

THE OUTSIDE OF THE ENVELOPE CARRYING THE BID SHALL ALSO BE MARKED TO SHOW THE AMENDMENTS RECEIVED

Authorized Signature

Company Name

Date

BID GUARANTEE

Enclosed is the bid guarantee (when applicable) consisting of _____, in the amount of _____.

In witness whereof, each bidder hereto has executed this bid form this _____ day of _____, 2016.

B I D D E R:

_____	_____
<i>Firm Name</i>	<i>By (signature)</i>
_____	_____
<i>Address</i>	<i>Title</i>
_____	_____
	<i>Telephone</i>
_____	_____
	<i>Project Manager</i>
_____	_____
<i>Firm Name</i>	<i>By</i>
_____	_____
<i>Address</i>	<i>Title</i>
_____	_____
	<i>Telephone</i>
_____	_____
	<i>Project Manager</i>

DIRECTIONS FOR SUBMITTING BID:

1. Read and comply with the Solicitation Instructions. This form is to be submitted in singular. Attached certifications must be completed and returned with the bid form. **Appendix B-1 (SBE) data must be completed and returned if bid price is \$500,000 or less.**
2. Envelopes containing bids, bid guarantee and related required documents must be sealed, marked and addressed as follows:

**IF BID IS TIMELY MAILED OR
HAND DELIVERED BEFORE 1:00 PM
ON BID OPENING DAY:**

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY, ROOM 3C02
DEPARTMENT OF PROCUREMENT
600 FIFTH STREET, N.W.
WASHINGTON, D.C. 20001

**IF BID IS HAND-DELIVERED
HAND DELIVERED BEFORE 1:00 PM
ON BID OPENING DAY:**

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY
MEETING ROOM, LOBBY LEVEL
600 FIFTH STREET, N.W.
WASHINGTON, D.C. 20001

Envelopes shall be marked in the lower left hand corner as follows:

**BID UNDER IFB FQ16140/LP
AMENDMENT NUMBERS ____ RECEIVED.**

CAUTION: DO NOT INCLUDE IN THE ENVELOPE ANY BID FOR OTHER WORK. BIDS SHOULD NOT BE QUALIFIED BY EXCEPTIONS TO THE SOLICITATION CONDITIONS.

REPRESENTATIONS & CERTIFICATIONS
(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 _____.

Name	Signature
Title	Company
Date	

2. AFFILIATION AND IDENTIFYING DATA

Each offeror shall complete 2.1, 2.2 if applicable, and 2.3 below, representing that:

2.1 It ☐ is, ☐ is not, owned or controlled by a parent company. For this purpose, a parent company is defined as one that either owns or controls the activities and basic business policies of the offeror. To own another company, means that the parent company must own at least a majority, i.e., more than fifty percent (50%), 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 the offeror's basic business policy decisions, 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.

2.2 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)

2.3 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. N. of its parent company).

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

Name	Signature
Title	Company
Date	

3. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS

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

- 3.1** It [] has, [] has not, participated in a previous contract or subcontract subject to either the Equal Opportunity Clause of this solicitation, or the clause contained in Parts II and IV of Executive Order 11246, as amended; that prohibits discrimination on the basis of race, color, creed, national origin, sex, age; and
- 3.2** It [] has, [] has not, filed all required compliance reports; and
- 3.3** Representations indicating submittal of required compliance reports signed by proposed subcontractors will be obtained prior to subcontract awards.

Name	Signature
Title	Company
Date	

4. DISADVANTAGED BUSINESS ENTERPRISE

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

- 4.1** It [] is, [] is not, a disadvantaged business enterprise.

"Disadvantaged Business Enterprise" means a for-profit small business concern that is at least fifty one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged individuals or, in the case of a corporation, in which fifty one percent (51%) of the stock is owned by one or more such individuals; and whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals who own it.

"Socially and Economically Disadvantaged Individual" is defined in Appendix B. Notice of Requirements for Disadvantaged Business Enterprise (DBE). By submission of this offer, the offeror represents that:

- 4.2** It [] is, [] is not, currently certified by Metropolitan Washington Unified Certification Program (MWUCP) as a disadvantaged business enterprise.

- 4.3 Special Certification Requirements for Transit Vehicle Manufacturers.** Each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA funded transit vehicle procurements, must certify that it has complied with the DBE requirements of 49 C.F.R. Part 26.

The offeror represents that it [] is or [] is not a transit vehicle manufacturer and [] has or [] has not complied with the DBE requirements of 49 C.F.R Part 26.

Name	Signature
Title	Company

5. SMALL BUSINESS ENTERPRISE (MAY 2015)

"Small Business Enterprise" means a for profit small business concern that is at least fifty one percent (51%) owned by one (1) or more individual(s) who are economically disadvantaged. "Economically Disadvantaged Individual" is defined in Appendix B-1, Definitions, in Notice of Requirements for Small Business Enterprise (SBE) Program.

- 5.1** It [] is, [] is not, a small business enterprise. A firm must be a small business as defined by the U.S. Small Business Administration (SBA) by applying current SBA business size standards found in 13 C.F.R. Part 121 that are applicable to the type of work the firm seeks to perform in USDOT assisted contracts. The fifty one percent (51%) owner must be a U.S. citizen or permanent resident. A firm must be organized for profit in order to be eligible for SBE certification. The firm's average gross receipts cannot exceed the overall USDOT size standard for a small business [\$23.98 million averaged over the three (3) previous fiscal years or part of year that the business has been in existence.] Set forth in 49 C.F.R. § 26.65, at least fifty one percent (51%) of the firm's ownership must be held by individuals who meet the personal net worth (PNW) cap of \$1.32 million as prescribed by 49 C.F.R. § 26.67.

- 5.2** It [] is, [] is not, currently certified by WMATA as a small business enterprise.

Name	Signature
Title	Company
Date	

6. AFFIRMATIVE ACTION COMPLIANCE

This representation is applicable to federally assisted contracts of \$50,000 or more that are awarded to contractors with fifty (50) or more employees. By submission of this offer, the offeror represents that:

- 6.1** It has a workforce of _____ employees.

- 6.2** It [] has developed and has on file, or [] has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 C.F.R. §§ 60.1 and 60.2), or

- 6.3** It [] has not previously had contracts subject to the written affirmative action program requirements of the rules and regulations of the U.S. Secretary of Labor.

Name	Signature
Title	Company
Date	

CERTIFICATIONS

7. 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 Board member, employee or agent of the Authority with the view toward securing favorable treatment in the awarding, or administration of this Contract.

Name	Signature
Title	Company
Date	

8. CONTINGENT FEES

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:

- 8.1** 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

- 8.2** 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.

Name	Signature
Title	Company
Date	

9. CLEAN AIR ACT AND CLEAN WATER ACT CERTIFICATION

This certification is applicable if the Contract will be federally assisted and the offer exceeds \$150,000, or the Contracting Officer believes that orders under an indefinite type Contract in any year will exceed \$150,000 or a facility to be used has been the subject of a conviction under the Clean Air Act [42 U.S.C. § 7413(c)(1)] or the Clean Water Act [33 U.S.C. § 1319(c)], is listed by the U.S. Environmental Protection Agency (EPA) as a violating facility, and the acquisition is not otherwise exempt:

- 9.1** Any facility to be utilized in the performance of this Contract [] is, or [] is not listed on the EPA's List of Violating Facilities;
- 9.2** Offeror will immediately notify the Contracting Officer, before award, of the receipt of any communications from the Administrator, or a designee of the EPA, indicating that any facility that it proposes to use in the performance of this Contract is under consideration to be listed on the EPA's List of Violating Facilities; and
- 9.3** Offeror will include a certification substantially the same as this certification, including this paragraph, in every non-exempt subcontract.

Name	Signature
Title	Company
Date	

10. DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

This certification is applicable to federally assisted contracts over \$25,000.

- 10.1** Primary Covered Transactions. This certification applies to the offer submitted in response to this solicitation and will be a continuing requirement throughout the term of any resultant Contract.
- 10.1.1** In accordance with the provisions of 2 C.F.R. Part 1200 and 2 C.F.R. Part 180, Subpart C, the offeror certifies to the best of its knowledge and belief that it and its principals:
- 10.1.1.1** are not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or state department or agency;
- 10.1.1.2** have not, within a three (3) year period preceding this offer, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction; violation of Federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 10.1.1.3** are not currently indicted for or otherwise criminally or civilly

charged by a governmental entity (Federal, state, or local) with commission of any of the offenses enumerated in paragraph (1) (ii) of this certification; and have not, within a three (3) year period preceding this offer, had one (1) or more public transactions (Federal, state, or local) terminated for cause or default.

10.1.2 Where the offeror is unable to certify to any of the statements in this certification, the offeror shall attach an explanation to this offer.

10.2 Lower Tier Covered Transactions. This certification applies to a subcontract at any tier expected to equal or exceed \$25,000 and will be a continuing requirement throughout the term of this Contract.

10.2.1 The prospective lower tier subcontractor certifies, by submission of this offer, that neither it nor its principals is currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal or state department or agency.

10.2.2 Where the prospective lower tier subcontractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

10.3 The Certification required by 10.2, above, shall be included in all applicable subcontracts and the Contractor shall keep a copy on file. The Contractor shall be required to furnish copies of certifications to the Contracting Officer upon his or her request.

Name	Signature
Title	Company
Date	

11. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

11.1 By submission of its 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:

11.1.1 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;

11.1.2 Unless otherwise required by law, the prices that are 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

11.1.3 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.

11.2 Each person signing this offer certifies that:

11.2.1 He or she is the person in the offeror's organization responsible for the decision regarding the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to 11.1.1 through 11.1.3 above; or

11.2.2 He or she is not the person in the offeror's organization responsible for the decision regarding 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 11.1.1 through 11.1.3 above; or and as their agent he or she does hereby so certify.

Name	Signature
Title	Company
Date	

12. CERTIFICATION OF NONSEGREGATED FACILITIES

This certification is applicable to federally assisted contracts over \$10,000.

12.1 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:

12.1.1 It does not and will not maintain or provide for its employees, any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control, where segregated facilities are maintained.

12.1.2 The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in this Contract.

12.1.3 As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom or otherwise.

12.1.4 It further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will:

12.2 Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;

12.3 Retain such certifications in its files; and

12.4 Forward the following notice to such subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS
OF NONSEGREGATED FACILITIES**

A Certification of Nonsegregated Facilities must be submitted prior to award of a subcontract exceeding \$10,000 that is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for such subcontract or for all subcontracts during a period (i.e., quarterly, semiannually or annually).

Name	Signature
Title	Company
Date	

13. NONDISCRIMINATION ASSURANCE

13.1 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, religion, national origin, sex, age, disability, sexual preference and/or gender identity in the performance of this Contract. The offeror is required to insert the substance of this clause in all subcontracts and purchase orders. The Contractor's failure to carry out these requirements is a material breach of this Contract, that 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.

Name	Signature
Title	Company
Date	

14. CERTIFICATION OF RESTRICTIONS ON LOBBYING

This certification is applicable to federally assisted contracts if the offer exceeds \$100,000.

14.1 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 his or her knowledge or belief:

14.1.1 No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

14.1.2 If any funds other than federally appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Contract, the undersigned shall complete and submit Standard Form--LLL, "Disclosure of Lobbying Activities."

14.1.3 The undersigned shall require that the language of this certification be included in all sub-awards (including subcontracts, sub-grants and contracts under grants, loans and cooperative agreements) at all tiers and that all sub-recipients shall certify and disclose accordingly.

14.2 This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352, as amended. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

14.3 The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C.A. § 3801, *et seq.* apply to this certification and disclosure, if any.

Name	Signature
Title	Company
Date	

15. BUY AMERICA ACT CERTIFICATION

The Buy America Act requirements apply to federally assisted construction contracts, and acquisition of goods or rolling stock contracts valued at more than \$150,000.¹

15.1 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 it will comply with 49 U.S.C. § 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7 Separate requirements for rolling stock are set out at 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11.

15.2 An offeror must submit to the Authority, the appropriate Buy America Act certification (below) with all offers on FTA funded contracts, except those subject to a general waiver. Offers that are not accompanied by a completed Buy America Act certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors. Mark the applicable certifications below:

¹ If the funding for this Contract comes from an FTA grant issued before December 26, 2014, then the limit is \$100,000.

15.2.1 Certification requirement for procurement of steel, iron, or manufactured products:

☐ *Certificate of Compliance with 49 U.S.C. § 5323(j)(1)*

The offeror hereby certifies that it will meet the requirements of 49 U.S.C. § 5323(j)(1) and the applicable regulations in 49 C.F.R. § 661.5.

☐ *Certificate of Non-Compliance with 49 U.S.C. § 5323(j)(1)*

The offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. § 5323(j)(1) and 49 C.F.R. § 661.5, but it may qualify for an exception pursuant to 49 U.S.C. §§ 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. § 661.7.

15.2.2 Certification requirement for procurement of buses, other rolling stock and associated equipment:

☐ *Certificate of Compliance with 49 U.S.C. § 5323(j)(2)(C)*

The offeror hereby certifies that it will comply with the requirements of 49 U.S.C. § 5323(j)(2)(C) and the regulations at 49 C.F.R. § 661.11.

☐ *Certificate of Non-Compliance with 49 U.S.C. § 5323(j)(2)(C)*

The offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11, but may qualify for an exception pursuant to 49 U.S.C. §§ 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. § 661.7.

Name	Signature
Title	Company
Date	

16. CERTIFICATION OF NON-DELINQUENT TAXES

This certification is applicable to federally assisted contracts.

16.1 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:

16.1.1 It has not been convicted over the past three (3) years of violating any Federal criminal tax law or failed to pay any tax.

16.1.2 It has certified if it has been notified of an unresolved tax lien or any unsatisfied Federal tax delinquency in excess of \$3,000 and that it is paying tax debts through an installment agreement or has requested a collections due process hearing.

16.1.3 The offeror agrees that a breach of this certification is a violation of the Federal Acquisition Regulation (FAR).

16.1.4 As used in this certification, the term "tax delinquency" means an outstanding debt for which a notice of lien has been filed in public records.

16.1.5 It further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will:

- 16.2 Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the FAR.;
- 16.3 Retain such certifications in its files; and
- 16.4 Forward the following notice to such subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATION
OF NON-DELINQUENT TAXES**

A Certification of Non-Delinquent Taxes must be submitted prior to award of a subcontract exceeding \$100,000 that is not exempt from the provisions of the FAR. The certification may be submitted either for such subcontract or for all subcontracts during a period (i.e., quarterly, semiannually or annually).

Name	Signature
Title	Company
Date	

17. DISCLOSURES OF INTERESTS OF WMATA BOARD MEMBERS

For purposes of this disclosure, terms in bold are defined by the Code of Ethics for Members of the WMATA Board of Directors a copy of which is available at www.wmata.com. Financial interests include 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 its knowledge, information and belief in connection with this procurement:

- 17.1 ☐ 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.
- 17.2 ☐ 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

- 17.3** The certifications required by 17.1 and 17.2 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 his or her request.

Name	Signature
Title	Company
Date	

SOLICITATION, OFFER AND AWARD (CONTINUATION SHEET)

UNIT PRICE SCHEDULE

Line Item	Description	Quantity	Unit of Issue	Unit Price	Total
001	Construct and Install Data Center HVAC Rooftop Work Platform for Carmen Turner Facility (CTF) IAW Technical Specifications and Drawings(attached)	1	EA	\$ _____	\$ _____
002	Construct and Install Operation Control Center HVAC Rooftop Work Platform for Carmen Turner Facility (CTF) IAW Technical Specifications and Drawings(attached)	1	EA	\$ _____	\$ _____
GRAND TOTAL					\$ _____

Authorized Signature

Company Name

Date

NOTES TO BIDDERS:

1. The Bid Item No. Amount shall include all work at each location.
2. The Contract will be awarded on the basis of the lowest responsive total bid price from a responsible Bidder. A single contract will be awarded.
3. The Offeror must bid on all items. Failure to bid on all items shall result in bid rejection.
4. Any bid which is materially unbalanced as to prices for the various items may be rejected as non-responsive. A materially unbalanced bid is one which is based on prices which are materially overstated for other work.
5. Unit Prices - The unit prices shall constitute full compensation for all costs of performance under this contract, including but not limited to: labor, materials, equipment, supervision, quality control, testing, safety, transportation, project management, overhead, profit, bonds and other items necessary to complete the work.
6. All extensions of the unit prices shown will be subject to verification by the Authority. In case of variation between the unit prices and the extension, the unit price will be considered the bid.
7. The Bidder must furnish a Bid Guarantee in accordance with the Invitation for Bid for the Total Bid Price.
8. Performance and Payment Bonds - The Performance and Payment Bonds shall be based upon the Total Bid Price.
9. The Bidder is advised that this contract contains Davis-Bacon provisions. The Contractor will be required to submit certified payrolls on a weekly basis. Also, the Authority will monitor compliance by performing Labor Standards Interviews of the labor force. The Authority will hold retainage in a sufficient amount as may be considered necessary for any underpayment of wages and/or fringes until they are fully resolved in accordance with the Labor Provisions of the contract.
10. SBE Set Aside data (See Appendix B-1) shall be submitted with the bid. Note: ***~~Applies only if total bid price (base plus option) is \$500,000 or less.***

BID BOND

Bid Invitation No. IFB FQ16140/LP

Bid Date:

Penal Sum of Bond:

5 % of Offered Price

Date Bond Executed:

KNOW ALL MEN BY THESE PRESENTS, that we, the Principal and Surety(ies) hereto, are firmly bound to the Washington Metropolitan Area Transit Authority in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally: Provided, that, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the bid identified above: NOW, THEREFORE, if the Principal, upon acceptance by the Authority of his bid identified above, within the period specified therein for acceptance (ninety [90] days if no period is specified), shall execute such further contractual documents, if any, and give such bond(s) as may be required by the terms of the bid as accepted within the time specified (ten [10] days if no period is specified) after receipt of the forms by him, or in the event of failure so to execute such further contractual documents and give such bonds, if the Principal shall pay the Authority for any cost of procuring the work which exceeds the amount of his bid, then the above obligation shall be void and of no effect.

Each Surety executing this instrument hereby agrees that its obligation shall not be impaired by any extension(s) of the time for acceptance of the bid that the Principal may grant to the Authority notice of which extension(s) to the Surety(ies) being hereby waived provided that such waiver shall apply only with respect to extensions aggregating not more than sixty (90) calendar days in addition to the period originally allowed for acceptance of the bid.

Principal(s)

1.	Firm Name and Address: Signature: _____ Name and Title:	State of Inc.:	Corporate Seal
2.	Firm Name and Address: Signature: _____ Name and Title:	State of Inc.:	Corporate Seal
2.	Firm Name and Address: Signature: _____ Name and Title:	State of Inc.:	Corporate Seal

BID BOND page 2

Corporate Surety(ies)			
Surety A	Surety Name and Address: _____ Signature: _____ Name and Title: _____	Liability Limit \$ _____	(Seal) State of Inc.: _____
Surety B	Surety Name and Address: _____ Signature: _____ Name and Title: _____	Liability Limit \$ _____	(Seal) State of Inc.: _____
Surety C	Surety Name and Address: _____ Signature: _____ Name and Title: _____	Liability Limit \$ _____	(Seal) State of Inc.: _____
<p>Attach additional pages as needed.</p> <p>Instructions</p> <ol style="list-style-type: none"> 1. This form is authorized for use whenever a bid guaranty is required in connection with construction work or the furnishing of supplies and services. 2. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of this form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership or joint venture, or an officer of the corporation involved, evidence of his authority must be furnished. 3. The penal sum of the bond shall be expressed as either a percentage of the bid price or in dollars and cents. 4. Corporation executing the bond as sureties must be among those appearing on the Treasury Department's list of approved sureties and must be acting within the limitations set forth therein. Where more than a single corporate surety is involved, their names and addresses (city and State) shall be inserted in the spaces (Surety A, Surety B, etc.) headed "Corporate Surety(ies)". 5. Corporations executing the bond shall affix their corporate seals. 6. The name of each person signing this bid bond should be typed in the space provided. 			

* * *

CONTRACTING REQUIREMENTS

OFFEROR'S INFORMATION NOTICE

The following forms are included for the
bidder's information regarding
pre-award information from the apparent low bidder
and award of the Contract to the eligible bidder.

Except where indicated otherwise, they are not required to be submitted
with the bid.

PRE-AWARD EVALUATION DATA

PERFORMANCE BOND

PAYMENT BOND

CONSTRUCTION CONTRACT

POWER OF ATTORNEY

POWER OF EXECUTION

* * *

PRE-AWARD EVALUATION DATA

PROJECT DESCRIPTION: Construct and Install Data Center & Operation Control Center HVAC Rooftop Work Platforms at Carmen Turner Facility, CTF

1. Name of Firm: _____

2. Legal Address: _____

3. ☐ Individual ☐ Partnership ☐ Corporation ☐ Joint Venture
4. Date Organized _____
State in which incorporated _____
5. Names and Addresses of Officers or Partners:
 - a. _____
 - b. _____
 - c. _____
 - d. _____
 - e. _____
 - f. _____
6. How long has the firm been in business under its present name? _____
7. **SCHEDULE 1** - Attach as a list of current contracts, each with contract amount, owner, architect-engineer, character or type of work and percentage of completion. Also, include those projects on which you are apparent low bidder, but for which you have not received an award of contract.
8. **SCHEDULE 2** - What is the estimated work placement value required per year to complete the work described in?

2016:_____ 2017:_____ 2018:_____
9. **SCHEDULE 3** - Attach as a list of contracts, each with contract amount, owner, architect-engineer and character or type of work, for contracts completed in the last five years.
10. Have you ever been denied an award on which you were low bidder? _____

SCHEDULE 4 - If the answer is YES, attach as the full particulars regarding each occurrence.

11. Have you ever failed to complete any contract, other than current, on which you were the low bidder? _____

SCHEDULE 5 - If the answer is YES, attach as the full particulars regarding each occurrence.

12. Have you ever been assessed liquidated damages or actual damages for late completion within the last five years? _____

SCHEDULE 6 - If the answer is YES, attach as the full particulars regarding each occurrence.

13. Financial resources available as working capital for this Contract:

a. Cash on hand: \$_____ Date: _____

b. Sources of credit: _____

14. **SCHEDULE 7** - Attach as certified financial statements for the last two (2) years and letters from banks regarding credit as required by the Pre-Award Information article of the Invitation for Bid.

15. **SCHEDULE 8** - Attach as the construction experience of each officer and principal individual of your organization; include present position, years of construction experience, magnitude and type of work and in what capacity.

16. What percentage of the work (contract amount) do you intend performing with your own personnel? _____%

17. **SCHEDULE 9** - Attach as 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 Invitation for Bid.

18. Attach as exhibits completed PRE-AWARD EVALUATION DATA forms for each of the subcontractors listed in SCHEDULE 9 above.

19. If the Contractor or subcontractor is a joint venture, submit PRE-AWARD EVALUATION DATA form for each member of the joint venture.

20. Method to achieve and maintain staff consistent with the requirements

The above information is confidential and will not be divulged to any unauthorized person or persons.

The signatory of this questionnaire certifies to the truth and accuracy of all statements and answers.

FOR: _____
(Name of Firm)

SIGNATURE: _____

TITLE: _____

DATED: _____

LOCATION: _____

PAYMENT BOND

Contract No. : FQ16140

Contract Date:

Penal Sum of Bond:

Date Bond Executed:

KNOW ALL MEN BY THESE PRESENTS, that we, the Principal and Surety(ies) hereto, are firmly bound to the Washington Metropolitan Area Transit Authority (hereinafter called the Authority) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally: Provided, that, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into the contract identified above:

NOW, THEREFORE, if the Principal shall perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Authority, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety(ies) being hereby waived, then the above obligation shall be void and of no effect.

1. A claimant is defined as one having a direct contract with the Principal or with a subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the CONTRACT.
2. The above-named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due the claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
 - a. Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to the Principal within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal at any place where he maintains an office or conducts business, or his residence or such notice shall be served in any manner in which legal process may be served in the state or District of Columbia in which the aforesaid project is located, save that such service need not be made by a public officer.
 - b. After the expiration of one (1) year following the date of final settlement of said CONTRACT, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
 - c. Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

PAYMENT BOND – Page 2

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this performance bond and have affixed their seals on the date set forth above.

Principal(s):

1. Firm Name and Address: Signature: _____ Name and Title:	Corporate Seal State of Inc.:
2. Firm Name and Address: Signature: _____ Name and Title:	Corporate Seal State of Inc.:
3. Firm Name and Address: Signature: _____ Name and Title:	Corporate Seal State of Inc.:

Corporate Surety(ies):

Surety A	Surety Name and Address: Signature: _____ Name and Title:		Liability Limit \$	(Seal)
			State of Inc.:	
Surety B	Surety Name and Address: Signature: _____ Name and Title:		Liability Limit \$	(Seal)
			State of Inc.:	

Surety C	Surety Name and Address:		Liability Limit \$	(Seal)
	Signature: _____			
	Name and Title:		State of Inc.:	
Attach additional pages as needed.				
	Bond			
	Premium			
	Schedule	Total Premium	\$	
Instructions				
<ol style="list-style-type: none"> 1. This form is authorized for use in connection with contracts for construction work or the furnishing of supplies and services. 2. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of this form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership or joint venture, or an officer of the corporation involved, evidence of his authority must be furnished. 3. Corporation executing the bond as sureties must be among those appearing on the Treasury Department's list of approved sureties and must be acting within the limitations set forth therein. Where more than a single corporate surety is involved, their names and addresses (city and State) shall be inserted in the spaces (Surety A, Surety B, etc.) headed "Corporate Surety(ies)". 4. Corporations executing the bond shall affix their corporate seals. 5. The name of each person signing this performance bond should be typed in the space provided. 6. The date this Bond is executed must be later than the contract execution date. 				

PERFORMANCE BOND

Contract No.: FQ16140

Contract Date:

Penal Sum of Bond:

Date Bond Executed:

KNOW ALL MEN BY THESE PRESENTS, that we, the Principal and Surety(ies) hereto, are firmly bound to the Washington Metropolitan Area Transit Authority (hereinafter called the Authority) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally: Provided, that, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into the contract identified above:

NOW, THEREFORE, if the Principal shall promptly make payment to all claimants as hereinafter defined supplying labor and material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety(ies) being hereby waived, then the above obligation shall be void and of no effect, otherwise it shall remain in full force and effect, subject, however, to the following conditions:

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this payment bond and have affixed their seals on the date set forth above.

Principal(s)

1. Firm Name and Address: Signature: _____ Name and Title:	 State of Inc.:	Corporate Seal
2. Firm Name and Address: Signature: _____ Name and Title:	 State of Inc.:	Corporate Seal
3. Firm Name and Address: Signature: _____ Name and Title:	 State of Inc.:	Corporate Seal

PERFORMANCE BOND page 2

Corporate Surety(ies)

Surety A	Surety Name and Address:	Liability Limit	(Seal)
	Signature: _____	\$	
	Name and Title:	State of Inc.:	
Surety B	Surety Name and Address:	Liability Limit	(Seal)
	Signature: _____	\$	
	Name and Title:	State of Inc.:	
Surety C	Surety Name and Address:	Liability Limit	(Seal)
	Signature: _____	\$	
	Name and Title:	State of Inc.:	

Attach additional pages as needed.

Instructions

1. This form is authorized for use in connection with contracts for construction work or the furnishing of supplies and services.
2. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of this form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership or joint venture, or an officer of the corporation involved, evidence of his authority must be furnished.
3. Corporation executing the bond as sureties must be among those appearing on the Treasury Department's list of approved sureties and must be acting within the limitations set forth therein. Where more than a single corporate surety is involved, their names and addresses (city and State) shall be inserted in the spaces (Surety A, Surety B, etc.) headed "Corporate Surety(ies)".
4. Corporations executing the bond shall affix their corporate seals.
5. The name of each person signing this payment bond should be typed in the space provided.
6. The date this Bond is executed must be later than the contract execution date.

* * *

CONSTRUCTION GENERAL PROVISIONS

1.1 Definitions (07/03)

- a. Authority: The term Authority as used herein means 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.
- b. Authority Representative: The Authority Representative is the person responsible for post award execution of an Authority contract in the most effective, economical, and timely manner. Upon Contract award, the Authority Representative is the Authority's primary point of contact with the Contractor. In addition, the Authority Representative is delegated authority to modify this Contract within specified dollar limits which are available upon request. The Authority may designate additional individuals, usually in the supervisory chain as the Authority Representative, who have dollar authority in excess of the Authority Representative's stated authority (see also definition of Contracting Officer). The Authority Representative may, at his or her discretion, delegate Project responsibilities to a Project Representative and certain other responsibilities to other designees. Unless the Contractor is directed to the contrary, all correspondence with respect to this Contract shall be sent to the Authority Representative.
- c. Project Representative: The term Project Representative means the individual(s), including but not limited to the Resident Engineer, to whom the Authority Representative has delegated Project responsibilities. If a Project Representative is appointed, the Project Representative represents the Authority Representative on the Project within the limits of that delegation with respect to any part of the Work.
- d. Engineer: The term Engineer is used in numerous locations in the specifications. The term Engineer is synonymous with the term Resident Engineer, Project Representative, or if no individual has been so designated, the Authority Representative.
- e. Contracting Officer: A Contracting Officer is an employee within the Authority's Office of Procurement and Materials with authority duly delegated from the powers of the General Manager and CEO to legally bind the Authority by signing a contractual instrument. The Office of Procurement and Materials has been delegated broad authority regarding acquisition functions, independent from the project office. Contracting Officers have the authority to make related determinations and findings, and take other significant actions normally reserved for the Office of Procurement and Materials including, but not limited to: awards, modifications above the Authority Representative's level of authority, final payments, suspensions, terminations, debarments, assessment of liquidated damages, and issuances of final decisions under the Disputes article. The term includes certain other representatives of the Authority acting within delegated limits of authority. In general, the Authority's primary point of contact for pre-award administration and fiscal closeout resides with the Contracting Officer, and the primary point of contact for the post-award contract administration is the Authority Representative.
- f. Board of Directors: The term Board of Directors means the Board of Directors of the Washington Metropolitan Area Transit Authority.
- g. The term Contractor as used in the Specifications shall mean the individual, partnership or corporation that agrees to provide all labor, material and services required under the Contract.
- h. Wherever in the Contract Documents 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 or other delegated Authority's Representative, Project Representative, or Designer, as specified, is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import, shall mean "approved by," "acceptable to," or "satisfactory to" the Contracting Officer or other delegated Authority's Representative, Project Representative, or Designer, as specified, unless otherwise expressly stated.

- i. Where the terms "as shown", "as indicated", "as detailed" or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this Contract unless stated otherwise. The word provided as used herein shall be understood to mean provided complete in place that is furnished and installed.

1.2 Contract Documents

1.2.1 INTENT OF THE CONTRACT DOCUMENTS:

- a. The intent of the Contract Documents is to prescribe the construction and completion of the work. Where the Contract Drawings and Specifications describe portions of the work in general terms, but not in complete detail, the best general practice shall be followed and only new materials and workmanship of best standard quality shall be used. Unless otherwise specified, the Contractor shall furnish all labor, materials, tools, equipment and incidentals which are necessary to complete the work in a proper, substantial and workmanlike way.
- b. Throughout the Specifications requirements have been specified for Contract performance. Each such Contract item is mandatory and shall be performed by the Contractor.
- c. Reference to any article or paragraph within the Specifications shall imply reference to all subparagraphs there under.

1.2.2 ELEMENTS OF THE CONTRACT DOCUMENTS:

- a. The Contract Documents: The Contract Drawings, the General Provisions, the Contract Specifications and all Amendments.
- b. Contract Drawings: The official plans, profiles, cross sections, elevations, schedules and details listed or referenced in the Contract Specifications or amendments thereto and which show the locations, character, dimensions and details of the work to be performed.
- c. General Provisions: Compilation of contractual and legal requirements. In case of variance between the General Provisions, the Special Conditions and/or the Technical Provisions, the General Provisions shall take precedence.
- d. Special Conditions and Technical Provisions: Project requirements and technical specifications which include materials and construction requirements.
- e. Amendment: A document which is added to the original bidding documents during the bidding period to clarify, revise, add to or delete from the original documents or previous amendments.

1.2.3 SPECIFICATIONS AND DRAWINGS:

- a. The Contractor shall keep on the work a copy of the Drawings and Specifications and shall at all times give the Contracting Officer or other delegated Authority's Representative access thereto.
- b. Omissions: Anything mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both.
- c. Discrepancies:
 - (1) In case of discrepancy between Drawings and Specifications, the Specifications shall govern.

- (2) In case of discrepancy in the figures, in the Drawings or in the Specifications, the matter shall be promptly submitted to the Contracting Officer or other delegated Authority's Representative who shall promptly make a determination in writing.
- (3) Any adjustment by the Contractor without such a determination shall be at his own risk and expense.
- d. The Contracting Officer or other delegated Authority's Representative shall furnish from time to time such detail drawings and other information as he may consider necessary unless otherwise provided.

1.3 Changes

- a. The Contracting Officer or other delegated Authority's Representative may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract including, but not limited to, changes:
 - (1) In the Specifications, including Drawings and designs;
 - (2) In the method or manner of performance of the work;
 - (3) In the Authority-furnished facilities, equipment, materials, services, or site; or
 - (4) Directing acceleration in the performance of work.
- b. Any other written order or an oral order, which terms as used in this Paragraph b. shall include direction, instruction, interpretation or determination from the Contracting Officer or other delegated Authority's Representative, which causes any such change, shall be treated as a change order under this Article, provided that the Contractor gives the Contracting Officer or other delegated Authority's Representative written notice stating the date, circumstances and source of the order and that the Contractor regards the order as a change order.
- c. Except as herein provided, no order, statement or conduct of the Contracting Officer or other delegated Authority's Representative shall be treated as a change under this Article or entitle the Contractor to an equitable adjustment hereunder.
- d. If any change under this Article causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this Contract, whether or not change by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly; provided, however, that except for claims based on defective Specifications, no claim for any change under Paragraph b. above shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as therein required, and provided further, that in the case of defective Specifications for which the Authority is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective Specifications.
- e. If the Contractor intends to assert a claim for an equitable adjustment under this Article, he must, within 30 days after receipt of a written change order under Paragraph a. above or the furnishing of a written notice under Paragraph b. above, submit to the Contracting Officer or other delegated Authority's Representative a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the Authority. The statement of claim hereunder may be included in the notice under b. above.
- f. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

1.4 Differing Site Conditions

- a. The Contractor shall promptly, and before such conditions are disturbed, notify the Contracting Officer or other delegated Authority's Representative in writing of the following:
 - (1) Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract.
 - (2) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

The Contracting Officer or other delegated Authority's Representative will promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Contract modified in writing accordingly.

- b. No claim of the Contractor under this Article shall be allowed unless the Contractor has given the notice required in Paragraph a. above; provided, however, the time prescribed therefor may be extended by Contracting Officer or other delegated Authority's Representative.
- c. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

1.5 Termination For Default, Damages For Delay And Time Extensions

- a. The Contractor shall be in default if it breaches any of its obligations under this Contract deemed material by the Contracting Officer, including, but not limited to, if the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, or fails to complete said work within such time. In addition to those instances specifically referred to in this 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 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 make progress in a manner deemed unreasonable by the Contracting Officer so as to endanger performance of the Contract; or
 - (4) In the view of the Contracting Officer, the Contractor is willfully violating this Contract or is not executing it reasonably and in good faith.
- b. In the event of the Contractor's material breach pursuant to paragraph a. above, the Contracting Officer is authorized to direct a written notice to the Contractor, specifying the nature of the breach and stating that, the Contractor has ten (10) days (or such additional time as the Contracting Officer authorizes, to cure the breach ("Notice to Cure"). If the Contractor fails to cure the breach in the time specified in the Notice to Cure, the Authority shall terminate the Contract, in whole or designated part, for default in accordance with the provisions of this Contract, by a written "Notice of Default" 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 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, material costs, plant costs, tooling expenses,

equipment costs, and property costs. The Authority may deduct the costs and expenses so charged from 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 Contract that was not terminated.

- d. The Authority may, in its sole discretion, waive a default by the Contractor, but such waiver 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 (1) any completed or partially completed Supplies, and (2) , 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 may have an interest.
- f. Upon any termination for default, the Authority shall pay for supplies or services accepted in accordance with this Contract. The Authority may also compensate the Contractor for any actions it reasonably takes at the Contracting Officer's direction, for the protection and preservation of property. The Authority may withhold from these amounts, any sum that the Contracting Officer determines to be necessary to protect the Authority against loss because of outstanding or claimed liens, or 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 converted to a termination for convenience and the rights and obligations of the parties shall be determined in accordance with the "Termination for Convenience" clause of this Contract.
- h. Any dispute with respect to any issue arising under this clause shall be subject to adjudication in accordance with the "Disputes" clause of this Contract. In no event shall the Authority's issuance of a "Notice to Cure" pursuant to paragraph (b) be the basis of a dispute pursuant this Contract or otherwise. The pendency of any dispute shall not constitute a basis for the delay of, or otherwise affect, the Authority's right to proceed in accordance with this clause, including without limitation, its right to complete the work, or the Contractor's obligation to complete any portion of the work that was not terminated.
- i. The rights and remedies of the Authority in this clause are in addition to any other rights and remedies provided under this Contract, at law or in equity.
 - a. The Contracting Officer may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event, the Contracting Officer may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the Authority resulting from his refusal or failure to complete the work in the specified time.
 - b. If fixed and agreed liquidated damages are provided in the Contract and if the Contracting Officer so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Authority in completing the work.

c. If fixed and agreed liquidated damages are provided in the Contract and if the Contracting Officer does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

d. The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

- (1) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the Authority in its contractual capacity, acts of another contractor in the performance of a contract with the Authority, fires, flood, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or

delays of subcontractors or suppliers at any tier arising from causes other than normal weather beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and

- (2) The Contractor, within 10 days from the beginning of any such delay, unless the Contracting Officer grants a further period of time before the date of final payment under the Contract, notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the DISPUTES Article of these General Provisions.

- (3) Unusually severe weather conditions:

(a) Pursuant to Paragraph d.(1) above, the Authority will use the following table as a basis for determining allowable time extensions to the Contract for unusually severe weather conditions and the impact of such weather at the construction site.

(b) The column below labeled Work Days represents work-day delays which may be expected in each month named within the Washington Metropolitan Area, based on a five-day work week:

MONTH	WORK DAYS	MONTH	WORK DAYS
January	4	July	2
February	4	August	3
March	4	September	2
April	5	October	3
May	5	November	4
June	2	December	4

- (a) Time extensions for weather delays during a given month will be allowed only for actual work days in excess of those numbers listed above and only when those excess days of delay affect the current critical path(s) leading to specified Contract completion or milestone dates.

If the Contractor, within 10 Days from the beginning of such delay, unless the Contracting Officer grants a further period before the date of Final Payment under the Contract, notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer will ascertain the facts and the extent of the delay and extend the time for completing the Work when, in the Contracting Officer's judgement, the findings of fact justify such an extension. The Contracting Officer's findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the Dispute clause of the Contract.

(4) Authority Operations and Emergencies:

- (a) The possibility exists that access to work may be impeded or that interruption to the work may occur, both scheduled and unscheduled, at the Authority's convenience, or specific direction, for operational or emergency reasons during contract performance ("delays from authority operations and emergencies"). It is the intent of this clause to ease the administration of delays from authority operations and emergencies.
- (b) Allowable time extensions to the contract for delays from Authority operations and emergencies shall be determined as follows:
 - (1) There shall be no allowable time extension nor equitable adjustment for any delay from Authority operations and emergencies causing work stoppage of less than 15 minutes.
 - (2) The contractor shall immediately bring to the AR's attention any delay from authority operations and emergencies causing continuous work stoppage of 15 minutes or more. Any delay from authority operations and emergencies not brought to the AR's attention on the day of the delay or the following work day will not be recognized.
 - (3) If the contractor and AR agree that a delay in part (b) (2) has delayed the completion of the work, the delay shall be considered a recognized delay.
 - (4) The contractor shall submit to the AR on a weekly basis a report of recognized delays occurring during the previous week, as a precondition to the Authority considering any claim for delays from authority operations and emergencies.
 - (5) Upon the contractor submitting a claim for delays from authority operations and emergencies, the AR shall grant a non-compensable time extension of one day for any working day in which the contractor accumulates 60 or more minutes of timely submitted recognized delays, unless granting the time extension would result in providing the contractor with more than a one day time extension relating to any working day. Simultaneously, the AR shall respond to the contractor's claim, if any, for costs associated with any working day in which the contractor accumulates 60 or more minutes of timely submitted recognized delays.
- e. If, after notice of termination of the Contractor's right to proceed under the provisions of this Article, it is determined for any reason that the Contractor was not in default under the provisions of this Article, or that the delay was excusable under the provisions of this Article, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the TERMINATION FOR CONVENIENCE OF THE AUTHORITY Article of these General Provisions.
- f. The rights and remedies of the Authority provided in this clause are in addition to any other rights and remedies provided by law under this Contract.

1.6 Disputes

- a. Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his 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 30 days from the date of receipt of such copy, the Contractor mails or otherwise

furnishes to the Contracting Officer a written appeal addressed to the Board of Directors. The decision of the Board of Directors or its duly authorized representative for the determination of such appeals 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 shall be afforded an opportunity to be heard and to offer evidence in support of his 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.

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

1.7 Payments To Contractor

- a. The Authority will pay the Contract price as hereinafter provided.
- b. The Authority will make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer or other delegated Authority's Representative, on estimates approved by the Contracting Officer or other delegated Authority's Representative.

The Contracting Officer or other delegated Authority's Representative shall review and approve the Contractor's progress payment requests based on the scheduled and actual progress of the work as reflected on the schedules and monthly updates if required by an Appendix of this Contract. The Contractor shall not be entitled to progress payments and the Contracting Officer or other delegated Authority's Representative shall have no obligation to review or approve progress payment requests if the Contractor has failed to submit or update the schedules if required by an Appendix of this Contract, or if the applicable schedule or update submitted by the Contractor fails to accurately reflect the actual progress of the work, or if the Contracting Officer or other delegated Authority's Representative declines to approve the submitted schedules for any of the reasons stated in this Contract. A decision not to approve a request for progress payments based upon the Contractor's failure to comply with the schedule and updates submission requirements, if required by an Appendix of this Contract, is committed under this Contract to the sole and absolute discretion of the Contracting Officer or other delegated Authority's Representative.

- c. If requested by the Contracting Officer or other delegated Authority's Representative, the Contractor shall furnish a breakdown of the total Contract price or lump sum bid items showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contracting Officer or other delegated Authority's Representative, at his discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration:
 - (1) If such consideration is specifically authorized by the Contract and
 - (2) If the Contractor furnishes satisfactory evidence that he has acquired title to such material and that it will be utilized on the work covered by this Contract.
- d. Unless otherwise provided in the Specifications, if the Contract price is more than \$50,000, material delivered that will be incorporated into the project will be taken into consideration in computing progress payments, provided the material is delivered on the site, or is delivered to the Contractor and properly stored by him in a warehouse, storage yard, or similar suitable place within 25 miles of the site or such reasonable distance in excess of 25 miles as may be approved by the Contracting Officer or other delegated Authority's Representative. Before each such payment is made for delivered material on the site, the Contractor shall furnish to the Contracting Officer or other delegated Authority's Representative such evidence as he may

require as proof of the ownership, quantity and value of such materials. Before each such payment is made for delivered materials off the site, the Contractor shall furnish the Contracting Officer or other delegated Authority's Representative evidence of ownership, properly executed bills of sale to the Authority for the delivered material upon which payment is being made.

- e. In making such progress payments, five percent of the estimated amount of work completed shall be retained until final completion and acceptance of the Contract work. Also, whenever the work is substantially complete, and the Contractor is in compliance with all provisions of the Contract, if the Contracting Officer or other delegated Authority's Representative considers the amount retained to be in excess of the amount adequate for the protection of the Authority, he may, at his discretion, release to the Contractor all or a portion of such excess amount. Furthermore, upon completion and acceptance of each separate building, public work, or other division of the Contract, on which the price is stated separately in the Contract, the Contracting Officer or other delegated Authority's Representative may direct the payment to be made without retention.

Where the time originally specified for completion of this Contract exceeds one year, the Contracting Officer or other delegated Authority's Representative, at any time after 50 percent of the work has been completed, if he finds that satisfactory progress (satisfactory progress includes prosecution of physical work, adherence to DBE, SAP, quality assurance and all other provisions of the Contract) is being made, may reduce the total amount retained from progress payments to the minimum level necessary to protect the interest of the Authority.

- f. All material and work covered by progress payments made shall thereupon become the sole property of the Authority but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the Authority to require the fulfillment of all of the terms of the Contract.
- g. Upon completion and acceptance of all work, the amount due the Contractor under this Contract shall be paid upon the presentation of a properly executed voucher and after the Contractor shall have furnished the Authority with a release, if required, of all claims against the Authority arising by virtue of this Contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release. If the Contractor's claim to amounts payable under the Contract has been assigned, a release may also be required of the assignee.
- h. Payment under this contract shall be subject to any garnishment and attachment orders issued pursuant to the laws of Maryland, Virginia and the District of Columbia, and to levies issued under the laws of the United States.
- i. Subcontract Payments
 - 1. The Contractor shall, under this contract, establish procedures to ensure timely payment of amounts due pursuant to the terms of their subcontracts. The Contractor shall pay each subcontractor for satisfactory performance of its contract, 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.
 - 2. 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. The Contractor shall notify the Contracting Officer or other delegated Authority's Representative with each payment request, of any situation in which scheduled subcontractor payments have not been made.
 - 3. If a subcontractor alleges that the Contractor has failed to comply with this provision, the Contractor agrees to support any Authority investigation, and, if deemed appropriate by the Authority, to consent to remedial measures to ensure subcontractor payment that is due.
 - 4. The Contractor agrees that the Authority may provide appropriate information to interested subcontractors who want to determine the status of Authority payments to the Contractor.

5. Nothing in this provision is intended to create a contractual obligation between the Authority and any subcontractor or to alter or affect traditional concepts of privity of contract between all parties.

1.8 Assignment

- a. The Contractor shall not transfer the rights and obligations of the Contract to third parties. The Contracting Officer or other delegated Authority's Representative may recognize a third party as successor in interest to the Contract where the third party's interest is incidental to the transfer of all the assets of the Contractor, 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 or other delegated Authority's Representative after review of the facts and circumstances surrounding each request, but the assignment shall not be approved unless the surety, in writing, agrees to that assignment and accepts the assignee as the Contractor and principal on the payment and/or performance bonds.
- b. If this Contract provides for payments aggregating \$1,000 or more, claims for monies due or to become due the Contractor from the Authority under this Contract may be assigned to a bank, trust company or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any institution. Notice of such assignment shall be made to the Contracting Officer or other delegated Authority's Representative. Any such assignment or reassignment shall cover all amounts payable under this Contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. It is the Authority's intent to recognize assignment only to bona fide lending institutions; therefore, assignment to any private corporation, business or individual which does not qualify as such is specifically prohibited.
- c. Any attempt to transfer by assignment not authorized by this Article shall constitute a breach of the Contract and the Contracting Officer or other delegated Authority's Representative may for such cause terminate the right of the Contractor to proceed as provided in TERMINATION FOR DEFAULT, DAMAGES FOR DELAY AND TIME EXTENSIONS Article of these General Provisions, and the Contractor and his sureties shall be liable to the Authority for any excess costs incurred by the Authority.

1.9 Material And Workmanship

- a. Unless otherwise specifically provided in this Contract, all equipment, materials and articles incorporated in the work covered by this Contract are to be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in this Contract, reference to any equipment, material, article or patented process, by trade name, make or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and the Contractor may, at his option, use any equipment, material, article or process which, in the judgment of the Contracting Officer or other delegated Authority's Representative, is equal to that named. The Contractor shall furnish to the Contracting Officer or other delegated Authority's Representative for his approval the name of the manufacturer, the model number and other identifying data and information respecting the performance, capacity, nature and rating of the machinery and mechanical and other equipment which the Contractor contemplates incorporating in the work. When required by this Contract or when called for by the Contracting Officer or other delegated Authority's Representative, the Contractor shall furnish the Contracting Officer or other delegated Authority's Representative for approval full information concerning the material or articles which he contemplates incorporating in the work. When so directed, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material and articles installed or used without required approval shall be at the risk of subsequent rejection.
- b. All work under this Contract shall be performed in a skillful and workmanlike manner. The Contracting Officer or other delegated Authority's Representative may, who may require the Contractor to correct defective workmanship or materials at no additional cost to the Authority.

1.10 Inspection And Acceptance

- a. All work, which term includes but is not restricted to materials, workmanship, and manufacture and fabrication of components, shall be subject to inspection and test by the Contracting Officer or other delegated Authority's Representative or the Engineer at all reasonable times prior to acceptance. Any such inspection and test is for the sole benefit of the Authority and shall not relieve the Contractor of the responsibility of providing quality control measures to assure that the work strictly complies with the Contract requirements. No inspection or test by the

Contracting Officer or other delegated Authority's Representative or the Engineer shall be construed as constituting or implying acceptance. Inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Authority after acceptance of the completed work under the terms of Paragraph f. of this Article, except as hereinabove provided.

- b. The Contractor shall, without charge, replace any material or correct any workmanship found by the Contracting Officer or other delegated Authority's Representative or the Engineer not to conform to the Contract requirements, unless in the public interest the Contracting Officer or other delegated Authority's Representative consents to accept such material or workmanship with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.
- c. If the Contractor does not promptly replace rejected material or correct rejected workmanship, the Contracting Officer or other delegated Authority's Representative may:
 - (1) By contract or otherwise, replace such material or correct such workmanship and charge the costs thereof to the Contractor, or
 - (2) Terminate the Contractor's right to proceed in accordance with the TERMINATION FOR DEFAULT, DAMAGES FOR DELAY AND TIME EXTENSIONS Article of these General Provisions.
- d. The Contractor shall furnish promptly, without additional charge, all facilities, labor and material reasonably needed for performing such safe and convenient inspection and test as may be required by the Contracting Officer or other delegated Authority's Representative. All inspections and tests by the Authority shall be performed in such manner as not unnecessarily to delay the work. Special, full-size and performance tests shall be performed as described in this Contract. The Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready at the time specified by the Contractor for its inspection.
- e. Should it be considered necessary or advisable by the Contracting Officer or other delegated Authority's Representative at any time before acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor and material. If such work is found to be defective or nonconforming in any material respect, due to the fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, an equitable adjustment shall be made in the Contract price to compensate the Contractor for the additional services involved in such examination and reconstruction and, if completion of the work has been delayed thereby, he shall, in addition, be granted a suitable extension of time.
- f. Unless otherwise provided in this Contract, acceptance by the Contracting Officer or other delegated Authority's Representative shall be made as promptly as practicable after completion and inspection of all work required by this Contract. Acceptance shall be final and conclusive except as regards latent defects, fraud or such gross mistakes as may amount to fraud, or as regards the Authority's rights under any warranty or guarantee.
- g. The Contractor shall give the Contracting Officer or other delegated Authority's Representative at least 10 days advance notice of the date the work will be fully completed and ready for final inspection, test and acceptance.

1.11 Project Management And Superintendence By Contractor

The Contractor shall give his personal superintendence to the work or have a competent foreman or superintendent, satisfactory to the Contracting Officer or other delegated Authority's Representative, on the work at all times during progress, with authority to act for him.

1.12 Permits And Responsibilities

The Contractor shall, without additional expense to the Authority, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, State, Local or Municipal laws, codes or regulations, in connection with the prosecution of the work. He shall be similarly responsible for all damages to persons or property that occur as a result of his fault or negligence. He shall take proper safety and health precautions to protect the work, the workers, the public and the property of others. He shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of construction thereof which theretofore may have been accepted.

1.13 CONDITIONS AFFECTING THE WORK

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve the Contractor from responsibility for successfully performing the work without additional expense to the Authority. The Authority assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations are expressly stated in the Contract.

1.14 Other Contracts

The Authority may undertake or award other contracts for additional work, and the Contractor shall fully cooperate with such other contractors and Authority employees and carefully fit his own work to such additional work as may be directed by the Contracting Officer or other delegated Authority's Representative. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor or by Authority employees.

1.15 Patent Indemnity

Except as otherwise provided, the Contractor agrees to indemnify the Authority and its officers, agents and employees against liability, including costs and expenses, for infringement upon any Letters of Patent of the United States arising out of the performance of this Contract or out of the use or disposal by or for the account of the Authority of supplies furnished or work performed hereunder.

1.16 Bonding for Construction Projects Exceeding \$100,000

The Contractor agrees to comply with applicable bonding requirements as follows:

a. Proposal Security

A proposal bond must be issued by a fully qualified surety company acceptable to WMATA and listed as a company currently authorized under 31 C.F.R. Part 223 as possessing a Certificate of Authority as described thereunder.

b. Rights Reserved

In submitting its offer, it is understood and agreed by offeror that the right is reserved by WMATA to reject any and all offers, or part of any offer.

It is also understood and agreed that if the offeror refuses or is unable to enter into this Contract, or refuses or is unable to furnish adequate and acceptable performance bonds and labor and material payments bonds, or refuses or is unable to furnish adequate and acceptable

insurance, it shall forfeit its security to the extent of WMATA's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefore.

It is further understood and agreed that to the extent that the defaulting offeror's proposal bond, certified check, cashier's check, treasurer's check, and/or official bank check (excluding any income generated thereby that was retained by WMATA) shall prove inadequate to fully compensate WMATA for the damages occasioned by default, then the offeror agrees to indemnify WMATA and pay over to WMATA the difference between the proposal security and WMATA's total damages, so as to make WMATA whole.

c. Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

(1) Performance bonds

- (a) The penal amount of performance bonds shall be one hundred percent (100%) of the original Contract price, unless the WMATA determines that a lesser amount would be adequate for its protection.
- (b) WMATA may require additional performance bond protection when the Contract price is increased. The increase in protection shall generally equal one hundred percent (100%) of the increase in Contract price. WMATA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

d. Payment bonds

(1) The penal amount of the payment bonds shall equal:

- (a) Fifty percent (50%) of the Contract price if it is not more than \$1 million.
 - (b) Forty percent (40%) of the Contract price if it is more than \$1 million but not more than \$5 million; or
 - (c) Two and one half million (\$2.5M) if the Contract price is more than \$5 million.
- (2) If the original Contract price is \$5 million or less, WMATA may require additional protection, if the Contract price is increased.

e. Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the WMATA's interests.

(1) The following situations may warrant a performance bond:

- (a) WMATA's property or funds will be provided to the Contractor for use in performing the Contract or as partial compensation (as in retention of salvaged material).
 - (b) If Contractor sells assets to or merges with another concern, and WMATA, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
 - (c) Substantial progress payments will be made before delivery of end items begins.
 - (d) Contracts for dismantling, demolition, or removal of improvements.
- f. When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds, as follows:

- (1) The penal amount of performance bonds shall be one hundred percent (100%) of the original Contract price, unless WMATA determines that a lesser amount would be adequate for its protection.
 - (2) WMATA may require additional performance bond protection when the Contract price is increased. The increase in protection shall generally equal one hundred percent (100%) of the increase in Contract price. WMATA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- g. A payment bond is required only when a performance bond is required, and if the use of payment bond is in WMATA's interest.
- h. When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
- (1) Fifty percent (50%) of the Contract price, if it is not more than \$1 million;
 - (2) Forty percent (40%) of the Contract price, if it is more than \$1 million, but not more than \$5 million; or
 - (3) Two and one half million (\$2.5M), if the Contract price is increased.
- i. Advance Payment Bonding Requirements
- The Contractor may be required to obtain an advance payment bond, if the Contract contains an advance payment provision and a performance bond is not furnished. WMATA shall determine the amount of the advance payment bond necessary to protect it.
- j. Patent Infringement Bonding Requirements (Patent Indemnity)
- The Contractor may be required to obtain a patent indemnity bond, if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. WMATA shall determine the amount of the patent indemnity required to protect it.
- k. Warranty of the Work and Maintenance Bonds
- (1) The Contractor warrants to WMATA, the architect and/or engineer that all materials and equipment furnished under this Contract will be of highest quality and new, unless WMATA specifies otherwise, free from faults and defects and in conformance with the Contract. All work not conforming to these standards shall be considered defective. If required by the Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
 - (2) The work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The work must be safe, substantial and durable in all respects. The Contractor hereby guarantees that the work will not contain defective materials or faulty workmanship for a minimum period of one (1) year after final payment by WMATA. The Contractor shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to WMATA. As additional security for these guarantees, the Contractor shall, prior to the release of final payment, furnish separate maintenance (or guarantee) bonds in a form acceptable to WMATA written by the same corporate surety that provides the performance bond and labor and material payment bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after final payment and shall be written in an amount equal to one hundred percent (100%) of the Contract amount, as adjusted.

1.17 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 Contracting Officer or other delegated Authority's Representative 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.

1.18 Officials Not To Benefit

- a. No member of Congress or resident Commissioner shall be admitted to any share or part of this Contract, or to any benefit that may arise therefrom; 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 and one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

1.19 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 or other delegated Authority's Representative.
- 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; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify his next higher tier subcontractor, or the Contractor, as the case may be, of all relevant information with respect to such dispute.

1.20 Convict Labor

In connection with the performance of work under this Contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

1.21 Civil Rights

- a. Nondiscrimination Assurance: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000 (d), 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, D.C. law 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, religion, creed, national origin, sex, age, sexual preference or disability. In addition, the Contractor, sub-recipient, or subcontractor agrees to comply with applicable federal implementing regulations and other regulations that FTA 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) including, but not limited to the "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Part 60 et seq., (implementing 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 all 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 all implementing requirements that FTA 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 that FTA 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, "ARegulations 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 ally implementing requirements that FTA may issue.
- (4) Special DOL EEO Clause for Construction Projects:
 - (a) The equal opportunity clause published at 41 CFR 60-1.4(a) of this chapter is required to be included in, and is part of, all nonexempt Federal contracts and subcontracts, including construction contracts and subcontracts. The equal opportunity clause published at 41 CFR 60-1.4(b) is required to be included in, and is a part of, all nonexempt federally assisted construction contracts and subcontracts. In addition to the clauses described above, all Federal contracting officers, all applicants and all nonconstruction contractors, as applicable, shall include the specifications set forth in this section in all Federal and federally assisted construction contracts in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to §60-4.6 of this part and in construction subcontracts in excess of \$10,000 necessary in whole or in part to the performance of nonconstruction Federal contracts and subcontracts covered under the Executive order.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS
(EXECUTIVE ORDER 11246)

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

- (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- 2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- 3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- 4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the FEDERAL REGISTER in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
- 5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- 6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- 7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its

effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written

notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
 - j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-

minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).
 - a. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only, if necessary, to identify the affected parties.
 - b. Failure by the Contractor, sub-recipient, or subcontractor to carry out these requirements is a material breach of this Contract, that may result in the termination or such other remedy as the Authority deems appropriate.

1.22 Utilization of Small Business Concerns

- a. It is the policy of the Authority that a fair proportion of the purchases and contracts for supplies and services for the Authority be placed with small business concerns.

- b. The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this Contract.

1.23 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 hereto.
- 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 aim 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 General and Administrative (G&A) 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 or proposing on, receiving or participating as joint venturer, subcontractor or otherwise in any Authority project for a period of five years;
 - (4) Have complete access to all of the Contractor's financial books, records and accounts for the purpose of performing a comprehensive audit of the entire project.
 - (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 right of the Contractor to proceed under 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 Paragraph b.(5) hereof, 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 nor more than 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.

1.24 Federal, State, and Local Taxes

- a. The Contract price includes all applicable Federal, State and Local taxes and duties.
- b. Nevertheless, 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 results in the following:
 - (1) 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 could 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) 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 or other delegated Authority's Representative. 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 or other delegated Authority's Representative, 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 \$100 shall be made in the Contract price pursuant to Paragraph b. above.
- e. As used in Paragraph b. above, the term Contract date means the date set for bid opening, or if this is a negotiated Contract, the Contract date. As to additional supplies or services procured by modification to this Contract, the term Contract date means the date of such modification.
- f. Unless there does not exist any reasonable basis to sustain an exemption, the Contracting Officer or other delegated Authority's Representative upon the request of the Contractor shall without further liability, furnish evidence appropriate to establish exemption from any Federal, State or Local tax; provided that, evidence appropriate to establish exemption from any Federal excise tax or duty which may give rise to either an increase or decrease in the Contract price will be furnished only at the discretion of the Contracting Officer or other delegated Authority's Representative.
- g. The Contractor shall promptly notify the Contracting Officer or other delegated Authority's Representative of matters which will result in either an increase or decrease in the Contract

price, and shall take action with respect thereto as directed by the Contracting Officer or other delegated Authority's Representative.

1.25 Termination for Convenience of the Authority

TERMINATION FOR CONVENIENCE- FTA

- (a) The Contracting Officer may terminate this Contract in whole, or in part, if he or she determines that a termination is in the Authority's interest. The Contracting Officer shall terminate by delivering a "Notice of Termination" to the Contractor specifying the extent of termination and its effective date.
- (b) Upon receipt of a Notice of Termination, except as the Contracting Officer otherwise directs, the Contractor shall immediately:
 - (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 of the Contractor's right(s), title, and interest(s) under the subcontracts terminated. 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 for the work that was the subject of such subcontracts;
 - (6) With the Contracting Officer's approval, settle all outstanding liabilities and settlement costs arising from the termination of subcontracts;
 - (7) As the Contracting Officer directs, transfer title and deliver to the Authority:
 - (i) Parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
 - (ii) The completed or partially completed plans, drawings, information and other property that would have been required to be furnished to the Authority, if the Contract had been completed.
 - (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 Contractor's possession and in which the Authority has or may acquire an interest;
 - (9) Use its best efforts to sell, as the Contracting Officer authorizes, any property of the types referred to in paragraph (b)(7). The Contractor is not required to extend credit to any purchaser and may acquire the property under the conditions that the Contracting Officer prescribes. 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 that the Contracting Officer directs.

- (c) The Contractor shall submit complete termination inventory schedules not later than one hundred twenty (120) days from the effective date of termination, unless the Contracting Officer extends the time in writing.
- (d) As soon as reasonably practicable, and not later than twenty (20) business days following the Authority's issuance of a "Notice of Termination" pursuant to paragraph (a), the Contractor shall submit a termination settlement proposal (TSP) to the Contracting Officer in the form that he or she prescribes, detailing the costs to which it asserts entitlement pursuant to this article. If the Contractor fails to submit the TSP within the time prescribed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due to the Contractor as a result of the termination and shall pay the amount so determined.
- (e) Following submission of the Contractor's TSP pursuant to paragraph (d), the parties shall 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. In no event shall the total amount to be paid to 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 disagree on the whole amount to be paid because of the termination, the Contracting Officer shall pay the Contractor the amounts that he or she determines as follows, but without duplication of any amounts agreed upon under paragraph (e):
 - (1) The Contract price for completed supplies or services that the Authority accepted [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 subparagraph (f)(1);
 - (ii) Termination costs under terminated subcontracts that are properly chargeable to the terminated portion of this Contract, if not excluded in subparagraph (f)(2)(i); and
 - (iii) A sum, representing profit on the items described in subparagraph (f)(2)(i) that the Contracting Officer determines to be fair and reasonable pursuant to Section 49.202 of the Federal Acquisition Regulation (FAR), in effect on the date of this Contract. 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 subparagraph 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 TSP(s);
 - (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 he or she determines of property that is unavailable or damaged and undeliverable to the Authority or to a third party.
- (h) The cost principles and procedures of FAR Part 31 in effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this article, except that the Authority shall not be obligated to pay interest, however represented, on any claimed costs.
- (i) The Contractor shall have the right to appeal, under the "Disputes" article, from the Contracting Officer's determination under paragraphs (d) or (f). The Contractor's failure to submit the TSP within the time provided in paragraph (d), or to timely request an extension thereof, shall constitute a waiver of its right to appeal the Contracting Officer's determination pursuant to the "Disputes" article or any otherwise applicable Contractual, legal or equitable remedy.
- (j) In determining any sum due to the Contractor under this article, there shall be deducted:
 - (1) All unliquidated advances or other payments to the Contractor under the terminated portion of this Contract;
 - (2) The value, as the Contracting Officer, reasonably determines, of any claim that the Authority has against the Contractor under this Contract, including any third-party claim, if 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 that the Contractor procured or sold under this article, not recovered by or credited to the Authority.
- (k) If the Contractor asserts that any partial termination has rendered enforcement of the remainder of this Contract at the remaining Contract price inequitable, the Contractor may file a proposal with the Contracting Officer for an adjustment to the price(s) for the continued portion of this Contract. Such proposal shall be submitted within ninety (90) days from the effective date of termination, unless the Contracting Officer extends it in writing, and shall be accompanied by appropriate supporting documentation.
- (l) The Contractor's responsibilities and obligations under this article shall 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 Contractor's costs and expenses 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 U.S. Comptroller General or the agents or representatives of any of them, at the Contractor's office, at all reasonable times, without any direct charge.

1.26 Notice and Assistance Regarding Patent and Copyright Infringement

- a. The Contractor shall report to the Contracting Officer or other delegated Authority's Representative, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.
- b. In the event of any claim or suit against the Authority on out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Authority, when requested by the Contracting Officer or other delegated Authority's Representative, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Authority except where the Contractor has agreed to indemnify the Authority.
- c. This Article shall be included in all subcontracts.

1.27 Composition of Contractor

If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

1.28 Site Investigation

The Contractor acknowledges that he has investigated and satisfied himself as to the conditions affecting the work including, but not restricted to, those bearing upon transportation, disposal, handling and storage of materials; availability of labor, water, electric power and roads; and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions of the ground, and the character of equipment and facilities needed preliminary to and during prosecution of the work. The Contractor further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Authority, as well as from information presented by the Drawings and Specifications made a part of this Contract, the character and extent of existing work within or adjacent thereto, and any other work being performed thereon at the time of the submission of his bid. Nothing in this requirement shall be construed as being determinative of the character, scope or extent of the work required under this Contract. Any failure by the Contractor to acquaint himself with the available information will not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the work. The Authority assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the Authority.

1.29 Protection of Existing Vegetation, Structures, Utilities and Improvements

- a. The Contractor shall preserve and protect all existing vegetation such as trees, shrubs and grass on or adjacent to the site of work which is not to be removed and which does not unreasonably interfere with the work. Care shall be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place.
- b. The Contractor shall protect from damage all existing improvements or utilities at or near the site of the work and shall repair or restore any damage to such facilities resulting from failure to comply with the requirements of this Contract or the failure to exercise reasonable care in the performance of the work. If the Contractor fails or refuses to repair any such damage promptly, the Contracting Officer or other delegated Authority's Representative may have the necessary work performed and charge the cost thereof to the Contractor.

1.30 Operations and Storage Areas

- a. All operations of the Contractor, including storage of materials, shall be confined to areas authorized or approved by the Contracting Officer or other delegated Authority's Representative. The Contractor shall hold and save the Authority, its officers and agents, free and harmless from liability of any nature occasioned by his operations.
- b. Temporary buildings, such as storage sheds, shops and offices, may be erected by the Contractor only with the approval of the Contracting Officer or other delegated Authority's Representative, and shall be built with labor and materials furnished by the Contractor without expense to the Authority. Such temporary buildings and utilities shall remain the property of the Contractor and shall be removed by him at his expense upon the completion of the work. With the written consent of the Contracting Officer or other delegated Authority's Representative, such buildings and utilities may be abandoned and need not be removed.
- c. The Contractor shall, under regulations prescribed by the Contracting Officer or other delegated Authority's Representative, use only established roadways or construct and use such temporary roadways as may be authorized by the Contracting Officer or other delegated Authority's Representative. Where materials are transported in the prosecution of the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State or Local law or regulation. When it is necessary to cross curbs or sidewalks, protection against damage shall be provided by the Contractor and any damaged roads, curbing or sidewalks shall be repaired by or at the expense of the Contractor.

1.31 Progress Schedules and Requirements for Maintaining Progress

- a. The Contractor shall submit a schedule to the Contracting Officer or other delegated Authority's Representative for approval, within 15 days after the award of the Contract, showing the order in which the Contractor proposes to carry on the work, the dates on which he will start the several major features, including procurement of materials, plant and equipment, and the contemplated dates for completing the same. The schedule shall be in the form of a graphic network diagram or progress chart indicating appropriately the work scheduled for accomplishment at any time. Unless otherwise specified, the Contractor shall enter on the schedule the actual progress at monthly intervals and shall immediately deliver to the Contracting Officer or other delegated Authority's Representative four copies thereof.
- b. Failure to comply with the terms of this Article may affect the processing of progress payment requests submitted by the Contractor as provided in Article 1.7, PAYMENTS TO THE CONTRACTOR, of this Contract.
- c. If, in the opinion of the Contracting Officer or other delegated Authority's Representative, the Contractor falls significantly behind the approved progress schedule, the Contractor shall take any and all steps necessary to improve his progress. The Contracting Officer or other delegated Authority's Representative, in this instance, may require the Contractor to increase the number of shifts, initiate or increase overtime operations, increase days of work in the work week, or increase the amount of construction plant, or all of them. The Contracting Officer or other delegated Authority's Representative may also require the Contractor to submit for approval supplemental progress schedules detailing the specific operational changes to be instituted to regain the approved schedule, all without additional cost to the Authority.
- d. Failure of the Contractor to comply with the requirements of the Contracting Officer or other delegated Authority's Representative under this provision shall be grounds for determination by the Contracting Officer or other delegated Authority's Representative that the Contractor is not prosecuting the work with such diligence as will ensure completion within the time specified. Upon such determination the Contracting Officer or other delegated Authority's Representative may terminate the Contractor's right to proceed with the work, or any separate part thereof, in accordance with the TERMINATION FOR DEFAULT, DAMAGES FOR DELAY AND TIME EXTENSIONS Article of these General Provisions.

1.32 Subcontractors

Within seven days after the award of any subcontract either by himself or a subcontractor, the Contractor shall deliver to the Contracting Officer or other delegated Authority's Representative a statement setting forth the name and address of the subcontractor and a summary description of the work subcontracted. The Contractor shall at the same time furnish a statement signed by the subcontractor acknowledging the inclusion in his subcontract of the clauses of this Contract entitled CIVIL RIGHTS and LABOR PROVISIONS, and other such articles specifically mentioned. Nothing contained in this Contract shall create any contractual relation between the subcontractor and the Authority.

After contract award, the Contractor will be required to submit copies of a conformed and signed subcontract agreement with all subcontractors to be used on the Contract to the Contracting Officer or designee with the price deleted. The terms of payment shall be in conformance with the "Payments to Contractor" clause in the General Provisions. The divisions or sections of the Specifications are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by a trade.

- A. The Contractor shall not enter into subcontracts totaling in amount more than the percentage of the total Contract price permissible under WORK TO BE PERFORMED BY THE CONTRACTOR article of these Special Conditions, without the written permission of the Contracting Officer.
- B. No subcontractor shall be permitted to perform work at the site until the subcontractor, or the Contractor, in compliance with the provisions of the INDEMNIFICATION AND INSURANCE article of the Special Conditions, has furnished satisfactory evidence of insurance as required.
- C. The Authority or its representatives will not undertake to settle any difference between the Contractor and its subcontractor or between subcontractors.

1.33 Use and Possession Prior To Completion

The Authority, through the Contracting Officer or other delegated Authority's Representative, shall have the right to take possession of or use any completed or partially completed part of the work. Such possession or use shall not be deemed an acceptance of any work not completed in accordance with the Contract. While the Authority is in such possession, the Contractor, notwithstanding the provisions of the Contract entitled PERMITS AND RESPONSIBILITIES, shall be relieved of the responsibility for loss or damage to the work other than that resulting from the Contractor's fault or negligence. If such prior possession or use by the Authority delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment in the Contract price or the time of completion will be made and the Contract shall be modified in writing accordingly.

1.34 Cleaning Up

- a. The Contractor shall at all times keep the construction area, including storage areas used by him, free from accumulations of waste material or rubbish and prior to completion of the work remove any rubbish from the premises and all tools, scaffolding, equipment and materials not the property of the Authority.
 - 1. Upon completion of construction, the Contractor shall leave the work and premises in a clean, neat and workmanlike condition satisfactory to the Contracting Officer or other delegated Authority's Representative.

1.35 Contract Modifications - Requirements for Proposals, Price Breakdown and Negotiation of Profit

- a. The Contractor, in connection with any proposal he makes for a Contract modification, shall furnish a price breakdown, itemized as required by the Contracting Officer or other delegated Authority's Representative. Unless otherwise directed, the breakdown shall be in sufficient

detail to permit an analysis of all material, labor, equipment, subcontract and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefor shall also be furnished. The proposal, together with the price breakdown and time extension justification shall be furnished by the date specified by the Contracting Officer or other delegated Authority's Representative.

Where profit is negotiated as an element of price, with either the Contractor or subcontractor, a reasonable profit will be negotiated for each modification by using the following procedure as a guide:

(1) Breakdown:

FACTOR	RATE	WEIGHT	VALUE
Degree of Risk	20		
Relative difficulty of Work	15		
Size of Job	15		
Period of Performance	15		
Contractor's Investment	5		
Assistance by Authority	5		
Subcontracting	25		
	100		%

(2) Based on the circumstances of each modification, each of the above factors shall be weighted from .03 to .12 as indicated below. The value shall be obtained by multiplying the rate by the weight. From the value column when totaled the fair and reasonable profit can be determined under the circumstances of the particular modification.

- [a] **Degree of risk:** Where the modified work involves no risk or the degree of risk is very small the weighting should be .03; as the degree of risk increases the weighting should be increased up to a maximum of .12. Lump sum items will generally have a higher weighted value than unit price items for which quantities are provided. Things to consider: The portion of the work to be done by subcontractors, nature of work, where work is to be performed, reasonableness of negotiated costs, amount of labor included in cost and whether the negotiation is before or after performance of work.
- [b] **Relative difficulty of work:** If the modified work is most difficult and complex the weighting should be .12 and should be proportionately reduced to .03 on the simplest of jobs. This factor is tied in, to some extent, with the degree of risk. Things to consider: The nature of the work, by whom it is to be done, the location and the time schedule.
- [c] **Size of job:** All modified work not in excess of \$100,000 shall be weighted at .12. Work estimated between \$100,000 and \$5,000,000 shall be proportionately weighted from .12 to .05. Work from \$5,000,000 to \$10,000,000 shall be weighted at .04 and work in excess of \$10,000,000 at .03.
- [d] **Period of performance:** Modifications providing for an extension of time in excess of 30 days are to be weighted at .12. Jobs of lesser duration are to be proportionately weighted to a minimum of .03 for jobs not to exceed one day. No weight is to be

granted for this factor where there is no extension of the Contract performance period of interim dates due to work under this modification.

- [e] **Contractor's investment:** To be weighted from .03 to .12 on the basis of below average, average and above average. Things to consider: Amount of subcontracting, mobilization payment item, Authority-furnished property and method of making progress payments.
 - [f] **Assistance by Authority:** To be weighted from .12 to .03 on the basis of average to above average. Things to consider: Use of Authority-owned property, equipment and facilities, and expediting assistance.
 - [g] **Subcontracting:** To be weighted inversely proportional to the amount of subcontracting. Where 80 percent or more of the work is to be subcontracted the weighting is to be .03 and such weighting proportionately increased to .12 where all the work is performed by the Contractor's own forces.
- (3) When considered necessary because of very unusual circumstances or local conditions, the range of weight may be increased to an upper limit of .15 if supported by adequate justification and if approved by the Contracting Officer or other delegated Authority's Representative.
 - (4) When negotiations between the Contracting Officer or other delegated Authority's Representative and the Contractor are joined to determine an equitable adjustment for a modification of this Contract, the Contractor shall encourage involved subcontractor(s) to be present to present their cost data and to participate in the resolution of a fair and equitable adjustment. In any event, if after reasonable effort a negotiated settlement cannot be reached between the Contracting Officer or other delegated Authority's Representative and the Contractor and subcontractor(s) involved, then at the request of the subcontractor(s) concerned, the Contracting Officer or other delegated Authority's Representative may process Part 1 of a two-part modification to cover the direct costs only, as agreed upon or, if not agreed upon, as determined unilaterally by the Contracting Officer or other delegated Authority's Representative. Subcontractor(s) requests for a Part 1 modification shall be submitted to the Contractor and the Contractor shall forward such requests promptly to the Contracting Officer or other delegated Authority's Representative. Any payments received by the Contractor under this procedure shall be passed along within 10 days thereafter to the subcontractor(s) concerned.
- c. Change Orders: When the Contracting Officer or other delegated Authority's Representative directs a change in accordance with the General Provisions and the Progress Schedule requirements of the PROGRESS SCHEDULES Article of the Special Conditions, the Contractor shall identify in his proposal for equitable adjustment the network activities that precede and follow the change order work activities. If the change order work activities are performed concurrently with existing network activities, those concurrent network activities shall be identified. If the change order work activities restrain network activities, those restraints shall be identified.

1.36 Accident Prevention

- a. In order to provide safety controls for protection to the life and health of employees and other persons, for prevention of damage to property, materials, supplies and equipment, and for avoidance of work interruptions in the performance of this Contract, the Contractor shall comply with all pertinent provisions of the SAFETY REQUIREMENTS Article of the Special Conditions, and shall also take or cause to be taken such additional measures as the Contracting Officer or other delegated Authority's Representative may determine to be reasonably necessary for the purpose.
- b. The Contractor shall maintain an accurate record of, and shall report to the Contracting Officer or other delegated Authority's Representative in the manner and on the forms prescribed by the Contracting Officer or other delegated Authority's Representative exposure data and all accidents resulting in death, traumatic injury, occupational disease and damage to property, materials, supplies and equipment incidental to work performed under this Contract.

- c. The Contracting Officer or other delegated Authority's Representative will notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the Contractor or his representative at the site of the work, shall be deemed sufficient for the purpose. If the Contractor fails or refuses to comply promptly, the Contracting Officer or other delegated Authority's Representative may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.
- d. Compliance with the provisions of this Article by subcontractors shall be the responsibility of the Contractor.
- e. Prior to commencement of the work the Contractor shall:
 - (1) Submit in writing his proposals for effectuating this provision for accident prevention.
 - (2) Meet in conference with representatives of the Contracting Officer or other delegated Authority's Representative to discuss and develop mutual understanding relative to administration of the overall safety program.

1.37 Equipment

- a. The Contractor shall provide equipment, in first class working order and safe condition of sufficient quantities and sizes to complete the work as specified and detailed on the Contract Drawings within the Contract time, and shall provide adequate maintenance of this equipment throughout the length of the project.
- b. All equipment shall be approved by the Authority Representative or Engineer upon delivery to the site; and any item of equipment that at any time proves ineffectual or hazardous to personnel and/or property shall be promptly brought to acceptable condition, or shall be removed from the site as directed by the Authority Representative or Engineer.

1.38 Suspension of Work

- a. The Contracting Officer or other delegated Authority's Representative may order the Contractor in writing to suspend, delay or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the Authority.
- b. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed or interrupted by an act of the Contracting Officer or other delegated Authority's Representative in the administration of this Contract, or by his failure to act within the time specified in this Contract, or if no time is specified, within a reasonable time, an adjustment shall be made for any increase in the cost of performance of this Contract, excluding profit, necessarily caused by such unreasonable suspension, delay or interruption and the Contract modified in writing accordingly. However, no adjustment shall be made under this Article for any suspension, delay, or interruption to the extent:
 - (1) That performance would have been so suspended, delayed or interrupted by any other cause including the fault or negligence of the Contractor or
 - (2) For which an equitable adjustment is provided for or excluded under any other provision of this Contract.
- c. No claim under this clause shall be allowed:
 - (1) For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer or other delegated Authority's Representative in writing of the act or failure to act involved, but this requirement shall not apply as to a claim resulting from a suspension order, and

- (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay or interruption, but no later than the date of final payment under the Contract.

1.39 Audit and Inspection of Records

- a. This Article is applicable if this Contract was entered into by means of negotiation and shall become operative with respect to any modification to this Contract whether this Contract was initially entered into by means of negotiation or by means of formal advertising.
- b. The Contractor shall maintain records, and the Contracting Officer or other delegated Authority's Representative, the U.S. Department of Transportation, and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor, involving transactions related to this Contract, for the purpose of making audit, examination, excerpts and transcriptions.
- c. The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Contracting Officer or other delegated Authority's Representative, the U.S. Department of Transportation and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three years after final payment under the Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor, involving transactions related to the subcontract, for the purpose of making audit, examination, excerpts and transcriptions.

1.40 Rights in Technical Data - Unlimited

(Also, refer to General Provisions Article 1.61 Rights in Data and Copyrights - FTA.)

- a. The Authority or any third party designated by the Authority to assist it in administration of this Contract or the inspection or verification of the product produced under this Contract, shall have the right to use, duplicate or disclose technical data, which includes computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so:
 - (1) Any manuals, instructional materials prepared for installation, operation, maintenance or training purposes;
 - (2) Technical data pertaining to end items, components or processes which were prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements ("form, fit and function" data; e.g., specification control drawings, catalog sheets, outline drawings; except for the computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software);
 - (3) Other technical data which has been, or is normally furnished without restriction by the Contractor or subcontractor;
 - (4) Other specifically described technical data which the parties have agreed will be furnished without restriction;
 - (5) All computer software regardless of whether it is technical data as defined in this Article 1.40, including the source code, algorithm, process, formulae, and flow charts, which is developed or materially modified by the Contractor for the Authority or for which the Authority is required by federal law or regulation to provide a royalty-free, irrevocable and nonexclusive license to the federal government.
 - (6) Shop drawings.

- b. The Authority shall have the right to use, duplicate, or disclose technical data other than that defined in Paragraph a. in whole or in part, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be
 - (1) released or disclosed in whole or in part outside the Authority,
 - (2) used in whole or in part by the Authority for manufacture, or
 - (3) used by a party other than the Authority except for: (i) emergency repair or overhaul, (ii) where the item or process concerned is not otherwise reasonably available to the Authority to enable timely performance of the work, or (iii) administration of this Contract or the inspection or verification of the product produced under this Contract where the third party has a written contract with the Authority to perform these efforts. In all cases described in this subsection, the release or disclosure outside of the Authority shall be subject to a written prohibition against further use, release, or disclosure by the party receiving the technical data.
- c. Technical data provided in accordance with the provisions of Paragraph b. shall be identified by a legend which suitably recites the aforesaid limitation. Nothing herein shall impair the right of the Authority to use similar or identical data acquired from other sources.
- d. Where any item is purchased as a separate item in the Contract, that purchase includes all integral parts of that item, including any computer software, source codes, algorithms, processes, formulae, and flow charts. As such, the Authority has full rights to use, duplicate, or disclose any or all parts of the item, including computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so. Should disclosure of the computer software be required only under this Paragraph, then the Contracting Officer or other delegated Authority's Representative may waive the provisions of this Paragraph if he certifies in writing that the item is commercially available from multiple sources and the product from any of those sources will be fully compatible with existing Authority property.
- e. The term technical data as used in this Article means technical writing, computer software, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether or not copyrighted, which are specified to be delivered pursuant to this Contract. The term does not include financial reports, cost analyses, and other information incidental to Contract administration. Computer software as used in this Article means computer programs, computer data bases, and documentation thereof.
- f. Material covered by copyright:
 - (1) The Contractor agrees to and does hereby grant to the Authority, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive, and irrevocable license throughout the world for Authority purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so, all (i) technical data and (ii) computer software covered by Article 1.40 a.(5) now or hereafter covered by copyright.
 - (2) No such copyrighted matter shall be included in (i) technical data or (ii) computer software covered by Article 1.40 a.(5) furnished hereunder without the permission of the copyright owner for the Authority to use such copyrighted matter in the manner above described.
 - (3) The Contractor shall report to the Authority (or higher-tier contractor) promptly and in reasonable written detail each notice or claim of copyright infringement received by the Contractor with respect to any (i) technical data or (ii) computer software covered by Article 1.40 a.(5) provided to the Authority.
- g. Relation to patents: Nothing contained in this Article shall imply a license to the Authority under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Authority under any patent.

- h. Any dispute under this Article shall be subject to the Disputes Article of this Contract.
- i. Notwithstanding any other payment provisions in this Contract, the Contracting Officer or other delegated Authority's Representative may retain from payment up to 10 percent of the Contract price until final delivery and acceptance of the technical data as defined in this Article and as required to be furnished by the Unit Price Schedule or the Contract Specifications.

1.41 Price Reduction for Defective Cost or Pricing Data - Price Adjustments

- a. This Article shall become operative only with respect to any modification of this Contract which involves aggregate increases and/or decreases in cost plus applicable profits in excess of \$100,000 unless the modification is priced on the basis of adequate competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The right to price reduction under this Article is limited to defects in data relating to such modification.
- b. If any price, including profit or fee, negotiated in connection with any price adjustment under this Contract was increased by any significant sums because:
 - (1) The Contractor furnished cost or pricing data which was not complete, accurate and current as certified in the Contractor's Certificate of Current Cost or Pricing Data;
 - (2) A subcontractor, pursuant to the Article of this Contract entitled SUBCONTRACTOR COST AND PRICING DATA AND PRICE ADJUSTMENTS or any subcontract article therein required, furnished cost or pricing data which was not complete, accurate and current as certified in the subcontractor's Certificate of Current Cost or Pricing Data;
 - (3) A subcontractor or prospective subcontractor furnished cost or pricing data which was required to be complete, accurate and current and to be submitted to support a subcontract cost estimate furnished by the Contractor but which was not complete, accurate and current as of the date certified in the Contractor's Certificate of Current Cost or Pricing Data; or
 - (4) The Contractor or a subcontractor or prospective subcontractor furnished any data, not within Paragraph (1), (2) or (3) above, which was not accurate, as submitted; the price shall be reduced accordingly and the Contract shall be modified in writing as may be necessary to reflect such reduction.

However, any reduction in the Contract price due to defective subcontract data of a prospective subcontractor, when the subcontract was not subsequently awarded to such subcontractor, will be limited to the amount, plus applicable overhead and profit markup, by which the actual subcontract, or actual cost to the Contractor if there was not a subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor, provided the actual subcontract price was not affected by defective cost or pricing data. (Note: Since the Contract is subject to reduction under this Article by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the Contractor may wish to include an article in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. However, the inclusion of such an article and the terms thereof are matters of negotiation and agreement between the Contractor and the subcontractor, provided that they are consistent with DISPUTES provisions in subcontracts. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.)

1.42 Audit - Price Adjustments

- a. General: The Contracting Officer or other delegated Authority's Representative shall have the audit and inspection rights described in the applicable Paragraphs b., c. and d. below.
- b. Examination of costs: If this is a cost-reimbursement type, incentive, time and materials, labor hour or price redeterminable Contract, or any combination thereof, the Contractor shall maintain, and the Contracting Officer or other delegated Authority's Representative shall have the right to examine books, records, documents and other evidence and accounting procedures

and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred for the performance of this Contract. Such right of examination shall include inspection at all reasonable times of the Contractor's plants, or such parts thereof, as may be engaged in the performance of this Contract.

- c. Cost or pricing data: If the Contractor submitted cost or pricing data in connection with the pricing of this Contract or any change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the Contracting Officer or other delegated Authority's Representative shall have the right to examine all books, records, documents and other data of the Contractor related to the negotiation, pricing or performance of such Contract, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted along with the computations and projections used therein.
- d. Not used.
- e. The Contractor shall insert a clause containing all the provisions of this Article, including this Paragraph e., in all subcontracts hereunder except altered as necessary for proper identification of the contracting parties and the Contracting Officer or other delegated Authority's Representative under this Contract.

1.43 Subcontractor Cost or Pricing Data and Price Adjustments

- a. Paragraphs b. and c. of this Article shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this Contract which involves a price adjustment in excess of \$100,000. The requirements of this Article shall be limited to such price adjustments.
- b. The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances:
 - (1) Prior to award of any cost-reimbursement type, incentive, or price redeterminable subcontract;
 - (2) Prior to the award of any subcontract the price of which is expected to exceed \$100,000;
 - (3) Prior to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed \$100,000; except in the case of (2) or (3) where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public or prices set by law or regulation.
- c. The Contractor shall require subcontractors to certify that to the best of their knowledge and belief the cost and pricing data submitted under Paragraph b. above is accurate, complete and current as of the date of execution, which date shall be as close as possible to the date of agreement on the negotiated price of the Contract modification.
- d. The Contractor shall insert the substance of this Article including this Paragraph d. in each subcontract hereunder which exceed \$100,000.

1.44 Value Engineering Incentive – N/A

- a. This Article applies to those Value Engineering Change Proposals (VECP's) which are initiated and developed by the Contractor to change the Drawings, Specifications or other requirements of this Contract. In order to be accepted under this Article each VECP shall:
 - (1) Be identified by the Contractor at the time of submittal to the Contracting Officer or other delegated Authority's Representative as submitted pursuant to this Article using the prescribed WMATA VECP proposal form;
 - (2) Require a change to this Contract.

- (3) Decrease the Contract price;
 - (4) Maintain the Contract requirements such as safety, service life, reliability, economy of operation, ease of maintenance and necessary standardized and architectural features of the facility or system, and;
 - (5) Not require an unacceptable extension of original Contract duration.
 - (6) Be reviewed and evaluated by way of a two-phase process.
- b. Phase One - Conditional Approval: In addition to the use of the WMATA VECP proposal form, any VECP the Contractor submits shall be in sufficient detail to clearly define the proposed change including the following items:
- (1) A description of the difference between the existing and the proposed Contract requirements, and the comparative advantages and disadvantages of each;
 - (2) Contract requirements recommended by the Contractor to be changed;
 - (3) Separate detailed cost estimates for both the basic Contract requirement and the proposed change, and an estimate of the change in Contract price including an accounting of the costs of development and implementation and Authority review of the VECP and the sharing arrangement as set forth in the following Paragraph e.;
 - (4) A statement from the Contractor predicting any effects the proposed VECP will have on the life-cycle cost of the work to include and identify separately the cost for increased maintenance and operations;
 - (5) A statement of the time by which the proposal must be accepted so as to obtain the maximum price reduction effect and not delay the original Contract completion time. The time required for VECP review shall be considered and included in this statement and also in a separate bar chart;
 - (6) A list of codes and WMATA standards applicable to the work to be carried out by the VECP and a statement that the proposed VECP will be in compliance with the requirements set forth in listed codes and standards;
 - (7) The identification of a project where the materials, methods of construction and special equipment, where required, have been previously and successfully performed on construction similar to that which is being proposed for implementation on this Contract; and
 - (8) Preliminary architectural and engineering analysis, including calculations and 22 x 34 inch drawings in sufficient detail for each requirement of the Contract which must be changed if the VECP is accepted, with recommendations for accomplishing each change and its effect on unchanged work.
- c. The Contracting Officer or other delegated Authority's Representative may at any time during the two-phase review and evaluation process reject part or all of the VECP by giving the Contractor written notice thereof. Until final approval is issued, the Contractor shall remain obligated to perform in accordance with the terms of the original Contract. VECP's will be processed expeditiously; however, the Authority shall not be liable for any delay in acting upon any proposal submitted pursuant to this Article. The decision of the Contracting Officer or other delegated Authority's Representative about acceptance or rejection of any such proposal shall be final and shall not be subject to the DISPUTES Article of this Contract.
- (1) The Contractor has the right to withdraw part or all of the VECP at any time prior to acceptance or rejection by the Contracting Officer or other delegated Authority's Representative. Such withdrawal shall be made in writing to the Contracting Officer or

other delegated Authority's Representative. If the Contractor desires to withdraw the proposal, he shall be liable for the cost incurred by the Authority in reviewing the proposal.

- d. Upon notice of conditional approval of the concept of the VECP, the Contractor shall proceed with final VECP design in accordance with the agreed schedule.
- e. Phase Two - Final Approval: Final approval of the VECP by the Authority will be contingent upon the following items:
 - (1) The Contractor shall address, to the Authority's satisfaction, all design issues and review comments.
 - (2) An equitable adjustment in the Contract price and appropriate changes in any other affected provisions of the Contract shall be made and the Contract modified in accordance with this Article and the CHANGES or other applicable articles of this Contract.
 - (3) The net savings resulting from the change shall be shared between the Contractor and the Authority on the basis of 50 percent for the Contractor and 50 percent for the Authority. Net savings shall be determined by deducting from the estimated gross savings, the Contractor's costs of developing and implementing the proposal, including any amount attributable to a subcontractor, and the estimated amount of increased costs to the Authority resulting from the change, such as costs for review, implementation, inspection, related items and Authority-furnished property. Estimated gross savings shall include Contractor's labor, material, equipment, overhead, profit and bond. The Contract price shall be reduced by the sum of the Authority's costs and share of the net savings.
 - (4) The Contractor is entitled to share in instant Contract savings only, to the full extent provided for in this Article. For purposes of sharing, the term 'instant contract' shall not include any supplemental agreements to or other modifications of this Contract, executed subsequent to acceptance of the particular VECP, by which the Authority increases the quantity of any item or adds any item.
 - (5) Notwithstanding any review, approval or acceptance of any VECP by the Authority; the Contractor agrees to be liable to the Authority for all costs of any kind whatsoever caused by or resulting from any error, omission, deficiency or negligence, or combination thereof, of any kind in the design, drawings or specifications submitted to the Authority in connection with any VECP proposal under this Contract. The rights and remedies of the Authority provided in this clause are in addition to any other rights or remedies provided by law or under this Contract.
- f. The Contractor will use his best efforts to include Value Engineering arrangements in any subcontract, which in his judgement, appears to offer sufficient value engineering potential.
- g. A VECP identical to one submitted under any other contract, by this or any other Contractor, may also be submitted under this Contract.
- h. The Contractor may restrict the Authority's right to use any VECP data by marking it with the following statement:

"This data, furnished pursuant to the VALUE ENGINEERING INCENTIVE Article of this Contract, shall not be duplicated, used or disclosed, in whole or in part, for any purpose except to evaluate the VECP, unless the proposal is accepted by the Authority. This restriction does not limit the Authority's right to use information contained in this data if it is or has been obtained, or is otherwise available, from the Contractor or from other source, without limitations. When this proposal is accepted by the Authority, the Authority shall have the right to duplicate, use and disclose any data in any manner and for any purpose whatsoever, and have others do so whether under this or any other Authority contract."

1.45 Variations in Estimated Quantities

- a. Where the quantity of a pay item in this Contract is an estimated quantity and where the actual quantity of such pay item varies more than 15 percent above or below the estimated quantity stated in this Contract, an equitable adjustment in the Contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contracting Officer or other delegated Authority's Representative shall, upon receipt of a written request for an extension of time within 10 days from the beginning of such delay, or within such further period of time which may be granted by the Contracting Officer or other delegated Authority's Representative prior to the date of final settlement of the Contract, ascertain the facts and make such adjustment for extending the completion date as in his judgment the findings justify.

1.46 Contract Prices - Price Schedule

Payment for the various bid items listed in the Price Schedule shall constitute full compensation for furnishing all plant, labor, equipment, appliances and materials and for performing all operations required to complete the work in conformity with Drawings and Specifications. All costs for work not specifically mentioned in the Price Schedule shall be included in the Contract prices for the bid items listed.

1.47 Progress Payment for Lump Sum Items

The Contractor shall furnish to the Contracting Officer or other delegated Authority's Representative a breakdown of the total Contract price for every lump sum item on the Unit Price Schedule, showing the amount included therein for each principal category of the work, in such detail as to provide a basis for determining progress payments. The breakdown shall be supported by such data to substantiate its correctness as the Contracting Officer or other delegated Authority's Representative may require.

1.48 Warranty of Construction

- a. Except as otherwise expressly provided in this Contract, the Contractor shall remedy at his own expense any failure of the work for a period of one year, including equipment, to conform to Contract Specifications and any defect of material, workmanship, or design in the work, but excluding any defect of any design furnished by the Authority under the Contract, provided that the Contracting Officer or other delegated Authority's Representative gives the Contractor notice of any such failure or defect promptly after discovery but not later than one year after final acceptance of the work, except that in the case of defects or failures in a part of the work of which the Authority take possession prior to final acceptance, such notice shall be given not later than one year from the date the Authority take such possession. The Contractor, at his own expense, shall also remedy damage to equipment, the site, or the buildings or the contents thereof which is the result of any failure or defect, and restore any work damaged in fulfilling the terms of this Article. Should the Contractor fail to remedy any such failure or defect within a reasonable time after receipt of notice thereof, the Authority shall have the right to replace, repair or otherwise remedy such failure or defect at the Contractor's expense. This warranty shall not delay final acceptance of or final payment for the Contract work.
- b. All subcontractors', manufacturers' and suppliers' warranties and guarantees, expressed or implied, respecting any part of the work and any materials used therein shall be deemed obtained and shall be enforced by the Contractor as the agent and for the benefit of the Authority without the necessity of separate transfer or assignment thereof; provided that, if directed by the Contracting Officer or other delegated Authority's Representative, the Contractor shall require such subcontractors, manufacturers and suppliers to execute such warranties and guarantees in writing to the Contracting Officer or other delegated Authority's Representative.

- c. Any work repaired or replaced pursuant to this Article shall also be subject to the provisions of this Article to the same extent as work originally performed. The rights and remedies of the Authority provided in this Article are in addition to and do not limit any rights afforded to the Authority by any other article of this Contract.

1.49 Time and Materials Work

- a. In the event equitable adjustment pursuant to the CHANGES Article or other articles of these General Provisions cannot be agreed to in a timely manner, the Contracting Officer or other delegated Authority's Representative reserves the right to order work on a time and materials basis. When work is ordered under this Article and notwithstanding the provisions of other articles, compensation for the work shall be determined as hereinafter provided and shall constitute the total compensation to be paid for the changes to the work. The methods, labor, materials and equipment used in the performance of such work shall be subject to the approval of the Authority Representative or Engineer.
- b. Work performed by or for the Contractor: Labor, materials, and equipment shall be furnished by the Contractor or by a subcontractor or by others on behalf of the Contractor. The Contractor will be paid therefor as hereinafter provided, except where agreement has been reached to pay in accordance with Paragraph c. below. To the totals, completed as indicated in Paragraphs b. (1) through b. (4), shall be added the following percentages, which in the aggregate shall be limited up to a maximum of:

Labor: 10 percent.

Materials: 5 percent.

Equipment rental: 5 percent.

- c. Profit shall be negotiated as provided in the CONTRACT MODIFICATIONS - REQUIREMENTS FOR PROPOSALS, PRICE BREAKDOWN AND NEGOTIATION OF PROFIT Article of these General Provisions.

A percentage for subcontract work, limited up to a maximum of 10 percent, may be added to the totals computed above. This subcontract percentage will be a one-time markup regardless of tier of the subcontractor performing the work. A percentage for Contractor's bond not to exceed one percent, may also be added to the total. For the purposes of this Article, subcontractor is defined as an individual, partnership, corporation, association, joint venture or any combination thereof, who contracts with the Contractor to perform work or labor or render service on or about the work. The term subcontractor shall not include those who supply materials only. When work paid for on time and materials basis is performed by forces other than the Contractor's organization, the Contractor shall reach agreement with such other forces as to the distribution of the payment made by the Authority for such work and no additional payment therefor will be made by the Authority by reason of performance of the work by a subcontractor or by others.

- (1) Labor: The cost of labor used in performing the work, whether the employer is the Contractor, subcontractor, or other forces, will be the sum of the following:

- [a] The gross actual wages paid including income tax withholding but not including any employer payments to or on behalf of workmen for health and welfare, pension, vacation, insurance and similar purposes.

- [b] To the actual gross wages, as defined in Paragraph b. (1) [a] above, will be applied a percentage based upon current applicable labor rates concerning payments made to or on behalf of workmen other than actual wages, which percentage shall constitute full compensation for all payments other than actual gross wages as defined in Paragraph b. (1) [a] above and subsistence and travel allowance as specified in Paragraph b. (1) [c] below. The Contractor shall compute a separate percentage for each craft or a composite percentage for all crafts, if so approved by the Authority Representative or Engineer. All computed percentages shall be submitted to the

Authority Representative or Engineer for approval within 90 days after receipt of Notice to Proceed or as directed by the Authority Representative or Engineer prior to any time and materials work being performed.

- [c] Subsistence and travel allowance paid to such workmen if required by collective bargaining agreements.

The charges for labor shall include all classifications through foremen when engaged in the actual and direct performance of the work. They shall not include charges for such overhead personnel as assistant superintendents, superintendents, office personnel, timekeepers and maintenance mechanics.

- (2) Materials: The cost of materials required for the accomplishment of the work will be delivered cost to the purchaser, whether Contractor, subcontractor or other forces, from the supplier thereof, except as the following are applicable:

- [a] If a cash or trade discount by the actual supplier is offered or available to the purchaser, it shall be credited to the Authority notwithstanding the fact that such discount may not have been taken.
- [b] If materials are procured by the purchaser by any method which is not a direct purchase form and a direct billing by the actual supplier to such purchaser, the cost of such materials, including handling, shall be deemed to be the price to the actual supplier as determined by the Authority Representative or Engineer.
- [c] If the materials are obtained from a supply or source owned wholly or in part by the purchaser, payment therefor will not exceed the price paid by the purchaser for similar materials furnished from said source on Contract items or the current wholesale price for such materials delivered to the job site, whichever price is lower.
- [d] The cost of such materials shall not exceed the lowest current wholesale price at which such materials are available in the quantities concerned, delivered to the job site, less any discounts as provided in Paragraph b. (2) [a] above.
- [e] If the Contractor does not furnish satisfactory evidence of the cost of such materials from the actual supplier thereof, the cost shall then be determined in accordance with Paragraph b.(2)[d] above.

The Contractor shall not be compensated for indirect costs and profit on Authority-furnished materials.

- (3) Equipment: The Contractor shall be paid for the use of equipment in accordance with the PAYMENT FOR USE OF EQUIPMENT Article of the Special Conditions. The Contractor shall furnish all data which might assist the Authority Representative or Engineer in the establishment of such rates.

- [a] Operators of rented equipment will be paid for as provided under Paragraph b. (1) above.

- (4) Subcontracts: The cost for subcontract work will be the actual cost to the Contractor for work performed by a subcontractor as computed in accordance with Paragraph b. above.

- c. Special items of work: If the Contracting Officer or other delegated Authority's Representative and the Contractor, by agreement, determine that either (1) an item of time and materials work does not represent a significant portion of the total Contract price, or (2) such item of work cannot be performed by the forces of the Contractor or the forces of any of his subcontractors, or (3) it is not in accordance with the established practice of the industry involved to keep the records which the procedure outlined in Paragraph b. above would require, charges for such special time and materials work item may be made on the basis of invoices for such work without complete itemization of labor, materials and equipment rental costs. To such invoiced price, less a credit to the Authority for any cash or trade discount offered or available, whether or not such discount may have been taken, will be added a negotiated amount not to exceed

five percent of the discounted price, in lieu of the negotiated lump sum not to exceed the percentages provided for in Paragraph b. above.

- d. Records: The Contractor shall maintain his separate records in such a manner as to provide a clear distinction between the direct costs of work paid for on a time and materials basis and the cost of other operations.
 - (1) The Contractor shall prepare, and furnish to the Authority Representative or Engineer, report sheets in duplicate of each day's work paid for on a time and materials basis the day after such work was performed. The daily report sheets shall itemize the materials used, and shall cover the direct cost of labor and the charges for equipment rental, whether furnished by the Contractor, subcontractor or other forces, except for charges described in Paragraph c. above. The daily report sheets shall provide names or identifications and classifications of workmen, the hours worked, and also the size, type and identification number of equipment, and hours operated.
 - (2) Material charges shall be substantiated by valid copies of vendor's invoices. Such invoices shall be submitted with the daily report sheets or, if not available, they shall be submitted with subsequent daily report sheets. Should said vendor's invoices not be submitted within 60 days after the date of delivery of the material or 15 days after acceptance of the work, whichever comes first, the Authority Representative or Engineer reserves the right to establish the cost of such materials at the lowest current wholesale prices at which such materials are available in the quantities concerned delivered to the location of the work less any discounts provided in Paragraph b.(2)[a] above.
 - (3) Said daily report sheets shall be signed by the Contractor or his authorized agent.
 - (4) The Authority Representative or Engineer will compare his records with the Contractor's daily report sheets, make any necessary adjustment, and compile the costs of work paid for on a time and materials basis on daily time and materials work report forms furnished by the Authority Representative or Engineer. When these daily reports are agreed upon and signed by both parties, they shall become the basis of payment for the work performed, but shall not preclude subsequent adjustment based on a later audit.
 - (5) Not used.
- e. Payment: Payment as provided in Paragraphs b. and c. above shall constitute full compensation to the Contractor for performance of work paid for on a time and materials basis and no additional compensation will be allowed therefor, except as provided in Paragraph f. below.
- f. If the work under this Article is emergency in nature or is on a critical path, i.e., completion of a milestone or overall Contract completion and affects efficient work and/or delays completion of other Contract work, the Contractor may propose a lump sum amount, adequately analyzed and certified for negotiation with the Contracting Officer or other delegated Authority's Representative as an added cost not covered by Paragraph b. (1) through b. (4) above.

1.50 Equitable Adjustment for Minor Contract Modifications

- a. When the Contracting Officer or other delegated Authority's Representative and Contractor agree to an additive or deductive amount for a modification to this Contract made pursuant to Articles of this Contract titled, CHANGES, DIFFERING SITE CONDITIONS or VALUE ENGINEERING INCENTIVE, when the fair and reasonable price in aggregate amount does not exceed \$100,000 and further agree to an adjustment in the time for Contract performance resulting from said modification which increases or decreases the completion date 10 or less calendar days, the equitable adjustment in Contract amount shall consist of the sum of the following:
 - (1) Direct costs as agreed to by the Contracting Officer or other delegated Authority's Representative and Contractor.

- (2) Job Office Overhead costs, the sum of which shall be limited to a maximum of 10 percent of direct labor costs, including fringe benefits, but excluding FICA, FUTA, and State Unemployment Insurance (SUI); a maximum of 10 percent of direct material costs; a maximum of five percent of direct equipment costs (small tools, defined as equipment less than \$2,000 in acquisition costs, are included and computed at a maximum of five percent of direct base labor wages); and a maximum of five percent of subcontract costs.
 - (3) Home Office General and Administrative (G&A) costs, the sum of which shall be limited to a maximum of three percent or the audited rate of the direct costs plus job office overhead costs computed as above.
 - (4) Profit will be determined in accordance with the guidelines specified in the CONTRACT MODIFICATIONS-REQUIREMENTS FOR PROPOSALS, PRICE BREAKDOWN AND NEGOTIATION OF PROFIT Article of the General Provisions.
- b. In using the above rates, the following shall apply:
- (1) Payroll Tax (FICA, FUTA & SUI) amounts are added immediately after direct and indirect costs are totaled.
 - (2) Subcontractors' indirect costs and profit shall be computed in the same manner as above.
 - (3) Indirect costs shall not be duplicated in direct costs.
 - (4) When the Contract time is increased, the change in Contract amount for direct and indirect costs computed by application of the above rates includes costs of impact and extended performance due to the time extension and no further consideration of costs arising from the specific modification and cited pending change orders (PCO's) will be given. The Contractor shall not receive both a percentage and a daily rate markup for job office overhead costs when a time extension to the Contract Performance Period is recognized.
 - (5) Bond will be allowed at actual cost without markup.
- c. Equipment Rates shall be determined from prior Authority audits. In the absence of audited rates for equipment owned or controlled by the Contractor, hourly rates shall be computed from the current Contractor's Equipment Cost Guide (monthly rate divided by 176).

1.51 Cost or Pricing Data

- a. The Contractor shall submit to the Contracting Officer or other delegated Authority's Representative, either actually or by specific identification in writing, cost or pricing data under the conditions described in this Paragraph and certify that, to the best of his knowledge and belief, the cost or pricing data submitted is accurate, complete and current as of the date of execution, which date shall be as close as possible to the date of agreement on the negotiated price of the Contract modification. The cost or pricing data shall be submitted at the time the Contractor submits his proposal for the pricing of any modification to his Contract, whether or not cost or pricing data was required in connection with the initial pricing of the Contract, when the modification involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$100,000, or less at the discretion of the Contracting Officer or other delegated Authority's Representative.
- b. The submittal of certified cost or pricing data shall not be required if the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The Contractor agrees that the terms "adequate price competition" and "established catalog or market prices of commercial items sold in substantial quantities to the general public" shall be determined by the Contracting Officer or other delegated Authority's Representative in accordance with the guidelines as set forth in Subpart 15.4 of the Federal Acquisition Regulations (48 CFR 15.4).

- c. Cost or pricing data consists of all facts existing up to the time of agreement on price which prudent buyers and sellers would reasonably expect to have a significant effect on the price negotiations for the modification. The definition of cost or pricing data embraces more than historical accounting data; it also includes, where applicable, such factors as subcontractor, supplier and vendor quotations, nonrecurring costs, changes in construction methods, unit cost trends such as those associated with labor efficiency and any management decisions which could reasonably be expected to have a significant bearing on costs under the proposed modification and the Contract work. Cost or pricing data consists of all facts which can reasonably be expected to contribute to sound estimates of future costs as well as to the validity of costs already incurred. Cost or pricing data, being factual, is that type of information which can be verified. Because the certificate pertains to cost or pricing data, it does not make representations as to the accuracy of the Contractor's judgment on the estimated portion of future cost or projections. The certificate does, however, apply to the data upon which the Contractor's judgment is based.

1.52 Pricing of Adjustments

- a. When costs are a factor in any determination of a Contract price adjustment pursuant to the CHANGES Article or any other provision of this Contract, such costs shall be in accordance with the contract cost principles and procedures in Subpart 31 of the Federal Acquisition Regulations (48 CFR 31). Where general and administrative expense is recoverable as part of any pricing adjustment under this Contract, the adjustment shall be based on the relationship between the Contractor's total general and administrative expenses allowable under FAR cost principles for all construction-type operations during the fiscal or calendar year covering the actual performance period of the work included in this pricing adjustment, and the Contractor's total cost input (excluding General and Administrative costs) for construction-type operations during the same period, expressed as a percentage, applied to the direct and overhead Contract costs included in the pricing adjustment.
- b. Notwithstanding any interpretation of the aforementioned contract cost principles and procedures to the contrary, the Authority shall not be liable for interest, however represented, on or as a part of any claim, request, proposal or adjustment (including equitable adjustments) whether said claim, request, proposal or adjustment (including equitable adjustment) arises under the Contract or otherwise.

1.53 Accounting and Record Keeping

- a. Applicability. This Article shall become effective for and shall apply to any adjustment in the price of this Contract initiated by the Contractor or the Authority. However, where the original amount of this Contract is less than \$1,000,000, Paragraph c. of this Article does not apply unless the adjustment is expected to exceed \$50,000.
- b. Forward Priced Adjustments. Unless expressly waived in writing in advance by the Contracting Officer or other delegated Authority's Representative, the Contractor shall furnish to the Contracting Officer or other delegated Authority's Representative a cost proposal in advance of performance of any work for which a price adjustment is requested under this Contract. The proposal format shall be as detailed in the CONTRACT MODIFICATIONS - REQUIREMENTS FOR PROPOSALS, PRICE BREAKDOWN AND NEGOTIATION OF PROFIT Article. The Contractor shall initiate such records as are necessary to substantiate all elements of the pricing proposal, current to the date of agreement on the pricing adjustment. Such records supporting the costs of each pricing adjustment request shall be specifically segregated and identified in the Contractor's accounting system as being applicable to the pricing adjustment request.
- c. Post Pricing Adjustments. In addition to the records required to be originated under b. above, in the event pricing of an adjustment under this Contract is not agreed upon between the Contractor and the Contracting Officer or other delegated Authority's Representative prior to the commencement of work for which the pricing adjustment is requested, the Contractor and any subcontractor engaged in work for which the pricing adjustment is requested, shall maintain accounts and original cost records specifically segregated and identified by job order or other appropriate accounting procedures approved by the Contracting Officer or other

delegated Authority's Representative of all incurred segregable costs related to the work for which the pricing adjustment is requested. The Contractor shall maintain accounts and records which segregate and account for the costs of all work associated with that part of the project for which the pricing adjustment is requested and shall allocate between (1) work required under the base Contract; (2) work requested to be reimbursed under the pricing adjustment; and (3) other claim, including but not limited to, changes, differing site conditions, and the like. The accounts and records so established shall accumulate such costs under logical costs groups, such as material, labor, equipment, subcontracts, field overhead and the like. The Contractor shall record these costs on a form approved by the Contracting Officer or other delegated Authority's Representative. Subject to agreement between the Contractor and the Contracting Officer or other delegated Authority's Representative, or upon direction of the Contracting Officer or other delegated Authority's Representative for work under the TIME AND MATERIALS WORK Article, the Contractor shall use Form C-113 (Daily Report - Labor, Materials and Equipment). The terms of Paragraph d. of the TIME AND MATERIALS WORK Article of this Contract shall apply regardless of the form used.

- d. Availability. The accounts, records and costs information required to be originated under b. and c. above together with all other accounts, records and costs information related to this Contract shall be maintained and made available by the Contractor or 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 other delegated Authority's Representative, or pursuant to any other provisions of this Contract;
 - (2) Until the expiration of three years from the date of payment of the final \$100 (final payment) under this Contract or such lesser time as is specified in Subpart 4.7 of the Federal Acquisition Regulations and for such longer period, if any, as is required by applicable statute, or by any other articles of this Contract, or by Paragraphs (a) and (b) below:
 - (a) If the Contract is completely or partially terminated, for a period of three years from either the date of any resulting final settlement or the date of final payment, whichever is the greater period; and
 - (b) If a pricing adjustment is involved in any appeal under the DISPUTES Article of this Contract or in any litigation related to this Contract, for a period of one (1) year following the final disposition of the appeal or litigation.
- e. When asserting a claim under the various provisions of this Contract, the Contractor shall grant the Authority access to review and ascertain the validity of the accounting records being maintained for segregation of costs, including base cost records, and to audit such costs as are deemed appropriate by the Contracting Officer or other delegated Authority's Representative. No payment shall be made to the Contractor on its claim until such records are made available and access is permitted.
- f. Limitation on Pricing Adjustment. In the event the Contractor or any subcontractor fails to originate or to maintain, or to make available any accounts or records as required under this or any other article of the Contract, any pricing adjustment or portion thereof previously granted by the Contracting Officer or other delegated Authority's Representative for which records are not available shall be rescinded and recomputed, or if a pricing adjustment has not yet been granted shall be computed, in an amount not to exceed the direct costs for which accounts or records are not available, plus a single mark-up for indirect expenses not to exceed 10 percent of the direct costs so determined by the Contracting Officer or other delegated Authority's Representative. The adjustment will be established by the Contracting Officer or other delegated Authority's Representative based upon, at his or her election, either:
 - (1) An audit of any existing books and records of the Contractor or subcontractor; or (2) an Authority estimate adopted by the Contracting Officer or other delegated Authority's Representative; or (3) a combination of (1) and (2); plus a single mark-up for indirect expenses not to exceed 10 percent of the direct costs so determined by the Contracting Officer or other delegated Authority's Representative. The Contractor and subcontractors shall not be allowed any profit for the work for which the Contractor or subcontractor fails to

originate, or to maintain, or to make available any accounts or records as required under this Contract.

- g. The Contractor shall insert a clause containing all the provisions of this Article in all subcontracts issued under this Contract, modified as necessary, for proper identification of the contracting parties and the Contracting Officer or other delegated Authority's Representative under this Contract.

1.54 Cargo Preference, Use of United States-Flag Vessels

- a. Pursuant to Pub. L. 664 (46 U.S.C. 1241(b):

"Cargo Preference - Use of United States-Flag Vessels

The Contractor agrees:

- (1) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, materials or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- (2) To furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated on-board commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) above to the Grantee (through the prime Contractor in the case of subcontractor bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street SW, Washington, D.C. 20230, marked with appropriate identification of the Project.
- (3) To include these requirements in all Subcontracts issued pursuant to this Contract when the Subcontract may involve the transport of equipment, material, or commodities by ocean vessel."

1.55 Buy America

The Buy America Act requirements apply to the following types of contracts: construction contracts, the acquisition of goods or rolling stock valued at more than \$150,000.00. If the federal grant that funds a procurement was issued prior to 12/2014, then this amount is \$100,000.00.

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7, and include final assembly in the United States for fifteen (15) passenger vans and fifteen (15) passenger wagons produced by the Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

The Contractor is responsible for flowing down these requirements to subcontractors at every tier. The dollar threshold only applies to the prime contract. All subcontracts thereunder are subject to the Buy America Act requirements.

1.56 Certificate of Current Cost or Pricing Data

The Contractor shall provide a Certificate of Current Cost or Pricing Data as required in Subpart 15.406 of the Federal Acquisition Regulations (48 CFR Part 15.406) in support of any negotiated contract expected to exceed \$100,000 or any modification to a formally advertised or negotiated contract on which the aggregate of the increases and decreases in cost are expected to exceed

\$100,000. The Contracting Officer or other delegated Authority's Representative at his discretion may request cost or pricing data for modifications on which cost are \$100,000 or less and an attendant certificate of current cost or pricing data.

1.57 EMPLOYMENT RESTRICTION WARRANTY

- (a) The Contractor warrants that it will not offer employment to, solicit or discuss prospective employment with, or otherwise engage in substantive employment related discussions or communications with, any present or former Board member of the Authority who has been involved, directly or indirectly, in any matter of financial interest to the Contractor until at least two (2) years after the Board member has ceased involvement in the matter. The post-employment restriction on former Authority employees is one (1) year from the date of their last employment with WMATA. The Contractor shall not knowingly engage in communications of the nature described above with any immediate family member or member of the household of any Authority employee or Board member during the period when such employee or Board member is involved in any matter of financial interest to the Contractor.
- (b) If a former Board member or employee of the Authority is eventually hired, the Contractor shall ensure that the former Board member or employee is not involved in negotiating or otherwise dealing with the Authority on any particular matter over which he or she had responsibility during his or her tenure.
- (c) Should the Contractor fail to comply with the provisions hereof, and no fraud is suspected, the Contracting Officer shall have the right to withhold payment under this Contract in an amount not to exceed two percent (2%) of the total Contract amount as liquidated damages to the Authority, such withholding to be in addition to any other withholding or retainage under this Contract. Any dispute shall be settled in accordance with the "Disputes" clause of this Contract.
- (d) If fraud is suspected, the Authority's only remedy prior to a final decision by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any state or Federal agency providing funding under this Contract and/or appropriate Federal, state and/or local law enforcement authorities.

1.58 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).

1.59 Conflict Of Interest (07/03)

- a. Neither the Contractor nor any person or company affiliated with it shall have, during the term of this Contract and any extensions thereof, any contractual or other financial relationship with the Authority, with any Authority prime Contractor, or with any subcontractor or supplier to any Authority prime Contractor other than the contractual relationship established under this Contract, unless an exception is granted as described below.
- b. Upon request of the Contractor and upon full disclosure and for good cause the Contracting Officer may in his sole discretion grant an exception to the requirement of a., above, when in his 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.
- c. If, during the performance of this Contract and any extension thereof, the Contractor becomes aware of any relationship, financial interest, or other activity in which it or an affiliated person or company is involved which is not in compliance with the provisions of a., above, it shall promptly notify the Contracting Officer in writing and fully disclose all circumstances thereof. Should the Contracting Officer not grant an exception to the requirements of this Article, the Contractor shall, within ten (10) days of written notice from the Contracting Officer to do so, take all action necessary to comply with the terms of a., above.
- d. 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 c., above, terminate the Contract for default pursuant to the Default Article of this Contract.
- e. 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.
- d. 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.

1.60 Davis-Bacon and Copeland Anti-Kickback Acts

- a. Minimum wages –
 - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 C.F.R. §5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and

fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 C.F.R. §5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (ii) (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
 - (1) Except with respect to helpers as defined in 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
 - (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
 - (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of

any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, submitted through the Contracting Officer, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

- b. Withholding - The Authority shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Authority may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

c. Payrolls and basic records -

- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Authority for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

This contract 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. The Davis-Bacon Act requires contractors and

subcontractors under construction contracts and subcontracts greater than \$2,000 to submit weekly certified payrolls reports to the AR.

- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. §1001 and 31 U.S.C. §3729.
- (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
- (4) Apprentices and trainees –
 - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a

contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or sub-contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- (5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract. In addition, the Contractor agrees to comply with section 1 of the Copeland "Anti-Kickback Act," 18 U.S.C. § 874 that prohibits anyone from inducing, by any means, any person employed on construction, prosecution, completion or repair of a federally assisted building or work, to give up any part of his or her compensation to which he or she is entitled. Contractor further agrees to comply with section 2 of the Act, 40 U.S.C. § 3145, as amended, and implementing DOL regulations, "Contractors and Subcontractors on Public Buildings or Public Works Financed in Whole or in Part, by Loans or Grants from the United States." Contractor agrees to comply with 29 C.F.R. Part 3 which imposes record keeping requirements for all such

contracts in excess of \$2,000.

- (6) Subcontracts – The Contractor shall insert the clause in section (5) above (Compliance with Copeland Act requirements) in all subcontracts, and require that subcontractors insert the clause in any and all of their subcontracts, at any tier. In addition, the contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- (7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) Compliance with Davis-Bacon and Related Act requirements - 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.
- (9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (10) Certification of eligibility –
 - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001 by reference in this contract.

1.61 Patent and Rights in Data (07/03) N/A

(Also, refer to General Provisions Article 1.40 Rights in Technical Data - Unlimited.)

Patent and rights in data requirements for federally assisted projects only apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information.

A. **Rights in Data** - The following requirements apply to each contract involving experimental, developmental or research work:

- (1) The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in

computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists; specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to Project administration.

- (2) The following restrictions apply to all subject data first produced in the performance of this contract.
- (a) Except for its own internal use, the Authority or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Authority or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution
 - (b) In accordance with 49 C.F.R. ' 18.34 and 49 C.F.R. ' 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 - 1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
 - 2. Any rights of copyright purchased by the Authority or Contractor using Federal assistance in whole or in part provided by FTA.
 - (c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Authority and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Authority or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.
 - (d) Unless prohibited by state law, upon request by the Federal Government, the Authority and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Authority or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Authority nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

- (e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 - (f) Data developed by the Authority or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Authority or Contractor identifies that data in writing at the time of delivery of the contract work.
 - (g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- (3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e. , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Authority and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
 - (4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- B. Patent Rights** - This following requirements apply to each contract involving experimental, developmental, or research work:
- (1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Authority and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
 - (2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Authority and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
 - (3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

1.62 Changes to Federal Requirements

- a. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the FTA Master Agreement (Form FTA MA (22) dated October, 2015) between the Authority and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.
- b. The Contractor agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

1.63 No Obligation by the Federal Government

- (1) The Authority and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Authority, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

1.64 Program Fraud, False or Fraudulent Statements or Claims or Civil and Criminal Fraud

- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Contract. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this Contract is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent that the Federal Government deems appropriate.
- (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

1.65 Incorporation Of Federal Transit Administration (FTA) Terms (07/03)

- a. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F and FTA Circular 4220.1F or any revision thereto, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all DOT or FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests which would cause the Authority to be in violation of the FTA terms and conditions.
- b. The Contractor agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

1.66 Seat Belt Use Policy (November 2000)

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.

1.67 Contract Work Hours and Safety Standards Act (07/03)

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. Pursuant to Section 102 (Overtime):

- (1) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the work that may involve the employment of laborers, mechanics, apprentices, trainees, watchmen, and guards shall require or permit any such employee in any workweek in which he or she is so employed to work in excess of forty (40) hours on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such employee receives compensation at a rate not less than one and one-half (1 1/2) times his or her basic rate of pay for all hours worked in excess of forty (40) hours in such work week.
- (2) **Violation; liability for unpaid wages; liquidated damages:** In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the 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, watchmen, or guard employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A(1) of this section.
- (3) **Withholding for unpaid wages and liquidated damages:** The Contracting Officer may withhold from the contractor or subcontractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph A(2) of this section.
- (4) **Subcontracts:** The contractor or subcontractor shall insert the clauses set forth in this section in all subcontracts at any tier. Contractor shall also require subcontractors to include the clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any and all subcontracts at every tier.
- (5) **Records:** The Contractor shall maintain payroll records containing the information specified in 29 C.F.R. § 516.2(a). Such records shall be preserved for three (3) years from the completion of this Contract.

Pursuant to Section 107 (OSHA):

- (i) The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, " Safety and Health Regulations for Construction " 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.
- (ii) **Subcontracts:** The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

1.68 Access to Records

- a. The Contractor agrees to provide the Authority, the FTA's Administrator, the Comptroller General of the United States or any of their authorized representatives access to any of the Contractor's books, documents, papers and records that are pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 C.F.R. § 633.15 to provide the FTA Administrator or his or her authorized representatives including any Project Management Oversight (PMO) Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U. S. C. § 5302(a)(1) that is receiving federal financial assistance through the programs described at 49 U. S. C. §§ 5307, 5309 or 5311.
- b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever, or to copy excerpts and transcriptions as reasonably needed.
- c. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Authority, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 C.F.R. §.18.39(i)(11).
- d. The Contractor agrees to include this clause in each subcontract awarded for work performed under this Contract. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

1.69 Fly America Requirements -

The Contractor agrees to comply with 49 U.S.C. § 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and

shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

1.70 Seismic Safety -

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

1.71 Energy Conservation -

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321, *et. seq.*

The Contractor agrees to perform an energy assessment for any building constructed, reconstructed or modified with FTA funds as required under FTA regulations, "Requirements for Energy Assessments." 49 C.F.R. Part 622.

The Contractor must include this clause in all subcontracts and sub-agreements at every tier.

1.72 Recycled Products/Recovered Materials -

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

The Contractor also agrees to include these requirements in each Subcontract financed, in whole or in part, with Federal assistance provided by FTA.

1.73 Contracts Involving Federal Privacy Act Requirements -

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. ' 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA'

1.74 Pre-employment Criminal Background Check Requirement

Criminal background checks of all contractor employees working at a WMATA facility on this contract will be required pursuant to Metro Policy/Instruction 7.40/0, Background Screenings and Metro Policy/Instruction 6.10/5, Metro Employee Identification Cards, Section 5.04. Eligibility for access to WMATA property will be based on WMATA's pre-employment Criminal Background

Check criteria. WMATA will provide the contractor employees with background check consent forms that the contractor's employees must complete and sign. The forms will require the contractor employees to appear in person, provide their full legal names, including middle initials if applicable, as well as their Social Security numbers, in addition to other information that will be necessary to conduct the background checks. The operating hours are Monday through Friday from 7:30 AM – 3:30 PM except holidays. Upon receipt of the completed, signed forms, WMATA will conduct background checks including criminal court searches and Social Security Number verifications of the contractor employees. If there is derogatory information that would disqualify a contractor employee from receiving a badge to access WMATA property, the Contractor and its employee will be notified that the background check failed. The completed forms are secured in a locked file cabinet and are destroyed one year after the expiration date on the contractor employee's badge. These background checks are expected to take one (1) business day for processing. The contractor employee must allow sufficient time for completion. The background check is free of charge.

Background checks are conducted to promote a safe work environment and to protect our company's most important assets: the people we serve and the people with whom we serve. This enables WMATA management to make prudent decisions and maintain a high quality workforce. Contractor employees who successfully complete the background checks are eligible to enter WMATA property once they are issued a contractor badge. Contractor employees who do not authorize background checks or whose background checks are unsatisfactory will not be granted contractor badges or access to WMATA property. The records generated by these background checks that contain private information will not be disclosed unless disclosure is required under the PARP/Privacy Policies.

1.75 Availability of Funds For the Next Fiscal Years

Funds are not presently available for performance under this contract beyond the current fiscal year which ends on June 30. 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 which 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 provision.

1.76 Living Wage

This contract is subject to the Authority's Living Wage Policy and implementing regulations. The Living Wage provision is required in all contracts for services (including construction) awarded in an amount that exceeds \$100,000 in a 12-month period.

- a. The Authority Living Wage Rate is \$13.48 per hour, and may be reduced by the contractor's per-employee cost for health insurance.
- b. The Contractor shall:
 - (1) Pay, at a minimum, the Authority Living Wage Rate, effective during the time the work is performed, to all employees who perform work under this contract, except as otherwise provided in paragraph (d) below;
 - (2) Include the Living Wage clause in all subcontractors that exceed \$15,000 in a 12-month period awarded under this contract;
 - (3) Maintain payroll records, in accordance with the retention and examination of records requirements in the General Provisions, and shall include a similar provision in affected subcontracts that requires the subcontractor to maintain its payroll records for the same length of time; and

- (4) Submit records with each monthly invoice supporting payment of the Living Wage Rate.
- c. The Contractor shall not split or subdivide a contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor to avoid compliance with the Living Wage provisions.
- d. Exemptions to the Living Wage provisions include:
 - (1) Contracts and agreements with higher negotiated wage rates,
 - (2) Contracts that are subject to higher wage rates required by federal law or collective bargaining agreements (e.g., Davis Bacon);
 - (3) Contracts or agreements for regulated utilities;
 - (4) Emergency services to prevent or respond to a disaster or imminent threat to public health and safety; and
 - (5) Contractors who employ fewer than ten (10) employees.
- e. The Authority may adjust the Living Wage rate effective in January of each year. The adjustment will reflect the average Living Wage Rate among Metro's Compact Jurisdictions with Living Wage provisions. If after contract award the Living Wage Rate increases, the Contractor is entitled to an equitable adjustment to the rate in the amount of the increase for employees who are affected by the escalated wage.
- f. Failure to comply with the Authority's Living Wage provisions shall result in the Authority's right to exercise available contract remedies, including contract termination or debarment from future contracts.

1.77 Government Wide Debarment and Suspension

- a. The Contractor is bound by its certification contained in its offer to the Authority that neither the Contractor, its principals, or affiliates, are excluded or disqualified for federal contracting and/or as defined at 49 C.F.R. 29.940 and 29.945. The certification is a material representation of fact, relied upon by the Authority in entering into this Contract. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 C.F.R, part 180, subpart C as adopted and supplemented by U.S. DOT regulations at 2 C.F.R, part 1200 "Nonprocurement Suspension and Debarment," including any amendments thereto, Executive Orders Nos. 12549 and 12689 "Debarment and Suspension" 31 U.S.C. § 6101 note, and other applicable federal laws, regulations or guidance regarding participation with debarred or suspended contractors throughout the term of this Contract.
- b. The Contractor agrees to include this clause in all subcontracts at all tiers under this Contract requiring lower tier contractors to comply with federal suspension and debarment requirements, and review the System for Award Management (SAM) at www.sam.gov in order to comply with U.S. DOT regulations at 2 C.F.R, part 1200 prior to awarding any subcontract under this Contract.

1.78 Lobbying

- a. The Contractor is bound by its certification contained in its offer or bid to the Authority regarding the use of federal or non-federal funds to influence, or attempt to influence any Federal officer or employee regarding the award, execution, continuation, or any similar action of any Federal grant or other activities as defined in 31 U.S.C. 1352, 49 CFR Part 19, or 49 C.F.R. Part 20. The Contractor agrees to comply with this requirement throughout the term of the Contract.
- b. Contractor agrees that it will comply with 31 U.S.C. § 1352, as amended, U.S. DOT regulations "New Restrictions on Lobbying" 49 C.F.R. Part 20, to the extent consistent with 31 U.S.C. § 1352, as amended and other applicable federal laws, regulations and guidance prohibiting the use of federal funds for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature unless an exception exists in current federal law.
- c. The Contractor agrees to include these requirements in all subcontracts at all tiers under this Contract.

1.79 Clean Air

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U. S. C. §§ 7401 et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.
- b. The Contractor will comply with U.S. EPA Regulations "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; "Control of Emissions from New and In-Use Highway Vehicles and Engines," 40 C.F.R. Part 86; "Fuel Economy and Greenhouse Gas Exhaust Emissions of Motor Vehicles," 40 C.F.R. Part 600, as well as any applicable State Implementation Plans (SIP), and EPA regulations "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or Federal Transit Laws" 40 C.F.R. Part 93, along with other applicable federal regulations.
- c. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

1.80 Clean Water

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U. S. C. §§1251 et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- b. The Contractor will protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§300 (f)-(j).
- c. The Contractor will comply with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368.
- d. The Contractor will facilitate compliance with Executive Order 11738, "Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants or Loans," 42 U.S.C. §7606 note.
- e. The Contractor also agrees to include these requirements in each subcontract exceeding

\$100,000 financed, in whole or in part, with Federal assistance provided by FTA.

1.81 Notification of Federal Participation

This Project is being funded in whole or part with Federal Funds.

1.82 Whistleblower Protections

Whistleblower Protection – All Contracts

- (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 Metro 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 (202-962-2400) or email hotline.oig@wmata.com or by any other reasonable means;
 - (2) WMATA's Metro Transit Policy Department (MTPD), in person, by telephone (202- 962-2121) or by any other reasonable means, or to the OIG, if the information constitutes a potential violation of criminal law;
 - (3) WMATA's Chief Safety Officer, in person, in writing, through the SAFE Hotline (202-249-7233) or email safety@wmata.com, or by any other reasonable means; or
 - (4) Any other official, office or agency within WMATA or outside WMATA that the employee or independent contractor reasonably believes has the authority to act on the matter.
- (b) The Contractor, its employees, independent contractors and subcontractors shall cooperate with any inquiry or review by an authorized official of WMATA, or by the federal government or any other governmental entity with jurisdiction over WMATA, regarding a matter that would constitute a report under paragraph (a) or a violation of this or any whistleblower provision of this Contract, and with any enforcement or judicial proceeding arising from such inquiry or review.
- (c) The Contractor and its subcontractors shall not interfere with or deny the right of any employee or independent contractor of either the Contractor or any of its subcontractors to make a report under paragraph (a). The Contractor and its subcontractors shall not recommend, take or threaten to take any action having a negative or adverse impact on any employee or independent contractor of either the Contractor or any of its subcontractors because he or she:
- (1) made or is perceived to have made a report under paragraph (a);
 - (2) sought a remedy under applicable law after making a report under paragraph (a);
 - (3) participated in or cooperated with an inquiry or review by an authorized official of Metro, or by the federal government or any other governmental entity with jurisdiction over Metro, 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.
- (6) The Contractor shall include, or shall cause to be included, the substance of this section, including this paragraph (d), in its subcontracts at all tiers.

Whistleblower Protection – National Transit Systems Security Act (NTSSA), 6 U.S.C. § 1442

- (a) 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.
- (b) The contractor shall notify the Authority of any instance, related to this Contract, of a report under paragraph (a)(1) or refusal under paragraphs (a)(2), (3) or (5).
- (c) The enforcement, filing and investigation of complaints, and remedies under this section shall be governed by the NTSSA, applicable federal regulations and federal law.
- (d) This section shall be interpreted in accordance with the NTSSA. If any provision is found to be in conflict with the NTSSA, the NTSSA shall govern.

- (e) The Contractor shall include, or shall cause to be included, the substance of this section, including this paragraph (e), in its subcontracts at all tiers.

1.83 Non Discrimination 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 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 agrees to comply with applicable Federal implementing regulations and other implementing regulations that FTA may issue.

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Design-Builder shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. 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 recipient deems appropriate.

- 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 FTA 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 FTA 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 FTA 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 FTA, modified only if necessary to identify the affected parties.

1.84 Drug and Alcohol Testing

- (a) 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 and 49 CFR 40).

1.85 Veterans Preference

Veterans Preference, as provided by 49 U.S.C. §5325(k), to the extent practical, the Contractor and its Subcontractor, (1) will give a hiring preference to veterans, as defined in 5 U.S.C. §2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53 , and (2) will not require an employer to give a preference to any veteran over an equally qualified applicant who is a member of any racial or ethnic minority, female, and individual with a disability, or former employee.

1.86 National Intelligent Transportation System (ITS) Architecture and Standards

The Contractor agrees to:

1. Conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. §517(d), as amended by MAP-21, unless it obtain an exemption from those requirements.
2. Follow FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455, January 8, 2001, and all other applicable Federal guidance; and
3. Flow this provision down to all applicable subcontracts.

1.87 Americans with Disabilities Act Accessibility

1. The Contractor agrees that it will operate public transportation services in compliance with 42 U.S.C. §12101 *et seq.*; DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)" using facilities and equipment that comply with 49 C.F.R. Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38. Private entities must comply with the requirements of 49 C.F.R. Part 37 applicable to public entities with which contract to provide public transportation services.
2. Facilities to be used in public transportation service must comply with 42 U.S.C. §12101 *et seq.*; DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)", 49 C.F.R. Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specification for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38.

CONSTRUCTION SPECIAL PROVISIONS

2.1 COMMENCEMENT, PROSECUTION AND PERIOD OF PERFORMANCE

2.1.1 WORK COMMENCEMENT (09/03)

- a. The Contractor shall commence work within ten (10) calendar days after the date of receipt of NTP and shall prosecute said work diligently to completion.
- b. In the event the signed Contract with required insurance and bonds is not returned to the Authority within ten (10) calendar days after date of award and/or further, if approval has not been obtained within that ten (10)-day period for the Safety Superintendent, the Contracting Officer or other delegated Authority's Representative may issue the NTP and Contract time will start upon its receipt. However, no work at the site shall be performed until the above requirements have been met.
- c. Upon issuance of NTP, contract time will start. When NTP is issued by U.S. Mail, email and /or facsimile, the date of the transmission shall constitute receipt.
- d. WMATA facilities are in operation for 24 hours/7 days a week/365 days a year. Contract work must be sequenced and scheduled and scheduled to minimize impact on facility work.

2.1.2 Material delivery may be shipped to a contractor controlled facility in advance of installation at the WMATA metro facility. The contractor shall store the materials off the worksite. No storage shall be allowed in public areas including the platforms.

2.1.3 Substantial Completion Inspection

The Authority shall conduct a Substantial Completion Inspection at the completion of the work. The Substantial Completion date shall establish the cut-off date for liquidated damages liability and the commencement of the warranty.

2.1.4 Work Hours – Refer to Section 2.92

An Authority escort or inspector shall be present at the site at all times while Contractor personnel are working.

2.1.5 Work Area Access

- a. Carmen Turner Facility
 - i Contractor activities shall not restrict Metrorail operations or public access.
 - ii All workday must be approved by the AR

2.1.6 Work Restrictions – Refer to Section 2.92 for details.

2.1.7 INTERIM WORK COMPLETION - N/A

2.1.8 PERIOD OF PERFORMANCE (FINAL WORK COMPLETION DATES)

- a. The Contractor shall complete the contract item(s), including the final cleanup, and receipt of all deliverables within forty five (45) calendar days after the issuance of Notice to Proceed (NTP).
- b. If this contract that has a Period of Performance that exceeds the current funding period, the contract is contingent upon future funding by the Authority, vesting in WMATA the right to cancel without penalty if such funding is not available for any budget period beyond the funded period.

2.1.9 EARLY COMPLETION

If the Contractor shall submit a schedule or express an intention to complete the work earlier than any required milestone, interim or final completion date, the Authority shall not be liable for any costs incurred because of delay or hindrance should the Contractor be unable to complete the work before such milestone, interim or final completion date. The duties, obligations and warranties of the Authority to the Contractor shall be consistent with and applicable only to the completion of the work and completion dates set forth in this Contract.

2.1.10 NOTIFICATION OF CANCELLATION:

- a. Access to work areas may be cancelled by the Authority or the Contractor within the following guidelines:
 - 1). Weeknights: Up to 5 hours before the planned start time.
 - 2). Weekends: Up to 24 hours before the planned start time.
 - 3). If, single tracking is scheduled on weeknights or weekends and, the Authority must cancel access to a work area for an extended period, defined as a full shift or an entire weekend, and notifies the Contractor fewer than 5 hours before the start time for weeknights or fewer than 24 hours before the stated start time on weekend, Standby Cost of not more than 4 hours per Contractor's crew member will be paid. Certified payrolls must support actual costs.

2.1.11 STANDBY COST FOR DELAYED OR CANCELLED SITE ACCESS: N/A

Delay will be measured within the "Hours of Work" period only. The "Hours of Work" period shall be determined based upon the scheduled work period for the work areas as set forth in the Weekly General Orders Track Rights schedule or as determined by the Authority Representative.

2.2 LIQUIDATED DAMAGES N/A

2.2.1 ASSESSMENT OF DAMAGES – N/A

2.2.2 ASSESSMENT OF DAMAGES - FINAL WORK

- a. In case of failure on the part of the Contractor to complete the work within the time specified for Final Work Completion for the Contract in Clause 2.1.3 of Construction Special Provisions or any extensions thereof, the Contractor shall pay to the Authority as liquidated damages, pursuant to the TERMINATION FOR DEFAULT, DAMAGES FOR DELAY AND TIME EXTENSIONS article of the General Provisions, the sum each calendar day of delay.

- b. The maximum liquidated damages for each calendar day of delay shall not exceed \$0.

2.2 CONTRACT AND BONDS

- a. Requirements: Within 10 calendar days after the prescribed forms are presented for signature to the bidder to whom award is made a written Contract on the form provided shall be executed and delivered to the Contracting Officer or other delegated Authority's Representative, together with a performance bond and payment bond if the Contract price is \$100,000 or more, each with good and sufficient surety or sureties acceptable to the Authority. Corporations executing the bonds as sureties must be among those appearing on the Treasury Department's list of approved sureties and must be acting within the limitations set forth therein. The penal sums of such bonds shall be as follows:

(1) Performance Bond:

- (a) The penal sum of the performance bond shall equal 100 percent of the Contract price.

(2) Payment Bond:

- (a) When the Contract price is \$1,000,000 or less, the penal sum of the payment bond shall be 50 percent of the Contract price.
 - (b) When the Contract price is in excess of \$1,000,000 but not more than \$5,000,000, the penal sum shall be 40 percent of the Contract price.
 - (c) When the Contract price is more than \$5,000,000, the penal sum shall be \$2,500,000.
- b. Failure to furnish: In the event the required bonds are not furnished as specified, the Contracting Officer or other delegated Authority's Representative may issue the NTP as specified in the article titled COMMENCEMENT, PROSECUTION AND COMPLETION OF WORK. However, no payment will be made to the Contractor until the required bonds are furnished.

2.4 AUTHORITY-FURNISHED DOCUMENTS

2.4.1 CONTRACT WORK

- a. The work shall conform to the Technical Specification and Drawings as shown in this Contract.
- b. The general character and scope of the work are shown. The Contractor shall conduct the work within the areas defined on the Contract Drawings as the limits of work, except when otherwise authorized by the Contracting Officer or other delegated Authority's Representative.

2.4.2 CONTRACT DOCUMENTS

- a. One set of Contract Documents, each set consisting of Contract Drawings, and Specifications, will be furnished the Contractor without charge, except for applicable publications referenced in the technical provisions. Additional documents will be furnished on request at the cost of reproduction.

- b. In case of differences between half-size and full-size Contract Drawings, the full-size Contract Drawings shall govern. In case of differences between small-scale details and large-scale details, the large-scale details shall govern. Schedules on Contract Drawings shall take precedence over conflicting information on any other Contract Drawings. On the Contract Drawings where a portion of the work is drawn out and the remainder is shown in outline, the parts drawn out shall apply also to all other like portions of the work.
- c. Standard drawings may be included in the Contract Drawings. Their application is made specific by notation on each such drawing included.
- d. Omissions from the Contract Drawings or Specifications or the inadequate description of details of the work which are manifestly necessary to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or inadequately described details of the work.
- e. The Contractor shall check all Contract Drawings furnished him immediately upon receipt and shall promptly notify the Contracting Officer or other delegated Authority's Representative in writing of discrepancies. Dimensions on Drawings shall be followed in preference to scale measurements. The Contractor shall compare Drawings and verify the figures before laying out the work and shall be responsible for any errors which might have been avoided thereby.
- f. The dimensions and descriptions given on the Contract Drawings for adjacent work are based on design drawings. It shall be the responsibility of the Contractor to verify all as-built conditions and interface information.

2.5 CONTRACTOR'S SUBMITTALS – as required

Unless otherwise required by the technical specifications:

2.5.1 GENERAL

- a. Interpretation of approval and review: The approval or review of submittals will be general; neither approval nor review shall be construed as:
 - (1) Permitting any departure from the Contract requirements,
 - (2) Relieving the Contractor of the responsibility for any errors including details, dimensions and materials, or
 - (3) Approving departures from details furnished by the AR except as otherwise specified.
- b. The Contractor shall make submittals sufficiently in advance of construction requirements to permit no less than **30** calendar days for checking and appropriate action. Submittals shall be shown on the Progress Schedules.
- c. The Contractor shall be responsible for and bear all cost of damages which may result from the ordering of material or from proceeding with any part of the work prior to the approval of specified or directed submittals.

2.5.2 SHOP DRAWINGS

- a. The Contractor shall, unless otherwise directed, submit one reproducible and two legible copies of shop drawings to the AR for approval using standard transmittal forms in

accordance with detailed instructions furnished by the AR. A supply of these forms is available without cost to the Contractor.

- b. Shop drawings shall be complete, detailed and dimensioned and shall include the following:
 - (1) Fabrication, erection, layout and setting drawings.
 - (2) Complete list of materials.
 - (3) Schedules.
 - (4) Manufacturer's drawings.
 - (5) Wiring and control diagrams, as applicable.
 - (6) Descriptive literature.
 - (7) Performance and test data.
 - (8) Drawings prepared by the Contractor for permanent structures, equipment and systems designed by him to comply with the Specifications.
 - (9) Additional requirements specified in the technical specifications.
- c. Drawings and schedules shall be checked and coordinated with the work of all trades involved, before they are submitted for approval and shall bear the Contractor's stamp of approval as evidence of such checking and coordination. The CQCS Manager shall review drawings and schedules to verify Contractor approval and compliance with the terms of the Contract prior to submittal, and shall indicate CQCS verification by signature or stamp thereon. Drawings or schedules submitted without this stamp of approval may be returned to the Contractor for resubmittal. Where specified to be certified by a professional engineer, certification of shop drawings shall comply with such requirements of the WORKING DRAWINGS article.
- d. The maximum size of each sheet shall be 22 inches by 34 inches. Each shop drawing shall have a blank area 3½inches by 3½inches, located adjacent to the title block. The title block in the lower right hand corner shall display the following:
 - (1) Number and title of the Drawing.
 - (2) Date of Drawing or revision.
 - (3) Name of project.
 - (4) Name of Contractor and subcontractor submitting drawing.
 - (5) Clear identification of contents and location of the work.
 - (6) Title and number of Specifications section.
- e. Drawings for work on utility facilities, street and other facilities which are constructed for owners other than the Authority shall be coordinated so that the information required by these owners is included on the shop drawings for their facilities.

- f. If drawings show variations from the Contract requirements because of standard shop practice or for other reasons, the Contractor shall describe such variations in his letter of transmittal. If acceptable, the AR may approve any or all such variations, subject to a proper adjustment in the Contract. If the Contractor fails to describe such variations he shall not be relieved of the responsibility for executing the work in accordance with the Contract, even though such drawings have been approved.
- g. If the drawings or schedules as submitted include such variations and show a departure from the Contract requirements, which the AR finds to be in the interest of the Authority and to be so minor as not to involve a change in the Contract price or time for performance, the AR may approve the drawings.
- h. If approved by the AR, each copy of the shop drawings will be identified as having received such approval by being so stamped and dated. Shop drawings stamped NOT APPROVED and with required corrections shown will be returned to the Contractor for correction and resubmittal. Resubmittals will be handled in the same manner as first submittals. On resubmittals the Contractor shall direct specific attention, in writing or on resubmitted shop drawings, to revisions other than the corrections requested by the AR on previous submittals. The Contractor shall make corrections as directed. If the Contractor considers any corrections indicated on the drawings to constitute a change to the Contract Drawings or Specifications, notice as required under the CHANGES article shall be given to the Contracting Officer or other delegated Authority's Representative. One reproducible and two prints of each shop drawing will be returned to the Contractor.
- i. When the shop drawings have been completed, to the satisfaction of the AR, the Contractor shall carry out the construction in accordance therewith and shall make no further changes therein except upon written instructions from the AR.
- j. After written approval of the drawings, the Contractor shall supply the AR with four additional prints of the approved drawings if the drawings have been approved subject to certain revisions prior to commencing such work.
- k. Before final substantial completion, the Contractor shall furnish to the AR one set of record shop drawings, all clearly revised and completed and brought up to date, showing the permanent construction as actually made. Drawings shall be either drawn in ink on tracing cloth, or reproduced on Mylar from which clear prints can be made.

2.5.3 WORKING DRAWINGS

- a. When used in the Specifications, the term WORKING DRAWINGS shall be considered to mean the Contractor's plan for temporary structures such as decking, temporary bulkheads, support of excavation, support of utilities, groundwater control systems, and forming and falsework; for underpinning; and for such other work as may be required for construction but which do not become an integral part of the completed project.
- b. The Contractor shall, unless otherwise directed, submit one reproducible and two copies of each working drawing.
- c. Working drawings and calculations as submitted shall meet the requirements of Article 2.5.2.d., and be certified by a professional engineer registered in the area where the work will be performed and shall convey, or be accompanied by, information sufficient to completely explain the structure, machine or system described and its intended manner of use.

2.5.4 SAMPLES – N/A

- a. The Contractor shall submit samples for approval as specified or as directed which shall be delivered to the AR as specified or directed. The Contractor shall prepay shipping charges on samples. Materials or equipment for which samples are required shall not be used in the work until approved.
- b. Each sample shall be labeled as follows:
 - (1) Name of project.
 - (2) Name of Contractor and subcontractor.
 - (3) Material or equipment represented.
 - (4) Place of origin.
 - (5) Name of producer and brand, if any.
 - (6) Location in project. Samples of finish materials shall have additional markings identifying them under the schedules.
- c. The Contractor shall mail, under separate cover, a letter in triplicate submitting each shipment of samples and containing the information required in Paragraph b. above. He shall enclose a copy of this letter with the shipment and send a copy of this letter to the AR. Approval of a sample shall be only for the characteristics or use named in such approval and shall not be construed to change or modify Contract requirements. Substitutions will not be permitted unless they are considered to be in the best interests of the Authority.
- d. Approved samples not destroyed in testing shall be sent to the AR. Approved samples in good condition will be marked for identification and may be used in the work. Materials and equipment incorporated in the work shall match the approved samples. Samples which fail testing or are not approved will be disposed of, unless the Contractor requests, at the time of submittal, that they be returned to him at his expense.
- e. Failure of any material to pass the specified tests will be sufficient cause for refusal to consider, under this Contract, further samples of the same brand or make of that material. The AR reserves the right to disapprove any material or equipment which has previously proved unsatisfactory in service.
- f. Samples of various materials or equipment delivered on the site or in place may be taken by the AR for testing. When a sample fails to meet Contract requirements, it will automatically void previous approvals of the item(s) tested. The Contractor shall replace such materials and equipment to meet Contract requirements or proper adjustment of the Contract price shall be made as determined by the AR.
- g. When tests are required, only one test of each sample will be made at the expense of the Authority. Samples which do not meet specified requirements will be rejected. Retesting of additional samples will be made by the AR at the expense of the Contractor.

2.5.5 CERTIFICATION

- a. The Contractor shall submit the original and two copies of certification, unless otherwise specified.
- b. Certificates:
 - (1) The Contractor shall submit the following:
 - (a) Certificates to demonstrate proof of compliance with requirements specified in the technical specifications for each of the following:
 - [1] Products and materials.
 - [2] Functioning and testing of equipment and systems.
 - [3] Qualifications of personnel, manufacturers, fabricators and installers.
 - (2) Each certificate shall be signed by an official authorized to certify in behalf of the issuing organization and shall bear the name and address of the Contractor, the project name and location; if for a material, quantity and date(s) of shipment or delivery to which the certificates apply shall be indicated.
 - (3) Certification shall not be construed as relieving the Contractor from furnishing satisfactory material, if, after tests are performed on selected samples, the material is found not to meet the specified requirements.
- c. Certified test reports:
 - (1) Submit original.
 - (2) Unless otherwise specified, testing shall be conducted by an independent testing agency which certifies that it complies with the recommended requirements of the American Council of Independent Laboratories or ASTM E329.

2.5.6 DOCUMENTATION

The Contractor shall submit to the AR the original and two copies of each of the following when so specified in the technical specifications and as follows:

- a. Test reports of previous testing:
 - (1) Where specified in the technical specifications, the Contractor may in lieu of testing submit certified test reports of previous testing of factory supplied components, if approved under similar Authority contracts.
 - (2) Include the following:
 - (a) Certification that materials meet or exceed specified test requirements.
 - (b) Name and address of testing laboratory.
 - (b) Dates of tests to which reports apply.

- (d) Certification that materials provided are the same as those tested.
- b. Calculations including, but not limited to, the support for the stinger system at all locations by a professional engineer licensed in the respective jurisdiction.
- c. Miscellaneous documentation:
 - (1) Specified items such as delivery tickets, batch tickets and bills of materials.

2.6 WORK TO BE PERFORMED BY THE CONTRACTOR

- a. The Contractor shall execute on the site, with his own organization, work equivalent to at least **50** percent of the Contract work, the percentage being determined by the dollar value of the Contract work done by his own organization in comparison to the Contract Price. The cost of work performed by skilled and unskilled labor carried on the Contractor's own payroll, together with the cost of materials installed, may be included in the above percentages. The Contractor's mark-up for overhead and profit on work performed by subcontractor(s) shall not be included in determining this percentage.
- b. If, during the progress of the work hereunder, the Contractor requests a reduction in such percentage; and the Contracting Officer or other delegated Authority's Representative determines that it would be to the Authority's advantage, the percentage of the work required to be performed by the Contractor may be reduced provided written approval of such reduction is obtained by the Contractor from the Contracting Officer or other delegated Authority's Representative.

2.7 AUTHORITY REPRESENTATIVE (AR)

- a. The work will be conducted under the general direction of the Contracting Officer or other delegated Authority Representative (AR). The AR has authority to take all actions authorized herein and as may be otherwise delegated.
- b. Not Used.
- c. The presence or absence of the AR or other Authority inspection staff will not relieve the Contractor from the requirements of the Contract.
- d. Upon failure of the Contractor to comply with any of the requirements of the Contract Drawings, Specifications, or other Contract documents, the AR may stop any operation of the Contractor affected by such failure until the failure is corrected. Time lost during such work stoppage will be regarded as Contract time for which no extension will be granted, and no increase in cost to the Contractor caused by the stoppage shall be subject to claim against the Authority.
- e. The authorized representatives of public and private utilities, and other agencies, have the right to inspect their facilities, communicating through the AR as follows:
 - (1) Inspection or supervision of work by utility forces and utility's contractors.
 - (2) Inspection of work by Authority contractors on, or adjacent, to utility facilities.
 - (3) Access to the site construction and the right to inspect all project works by the U.S. Government, jurisdictional agencies and public and private interests and utilities.

- f. In the event that the Contractor's work endangers utility property or facilities, the utility's representative shall immediately inform the AR of the impending hazard. When time does not permit this action, the utility representative is authorized to stop such work until the AR is present, or until safety of the utility property is ensured. Any such stop order is to be delivered to the Contractor's representative in writing and the Contractor shall report in writing and explain the stop order to the AR at the earliest opportunity. Any handwritten note with date, time and inspector's signature is acceptable.
- g. Highway and roadway facilities which may be affected by Authority construction are considered for the purpose herein as utility facilities.

2.8 PROGRESS SCHEDULES - N/A

- a. In lieu of the progress schedules required in the General Provisions Articles 1.31 for PROGRESS SCHEDULES AND REQUIREMENTS FOR MAINTAINING PROGRESS, the Contractor shall submit a cost loaded CPM schedule showing the critical path(s) and details the sequence in which the Contractor proposes to carry on the work required under this Contract. The progress schedule and all subsequent submissions shall be prepared using the latest version of Primavera Project Planner (P6) in **XER File** with an electronic file copy submitted to the AR. The progress schedule documents consist of two distinct submittal sets as follows:
 - (1) The initial progress schedule which shall include a detailed schedule in bar graph format and a supporting narrative and **electronic** data for each phase of the project.
 - (2) The monthly progress status reports, each of which shall include an updated schedule in spreadsheet and bar graph format, a supporting narrative and **electronic** data for each phase of the project.
- b. Initial progress schedule:
 - (1) The initial progress schedule shall be submitted for approval within ten (10) calendar days after NTP. The AR **shall** have a minimum of 15 calendar days after receipt of the submittal to respond. Upon receipt of the AR's comments, the Contractor shall make necessary changes and deliver the corrected initial progress schedule to the AR within 10 calendar days. **No progress payments shall be made until the initial progress schedule is reviewed and approved.** Submittal of the initial progress schedule shall include five copies of the detailed schedule and five copies of the supporting narrative for each phase of the project, and the **electronic** data containing the schedule.
 - (2) The cost loaded CPM schedule chart shall include the following:
 - (a) A time scale in calendar days with day number one being the day after receipt by the Contractor of the NTP.
 - (b) Activity bars which schedule all work included in the Contract. The activity bars shall be solid bars which begin on the planned start date and end on the planned completion date for each activity. Durations of workday and man-hours to complete activity will be reflected.
 - (c) Activities broken down in a work breakdown structure with work packages of no more than 30 CD duration.

- (d) Activity description for each activity bar. Activity descriptions shall be brief but shall describe discrete items of work that must be accomplished under the Contract.
 - (e) The Contract requirements shall be clearly shown on the schedule. The schedule shall include at least one activity bar for each required milestone date.
 - (f) A title block, revision block, and a legend shall be included.
 - (g) The data date shall be the date of NTP.
- (3) The supporting narrative for all phases of the project shall include the following:
- (a) The Contractor's general approach for meeting all the milestone dates required by the contract.
 - (b) A discussion of the activities which the Contractor considers most critical in meeting contract completion dates.
 - (c) A listing of the holidays and special non-work days planned during the performance period.
- (4) The approved initial progress schedule shall be the schedule to be used by the Contractor for planning, scheduling, managing and executing the Contract work. The approved initial progress schedule shall not be revised without prior approval or direction **by the Authority Representative**.
- c. The monthly progress status report:
- (1) Not later than 30 calendar days after receipt of NTP and monthly thereafter until all Contract work is complete, the Contractor shall submit a monthly status report with data date as the last day of each pay period. Each monthly progress status report shall include four copies of the updated schedule chart, four copies of a supporting narrative and electronic data for all phases.
 - (2) Prior to submittal of the monthly progress status report, the Contractor shall submit a draft updated schedule chart. The Contractor shall participate with the AR in monthly meetings, on dates and at locations as directed. The purpose of the meetings is a joint review and agreement of the draft updated schedule and job progress. Job progress shall specifically include the following:
 - (a) Actual performance and completion dates for activities completed during the report period.
 - (b) Actual start dates, remaining durations, and percent complete for in-progress activities commenced during the report period.
 - (c) Estimated start dates for activities scheduled to commence during the month following the report period. Contractor shall maintain weekly schedule recording locations of systems currently working and percent complete on each. Additionally, a monthly, quarterly, semi-annual, and annual cumulative percentage of work complete as it applies in a hierarchal manner.
 - (d) Proposed changes and/or revisions to the initial progress schedule.

- (e) The Contractor shall not delete or add any scheduled activities, restraints or durations to the approved baseline schedule without the express approval of the Authority Representative. If additional activity or restraints are required, clearly identify the changes and explain the rationale for such deletions or additions in the Contractor's Narrative.
- (3) After discussion and agreement on these data, the Contractor shall submit to the AR four final copies of the monthly progress status report and the data diskette with the monthly progress payment schedule within seven days after the last day of the pay period. Upon receipt of the monthly progress status report, the AR will expedite the processing of the monthly progress payment.
- (4) The updated schedule chart shall include the following:
 - (a) Update the schedule on a copy of the detailed schedule chart which was included in the approved initial progress schedule. Create a copy of schedule file with a new file name and keep the initial program schedule intact. Update the schedule in newly created file.
 - (b) The data date indicated by a vertical line from top to bottom of the sheet at the appropriate place on the time scale and labeled with the data date.
 - (c) Progress for each activity bar indicated by a second bar below the initial schedule activity bar. The progress bar shall start on the date the activity actually started and shall end on the date the activity actually was completed. The initial schedule activity bars shall not be changed unless a proposed revision is approved. The progress bars shall be shown in a pattern which will distinguish them from the scheduled activity bars.
 - (d) The actual start date shall be noted at the beginning of each progress and the actual completion date shall be noted at the end of each progress bar.
 - (e) The percent complete as the data date shall be noted at the end of each progress bar.
- (5) The supporting narrative shall include the following:
 - (a) A list of activities in progress as of the data date with the scheduled start date, actual start date, percent complete and scheduled completion date noted for each activity.
 - (b) A list of activities completed during the report period with the scheduled and actual start dates and the scheduled and actual completion dates noted activity.
 - (c) A list of activities planned to start during the next report period with scheduled and planned start dates for each activity noted.
 - (d) A discussion of activities which are behind schedule including the reasons for delay and corrective actions planned or implemented to get back on schedule.
 - (e) A list of approved revisions to the progress schedule with the reason for each revision noted.
 - (f) The status of each of the Required Completion Dates included in the Contract schedule milestone dates.

- d. When needed or so directed by the Authority, the Contractor shall revise the progress schedule to reflect changes in the Contractor's planned sequence of work or to reflect scope and time changes included in Contract modifications. All such revisions are subject to approval by the AR.

2.9 DETERMINATION OF PROGRESS – N/A

- a.. Independent of progress payments made pursuant to the PAYMENTS TO CONTRACTOR article of the General Provisions, progress schedules prepared under the requirements of the PROGRESS SCHEDULES article, shall provide as schedules progress for only 50 percent of the estimated invoiced cost of materials or equipment delivered to the site but not incorporated in the work as of the time of the scheduled delivery thereof.
- b. In determining progress accomplished, the AR will allow as an element of work accomplished, i.e., progress toward completion, only 50 percent of the invoiced cost of materials or equipment delivered to the site but not incorporated in the construction up to the time the materials or equipment are actually incorporated in the work.

2.10 LAYOUT OF WORK – as required

- a. The Engineer has established, or will establish, such general reference points, including horizontal and vertical control points and benchmarks as will enable the Contractor to proceed with the work. If the Contractor finds that any previously established reference points have been destroyed or displaced, or that none have been established, he shall promptly notify the AR.
- b. The Contractor shall layout his work from reference points established by previous construction or from Authority-established reference points shown and shall be responsible for all measurements in connection therewith. The Contractor shall furnish, at his own expense, stakes, templates, platforms, equipment, tools, and materials and labor as may be required in laying out any part of the work from the reference points established by previous construction or by the Authority. The Contractor will be held responsible for the execution of the work to such lines and grades as may be directed.
- c. The Contractor shall protect and preserve the established reference points and shall make no changes in locations without approval. Reference points lost, destroyed, disturbed by construction, or which require shifting because of necessary changes in grades or locations shall, subject to prior approval, be replaced and accurately located at the Contractor's expense by a surveyor registered in the area where the work is to be performed. Reference points replaced by the Contractor's registered surveyor shall be done in accordance with the FGCC Standards and Specifications for Geodetic Control Networks® using First Order, Class 1 specifications for horizontal control work and Second Order, Class 1 specifications for vertical control work.
- d. For the purpose of this article, the Contractor shall provide competent engineering services as necessary to execute the work in accordance with the Contract requirements. He shall verify the dimensions shown before undertaking any construction work and shall be responsible for the accuracy of the finished work.
- e. All survey personnel shall be Certified Survey Technicians (CST) by and through ACSM - National Society of Professional Surveyors (NSPS).
- f. The Contractor shall maintain minimum accuracy standards for all surveys performed under the terms of this Contract in accordance with the following:

1. Primary horizontal control surveys: first order.
2. Primary vertical control surveys: second order, class 1.
3. Secondary horizontal control surveys: second order, class 1.
4. Secondary vertical control surveys: second order, class 1.

In order to maintain the minimum accuracies stated above the Contractor is required to follow the procedures defined by the Federal Geodetic Control Committee (FGCC) "Standards and Specifications for Geodetic Control Networks" September 1984 or latest version. The Contractor shall not use GPS technology to perform any survey control replacement without submittal and approval of the proposed procedures. Primary control is defined as the original control provided to the Contractor at the start of the Contract. Secondary control is the control established and used by the Contractor during construction. All secondary control traverse stations shall be set with permanent markers. All horizontal traverses shall be adjusted by the least squares method and shall be provided to the Authority. In addition, all adjusted vertical traverses shall be provided to the Authority.

- g. All electronic distance measuring instruments shall be checked by the Contractor against a NGS (or similar facility) range of known distances at least once every six months. The results of this exercise shall be computed using the procedures in NOS NGS-10 "Use of Calibration Base Lines". The actual measurements shall be recorded, atmospheric corrections applied, and then adjusted by least squares to compute a constant, as well as a relative correction factor (scale correction). A copy of the final results from this exercise shall be provided to the Authority.
- h. The source document for the contract drawings are the 2009 WMATA Emergency Response Maps. Any deviations from dimensions, chain markers or lay-outs shown in the contract drawings shall be brought to the attention of the AR. Any field changes from new work system installations depicted in the contract drawings must have prior approval from the AR.
- i. Contractors will be required to maintain a mirror fireline system during the removal, installation, and testing of all standpipes.
- j. All cutting and welding shall require a 1 hour fire watch at the conclusion of said hotwork.

2.11 PHYSICAL DATA - NOT USED

2.12 TEMPORARY UTILITY AND ELECTRICAL SERVICES

- a. The Contractor will be permitted the use of existing water facilities. The fire line facilities shall be used only with approval before each use and inspection after use.
- b. The Contractor will be permitted the use of existing electrical facilities, providing the Contractor ensures that he does not overload circuits. Contractor shall coordinate with the facility manager the location of 120-volt service.
- c. The Contractor shall provide temporary electrical service of sufficient capacity to serve his requirements during the life of the Contract. The source of temporary power for testing may be the temporary service, portable generator or other approved system which will deliver power at the voltage and other characteristics required to accomplish testing as specified.

Circuits and construction for temporary systems shall suit the needs of the work and comply with NEC and the codes and regulations of the jurisdictional authorities.

- d. The Contractor shall provide temporary compressed air as necessary during the construction work at the site.
- e. Under no circumstances shall the contractor foul the running rails through the facility with temporary services.
- f. Temporary services shall be furnished, installed, connected and maintained by the contractor in an approved manner. Prior to completion of the work, the Contractor shall remove all temporary services and restore affected areas as approved.

2.13 INDEMNIFICATION AND INSURANCE

2.13.1 INDEMNIFICATION

- 1. Contractor shall indemnify, defend and hold harmless the Authority, its directors, officers, employees and agents, from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, and for loss or damage to any property, including the property of the Contractor and the Authority, occurring in connection with, or in any way arising out of the use, occupancy and performance of the work and/or any acts in connection with activities to be performed under this contract, unless the loss or damage is due to the sole negligence of the Authority. Nothing in the preceding sentence shall be deemed to relieve Contractor from ultimate liability for any obligation of Contractor under this Contract.
- 2. Contractor shall indemnify, defend and hold harmless the Authority, its directors, officers, employees and agents, against any and all claims, liabilities, losses, demands, damages, penalties, costs, charges, remedial costs, environmental claims, fees or other expenses including attorneys' fees, related to, arising from or attributable to any effluent or other hazardous waste, residue, contaminated soil or other similar material discharged from, removed from, or introduced on, about or under the job site; provided, however, that the foregoing indemnity does not apply to loss or damage due to preexisting conditions, whether known or unknown.
- 3. If any action or proceeding relating to the indemnification required is brought against the Authority, then upon written notice from the Authority to the Contractor, the Contractor shall, at the Contractor's expense, resist or defend such action or proceeding by counsel approved by the Authority in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same. The Authority reserves the right to use its own counsel under this indemnity at Contractor's sole cost and expense.
- 4. Contractor understands and agrees that it is Contractor's responsibility to provide indemnification to the Authority pursuant to this Section. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the failure of Contractor's insurance to fully fund any indemnification shall not relieve the Contractor of any obligation assumed under this indemnification.

2.13.2 Minimum Insurance Requirements

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

General Insurance Requirements

- 1) Contractor is required to maintain the insurance coverage(s) outlined in this Section for a period of time commencing the sooner of the execution of this contract, or the start of Work, and continuing through the completion of all work including any and all punch list and warranty work, without interruption.
- 2) The insurance coverage and limits of insurance outlined herein are minimum coverage and limits. Contractor is encouraged, at its sole cost and expense, to purchase any additional insurance coverages and or limits of insurance that Contractor deems prudent and necessary to manage risk in the completion of this contract.
- 3) Upon written request from WMATA, contractor shall provide copies of any and all policy(s) required by these Minimum Insurance Requirements, including all endorsement(s), within 5 business days of such request.
- 4) Receipt, review and communications regarding Certificates of Insurance (COI), Insurance Policy(s), endorsements or other materials utilized to document compliance with these Minimum Insurance Requirements does not constitute acceptance by WMATA.
- 5) Insurance Policies must be written on admitted paper, (unless otherwise indicated herein) with insurance companies having an A. M. Best rating of at least A- VII.
- 6) Unless otherwise noted, "Claims Made" insurance policies are not acceptable.
- 7) Any insurance policy utilizing a Self-Insured Retention (SIR) requires written approval from WMATA.
- 8) Contractor is required to incorporate these Minimum Insurance Requirements into contract requirements of all subcontractors of every tier. Contractor, at its sole peril, may amend the insurance for its subcontractors, but doing so does not relieve Contractor from its respective liability to WMATA.
- 9) Compliance with these Minimum Insurance Requirements does not relieve Contractor from its respective liability to WMATA, even if that liability exceeds the minimum insurance requirements.

Workers' Compensation and Employer's Liability

Required Minimum Limits of Coverage:

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

Required Minimum Coverage(s):

- 1) Workers' Compensation Statutory Coverage must be provided on an "All States" basis.

- 2) Contractor and subcontractors of any tier performing work within 500 feet of navigable water must have their Workers' Compensation Policy endorsed to provide coverage for both Jones Act Liability and Longshore and Harbor Workers' Compensation Act Liability.

Commercial General Liability

Required Minimum Limits of Coverage:

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

Required Minimum Coverage(s):

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

Business Auto Liability

Required Minimum Limits of Coverage:

\$1,000,000	Combined Single Limit
-------------	-----------------------

Required Minimum Coverage(s):

- 1) Business Auto Liability shall be written on ISO Business Auto Coverage Form CA 00 01 03 06, or its equivalent. Equivalency determination shall be made in WMATA's sole and unreviewable discretion.
- 2) Policy shall be endorsed with Additional Insured Endorsement(s) in compliance with the "Additional Insured" Section below.
- 3) Policy shall be endorsed with a Waiver of Subrogation Endorsement(s) in compliance with the "Waiver of Subrogation" Section below.
- 4) Business Auto Liability minimum Combined Single Limit requirements may be obtained through the combination of a Primary Business Auto Liability policy and an umbrella/excess liability policy provided that the umbrella/excess liability policy complies with items 1 through 3 above.

Professional Liability Insurance Contractor, any subcontractors of any tier or any supplier providing design services or the services of a professional engineer, including, but not limited to stamping, sealing, or certifying blueprints or other related documents are required to maintain Professional Liability Insurance as follows:

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

Additional Insured(s)

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

- 1) Coverage provided to any Additional Insured shall be primary and non-contributory to any other insurance available to the Additional Insured, including coverage afforded to WMATA as an additional insured by Sub-contractors, and from other third parties.
- 2) Coverage provided to any Additional Insured shall be for claims arising out of both ongoing operations and products and completed operations hazard.

- 3) Coverage available to any Additional Insured under the products and completed operations hazard can only be limited to the applicable statute of repose in the jurisdiction(s) where the contract scope of work takes place.

Waiver of Subrogation

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

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

Certificate of Insurance (COI)

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

The cert holder box should read:

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

Additionally;

- 1) Proposed material modifications to insurance required under this Section must be received by WMATA at least 30 days prior to the effective date of the proposed modifications to such insurance.
- 2) WMATA's receipt of copies of any COI, policy endorsements or policies does not relieve Contractor of the obligation to remain in compliance with the requirements of this Section at all times. Contractor's failure to comply with these insurance requirements shall constitute a material breach of this Contract.
- 3) Receipt of the COI does not constitute acceptance of the insurance outlined above.

2.14 N/A

2.15 SAFETY REQUIREMENTS

- A. The Contractor shall be responsible for ensuring compliance with the most stringent provisions of the applicable occupational safety and health statutes and regulations of the District of Columbia, State of Maryland, Commonwealth of Virginia or political subdivision in which the work is being performed, and the Department of Labor OSHA standards. In addition, the Contractor must comply with the following documents: the WMATA Construction Safety and Environmental Manual; the WMATA System Safety Program Plan; the Metrorail Safety Rules and Procedures Handbook (for contracts in which work is performed on, or interfaces with the Metrorail System); and the Department Bus Service Employee Handbook (for contracts in which work is performed on, or interfaces with the Metrobus System or facilities); Consolidated Plan prepared by WMATA for each Bus Division and Rail Yard in order to minimize the potential for pollutant discharge to the environment; the National Institute for Occupational Safety and Health (NIOSH) guidelines; the American Conference of Governmental Industrial Hygienists (ACGIH) guidelines; the American National Standards Institute (ANSI) guidelines; and the U.S. Army Corps of Engineers Safety and Health Requirements Manual. The contractor shall also be responsible for compliance with applicable National Fire Protection Association (NFPA) Standards 13, 14, 24, 25 and 130. Further, the Contractor shall ensure that all methods of performing the work do not involve danger to the personnel employed thereon, the public, or 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 WMATA's Representative.
- B. The Contractor shall employ and assign to the work Safety Superintendent(s) and a separate certified First Aid Attendant, based on the contract need. At the site of the work, a first aid station shall be established and fully equipped to meet the needs of the anticipated work force. In no event shall work at the site be performed until the approved Safety Superintendent and First Aid Attendant are on duty at the site. WMATA's Representative in coordination with the Department of System Safety & Risk Protection (SARP) will determine the needed coverage for Safety Superintendent(s) and First Aid Attendant per following two categories:

Category I. - The contractor shall employ and assign full-time Safety Superintendent(s) and First Aid Attendant for on-site work activities at all times. The Safety Superintendent shall have no duty other than safety supervision of persons, equipment, and property affected by contract work.

Category II. - The Safety Superintendent may be the project foreman or an employee who is on-site at all times while work is being performed, and who has the added duty of supervising the safety of persons, equipment, and property affected by contract work. The need for separate First Aid Attendant coverage will be determined by WMATA's Representative.

Any selected Safety Superintendent shall have specialized training and experience in construction safety supervision and have a thorough knowledge of all OSHA regulations. Safety Superintendent shall have the ability to develop and conduct safety training courses. Safety Superintendent shall be familiar with industrial hygiene equipment and testing as required for the protection of all personnel and the public. The Safety Superintendent and First Aid Attendant shall be responsible for First Aid and CPR at the site and must have current First Aid and CPR certificates. Employees expected to render

First Aid or CPR must be trained in Blood borne Pathogens in accordance with 29 CFR *1910.1030. If, at any time, the work site is without the services of an approved Safety Superintendent and First Aid Attendant for a period of 15 calendar days or more, the work may be closed down at the discretion of WMATA's Representative. The Safety Superintendent must be acceptable to WMATA's Representative and his/her performance will be reviewed and documented by WMATA's Representative on a continuing basis. If the Safety Superintendent's effectiveness is below standard, the Contractor shall provide immediate replacement at the WMATA Representative's direction. Once employed, the Safety Superintendent shall not be changed without permission of WMATA's Representative. A resume must be submitted documenting the education and experience of the individuals assigned to perform the duties of Safety Superintendent.

- C. The Contractor shall submit a construction safety plan to WMATA's Representative for review prior to commencement of work. The Contractor shall, within five days after receipt of Notice to Proceed (NTP), submit through WMATA's Representative to the Department of System Safety & Risk Protection, a request for the Authority to schedule and conduct safety instructions at the earliest possible time for all Contractor personnel who will be engaged in the performance of Contract work on or above or under the right-of-way. The Authority will schedule and conduct for all of the Contractor's work force, an eight-hour long course of instruction related to work on the Authority's Rail Operating System. The Contractor shall not perform work at the Contract site(s) on or above or under the right-of-way, until all personnel of the contract work force have attended the Right-of-Way training as specified and have been furnished evidence of attendance. The Contractor shall follow all applicable RAIL Operational Rules: Department of Operations Administrative Procedures (OAPs), Standard Operating Procedures (SOPs), Metrorail Safety Rules and Procedures Handbook, and General and Special Orders while working in the operational railroad system. For any work within Start-Up limits all contractor's personnel shall receive WMATA Start-up Lockout/Tagout training prior to commencing the work. Copies of training documents through WMATA's Representative shall be forwarded to the Department of System Safety & Risk Protection prior to work. The Contractor shall conduct Tool Box Safety Talk meetings each night before starting work and submit the Tool Box forms each month. The Contractor shall complete Construction Safety Survey forms for each work week (template issued by WMATA).

Upon completion of a project but before the start of the revenue service, system operation or before the re-starting the operation of the renovated system or facility, the Department of System Safety & Risk Protection in coordination with WMATA's Representative will conduct the System Safety Certification to certify that all practical steps have been taken to optimize the operational safety of WMATA. The System Safety Certification Program will be conducted in accordance with the Authority's System Safety Program Plan, section 3.3.5, System Safety Certification; and System Safety Rules and Procedure Manual, section 2.2/0, Safety Certification Program. The Contractor shall conduct Tool Box Safety Talk meetings each night before starting work and submit the Tool Box forms each month. The Contractor shall complete Construction Safety Survey forms for each work week (template issued by WMATA).

- D. The jurisdictional Fire Marshals prohibit the use of oxygen-acetylene welding/cutting equipment or flammable materials anywhere in the Metrorail system during revenue hours. After each work shift, all flammable materials must be removed from the Metrorail system. The storage of hazardous and flammable materials (including such items as rags, mops, paper towels, or other combustible materials contaminated with hazardous or flammable products) on WMATA property, is restricted. Contractors seeking to store hazardous or flammable materials on WMATA property must request permission from WMATA's Representative. It may not always be possible to grant permission to store hazardous or

- flammable materials on WMATA property. If permission is granted, the Contractor must store the materials in compliance with the jurisdictional codes and regulations. In addition, a copy of the material safety data sheets (MSDSs) for each specific chemical and the quantity of each chemical to be stored on the site shall be provided to WMATA's Representative. The Contractor shall acquire permits for use of hazardous materials as required by the jurisdictional Fire Marshal.
- E. Contractors must submit MSDSs for ALL chemicals to be used on Authority property to WMATA's Representative along with a brief description of how and where they will be used, and if wastes will be generated. The MSDSs will be reviewed by WMATA's Department of System Safety & Risk Protection (SARP) and if approved, the materials can be used in the system. If they are rejected, the contractor must identify a substitute that will meet SARP's criteria for approval in addition to WMATA's Representative criteria for performance. The MSDSs must be recent (preferably less than 3 years old) and comply with the OSHA Hazard Communication Standard 29 CFR '1910.1200. The Contractor is responsible for complying with the requirements of the MSDSs.
 - F. The use of explosives for the performance of Contract work will not be permitted without written authorization from WMATA's Representative.
 - G. Prior to performing any work on or above or under the right-of-way, arrangements shall be made through WMATA's Representative for access rights and power outage in accordance with WMATA SOPs No. 19, No. 28 and No. 33 contained in the Metrorail Safety Rules and Procedures Handbook and with OAPs No. 100-9 and No. 200-10. All special requests for access, single tracking, power outages, escorts, and other Authority support shall be submitted in writing through WMATA's Representative to the appropriate RAIL officials within the time frame as set forth in the HOURS OF WORK Article of these Special Conditions.
 - H. For any work within confined spaces, the Contractor and all Subcontractors shall comply with all OSHA, state and local jurisdictional rules and regulations for confined spaces. As a minimum, the Contractor shall follow 29 CFR '1910.146 for all permit confined space work on Authority property, including construction. A detailed site specific Confined Space Program shall be submitted to WMATA for review for all work requiring entry into permit confined spaces as defined by 29 CFR '1910.146. No work shall be performed in any area considered to be a permit confined space until the Contractor's Confined Space Program is reviewed by WMATA. Prior to the initial entry into any confined space (permit or non-permit), the Contractor shall coordinate entry with WMATA's Representative and take air quality readings to establish base readings and conditions. At a minimum, oxygen, lower explosive limit, carbon monoxide, and hydrogen sulfide, shall be measured. Measurement of additional parameters may be required depending on the location of the space and potential for atmospheric hazards related to contamination or work activities. These results shall be provided to WMATA's Representative for recording purposes and will determine if atmospheric hazards exist which would classify the space as a permit-required confined space. Continuous and follow-up monitoring of air quality shall meet OSHA requirements, and all subsequent results shall be provided to WMATA's Representative.
- 1. Prior to the start of any work involving non-permit confined spaces, the Contractor shall submit to WMATA's Representative a copy of the following:
 - a. Written Job Hazard Analysis for any work to be performed in the confined space, including MSDSs for chemicals to be used in the space.

- b. Written Emergency Response Plan which identifies emergency responders for rescue operations.
 - c. Written plan for a temporary Fire Protection System for use during the term of the Contract, which shall be subject to approval by WMATA's Representative. This plan shall include provisions for Fire Protection Systems and Equipment as required by OSHA, Safety and Health Regulations for Construction, 29 CFR '1926, Subpart F - Fire Protection and Prevention, and applicable NFPA Standards.
 - d. Identification of air monitoring devices that will be used to monitor air quality at the work site. Provide copies of most recent manufacturer calibration and all Contractor field calibration checks. As a minimum, WMATA requires field calibration checks on air monitoring instruments, each day (or shift) before use. As a minimum, the field calibration check information must include the date, time, calibration check data, and the printed name and signature of the person performing the calibration check.
 - e. Documentation to show that all personnel working in or near **non-permit** confined spaces are trained in Confined Space Awareness.
2. Prior to the start of any work involving permit-required confined spaces, the Contractor shall submit to WMATA's Representative a copy of the following:
- a. Written Job Hazard Analysis for any work to be performed in the confined space, including MSDSs for chemicals to be used in the space.
 - b. Written site specific Confined Space Program.
 - c. Confined space permit for applicable space. Each permit is valid for a maximum of 24 hours. (Submit to WMATA's Representative at least 48 hours before entry.)
 - d. Written Respiratory Protection Program.
 - e. Written Emergency Response Plan which identifies emergency responders for rescue operations.
 - f. Written plan for a temporary Fire Protection System for use during the term of the Contract, which shall be subject to approval by WMATA. This plan shall include provisions for Fire Protection Systems and Equipment as required by OSHA, Safety and Health Regulations for Construction, 29 CFR '1926, Subpart F - Fire Protection and Prevention. Contractor shall ensure that work activities do not adversely impact existing fire protection system(s) i.e., sprinklers, stand pipes, portable extinguisher, etc.
 - g. Identification of air monitoring devices that will be used to monitor air quality at the work site. Provide copies of most recent manufacturer calibration and all Contractor field calibration checks. As a minimum, WMATA requires field calibration checks on air monitoring instruments, each day (or shift) before use. As a minimum, the field calibration check information must include the date, time, calibration check data, and the printed name and signature of the person performing the calibration check.
 - h. Documentation to show that all Confined Space entrants and attendants are trained in Confined Space Entry, including hands-on-training. Documentation to show that

all personnel working near the permit-required confined spaces (no entry) are trained in Confined Space Awareness.

- i. Documentation to show that all personnel required to wear respiratory protection have received respiratory protection training, have been fit tested for the respirators they are required to wear (applies to tight fitting respirators) and have been medically evaluated to verify that they have no health problem that would interfere with their safe use of a respirator.
- j. A warning sign to identify the work site as a permit-required confined space requiring authorization to enter.
- k. The Contractor is required to notify the state of Maryland at least 24 hours prior to entering permit-required confined spaces located in the state of Maryland. The Contractor will be given a log number by the State which they must provide to WMATA's Representative
- l. Contractor must provide a Job Hazard Analysis prior to the start of each phase of work.
- J. Work clothing consists of long pants, shirts with long or short sleeves, sturdy work boots, and appropriate personal protective equipment. Jewelry that hangs, loose clothing or clothing with non-detachable hoods, drawstrings, or anything that can become entangled in machinery, shall not be worn on the work site if machinery is in use on the work site. Personal protective equipment such as hard hats and footwear shall meet the requirements of 29 CFR '1910.135 and '1910.136. Athletic-type footwear shall not be worn on WMATA work sites.
- K. Smoking is prohibited in the Metrorail system, at WMATA facilities, and in WMATA vehicles. WMATA's Representative, will select a designated smoking area outside the system and/or facilities and Contractor employees will be informed of its location. Contractor personnel found smoking in un-designated areas on WMATA property or in the Metrorail system will be subject to removal from WMATA property. The Contractor's Safety Superintendent shall be responsible for ensuring compliance.
- L. The OSHA standard for sanitation, 29CFR & 1910.141, shall be followed. Prior to starting work, the contractor should furnish for the contractor's staff, necessary toilet convenience secluded from public view. They should be kept in a clean and sanitary condition and should comply with the requirements and regulations of the area in which the work is being performed. Potable drinking water shall be provided with individual cups and sanitary conditions for the water dispenser shall be maintained. A common drinking cup and other common utensils are prohibited.
- M. Contractor and Subcontractor employees shall cooperate with representatives of the Authority and federal, state, and local regulatory agencies during site inspections or investigations. Inspection and investigation activities do not involve directing of Contractor's work, but may involve interviews with Contractor and Subcontractor personnel. CAPM, ENSV and SARP will notify WMATA's Representative of any operation that is not in compliance with federal, state, or local health and safety or environmental regulations or WMATA policy and procedures, and that may require the Contractor or Subcontractor to stop work on a specific task or operation.

- N. For any work at heights above six feet, the Contractor must submit a detailed, site- specific Fall Protection Plan. The Contractor must comply with the most stringent OSHA requirements for Walking-Working Surfaces (29 CFR Part 1910 Subpart D), Scaffolds (29 CFR Part 1926, Subpart L), and Fall Protection 29 CFR Part 1926, Subpart M.
- O. The Contractor and all Subcontractors shall comply with 29 CFR '1910.95, *Occupational Noise Exposure* for all work on Authority property, including construction. This standard requires that employees exposed to continuous noise in excess of the OSHA Action Level, participate in a Hearing Conservation Program. Instruments used for noise measurements must be appropriate for the type of noise being measured (impact/impulse or continuous).
- P. If the work involves removal of paints or coatings, the Contractor must test the paint or coatings to determine if they contain heavy metals such as lead that require special handling and disposal considerations. As a minimum, testing should be conducted for the eight Resource Conversation and Recovery Act (RCRA) of 1976 and amendments metals (arsenic, barium, cadmium, chromium, lead, mercury, silver, and selenium). If any of these are present, the components will require special handling and disposal to prevent exposure to workers, patrons, the community, and the environment.

The Contractor and/or Subcontractor performing lead-based paint abatement, removal, or control, must have all licenses and accreditations required by the jurisdiction in which the work is performed. Jurisdictions that do not have their own state lead plans fall under the auspices of the Environmental Protection Agency (EPA). The Contractor and Subcontractor employees are required to have medical monitoring to meet the requirements of 29 CFR 1910.1025 and 1926.62. As a minimum, medical monitoring shall consist of biological monitoring for lead and zinc protoporphyrin and shall include a physician's medical determination. As a minimum, biological monitoring shall be conducted immediately prior to working on a WMATA property where the employee may be exposed to lead, and immediately upon completion of this work. The Contractor and Subcontractor employees shall receive training for lead workers and supervisors as required by the jurisdictional regulations. Documentation shall be provided to WMATA's Representative prior to commencement of work. All documentation shall be authentic and verifiable. All materials must be handled and disposed of in compliance with the jurisdictional regulations. MSDSs for replacement paints/coatings must be reviewed by WMATA prior to use on WMATA property.

- Q. If the work involves removal of insulation, flooring, cove base, mastic, ceiling tile, roofing materials, or any other material that is suspected of containing asbestos, the Contractor must have the materials sampled and analyzed to determine if they contain asbestos. If the Contractor and/or Subcontractor will be handling or removing asbestos-containing materials, the Contractor and/or Subcontractor must have all licenses and accreditations required by the jurisdiction in which the work is performed. The Contractor and Subcontractor employees are required to have medical monitoring to meet the requirements of 29 CFR 1910.1001 and 1926.1101. The Contractor and Subcontractor employees shall receive training for asbestos workers and supervisors as required by the jurisdictional regulations. Documentation shall be provided to WMATA's Representative prior to commencement of work. All documentation shall be authentic and verifiable. All materials must be handled and disposed of in compliance with the jurisdictional regulations. All replacement materials shall be free of asbestos. Contractors shall follow the WMATA Technical Specification for Asbestos Removal.

- R. Contractor and Subcontractor employees shall not be exposed to asphalt fumes in excess of the National Institute for Occupational Safety and Health (NIOSH) recommended ceiling limit of 5 milligrams of asphalt fumes per cubic meter of air (5 mg/m^3), in any 15 minute period. NIOSH provides recommendations for control of asphalt fumes.
- S. Work that generates visible dust requires submission of a Dust and Debris Control Plan to prevent exposure of employees, patrons, and the community to dust including crystalline silica dust. Be prepared to submit air monitoring data to demonstrate effectiveness of dust control measures. If dust cannot be controlled, submit Respiratory Protection Program in compliance with 29 CFR '1926.103 or 29 CFR '1910.134, and be prepared to submit evidence of air monitoring, training documentation, medical clearance for respirator use, and respirator fit tests for tight-fitting respirators.
- T. The Contractor shall ensure that the level of exhaust emissions from equipment such as air compressors and generators, are within acceptable limits to comply with clean air regulations and that workers are not exposed to exhaust fumes or gases (carbon monoxide, sulfur dioxide, nitrogen oxides, hydrogen sulfide, aldehydes) in excess of the most stringent of occupational exposure limits.
- U. The Contractor shall submit a Waste Water Discharge Plan that describes how the Contractor will treat and release waste water generated by activities at the work site, for all work that generates waste water. Contractor shall also comply with Consolidated Plan prepared by WMATA for Bus Divisions and Rail Yards.
- V. For abrasive blasting activities, the Contractor must submit MSDSs for abrasives to WMATA's Representative prior to abrasive blasting activities. Only abrasives containing less than 1 percent crystalline silica shall be used for abrasive blasting.
- W. For hot work activities, the Contractor and Subcontractors shall provide documentation on certification for personnel who perform welding on WMATA property. Ventilation in accordance with OSHA regulations, shall be provided for hot work such as welding, cutting, or brazing.
- X. At the site of the work, a First Aid Kit shall be provided and fully equipped to meet the needs of the anticipated work force. Employees expected to render First Aid or CPR must have the proper current certifications and be trained in Blood-borne Pathogens in accordance with 29 CFR '1910.1030.
- Y. The contractor shall be responsible for all subcontractors, suppliers and other persons working under the contractor's direction to comply with all requirements as noted above and herein, and shall disseminate these requirements to those personnel. Contractors and Subcontractors shall ensure that their personnel complete safety training by WMATA on the rules and procedures for working on the right-of-way before starting such work.
- Z. The Contractor shall immediately report all accidents and incidents (including near misses) that occur during the performance of the work, to WMATA's Representative.
- AA. Work shall not be performed in any area in use by the public, unless specifically required by the Contract or directed in writing by WMATA's Representative. The Contractor shall give at least 48 hours notice to WMATA's Representative before

beginning such work.

- BB. In cases where the movement of motorized equipment is necessary, flag persons shall be provided to warn and direct personnel and patrons away from the area of travel. Flag persons must be certified as trained in proper flagging techniques and Contractor employees involved in traffic control and devices must be certified as trained in traffic management as required by the State or local jurisdiction. Certification must be documented. WMATA's Representative shall be notified before using heavy equipment in or near stations and their entrances, building entrances, bus bays, sidewalks, etc. Under no circumstances shall motorized equipment be left unattended with the motor idling. Always remove keys from motorized equipment not in use. Provide proper blocks as necessary to prevent running away of any equipment.
- CC. When it is necessary to maintain use of work areas involving stations, sidewalks, elevators, platforms, bus shelters, vehicular roadways, building entrances, corridors, etc., the Contractor shall protect the area with guardrails, substantial barricades, temporary fences, overhead protection, and temporary partitions as deemed necessary by WMATA's Representative. Under no circumstances will yellow or orange tape strung between barricades, or the like, be acceptable as a substantial barricade. Open manholes, access openings or other breaks in the normal walking surface shall be isolated from personnel and the public using barricades.
- DD. Sidewalks, entrances, platforms, mezzanines or any other location where personnel or the public traverses, shall always be kept clear of obstruction, tools, ladders, work debris, excavation materials, etc. When necessary, temporary sidewalks, or pathways shall be provided for pedestrian traffic. Temporary sidewalks or pathways shall be free of tripping hazards and protected by proper guardrails and barricades. Temporary means of egress and access shall be marked for easy recognition. If work is required above sidewalks or pathways, substantial overhead protection shall be provided. Protected walkways shall be approved by WMATA's Representative.
- EE. Appropriate warning signs and instructional safety signs shall be conspicuously posted in all areas involving construction activities. Work involving electrical systems or equipment in or near the area to which personnel or the public have access shall be isolated using barricades, partitions, etc. Exposed, live circuits shall not be left accessible to personnel or the public or left dangling overhead. Before completion of the work, the Contractor shall:
 - 1. Ensure that all wiring is insulated and properly positioned.
 - 2. Verify grounding, bonding, or both, of all metallic conduit, wiring or electrical equipment that is in the areas of contractual effort, and to which the public can make contact.
 - 3. Notify WMATA's Representative immediately in those instances where verification cannot be made.
 - 4. Contractor's personnel working near the platform edge or in the right-of-way shall wear reflective safety vests with the tear-away feature, to identify them to passing trains, as directed by SARP at the right-of-way safety training

required in this Section. The safety vests shall comply with the ANSI/ISEA 107-1999 guideline entitled *American National Standard for High-Visibility Safety Apparel*. All of the Contractor's personnel are required to attend safety training provided by SARP before starting work near the platform edge or in the right-of-way.

FF. Use of Cranes and Derricks:

1. General Safety Requirements. Comply with the following:

[1] 29 CFR '1910.180 through '1910.189.

[2] 29 CFR '1926.550 through '1926.556

[3] U.S. Army Corps of Engineers, Safety Manual EM-385-1-1.

2. No part of any Crane or Derrick Boom shall swing over WMATA patrons, tracks or stations without a WMATA Representative-approved shield or approved procedure.
3. Placement of Crane or Derrick shall be coordinated with WMATA's Representative.
4. Rights for use of the Crane or Derrick affecting Metrorail Operations are granted through SOPs No. 19 and 33 of the Metrorail Safety Rules and Procedures Handbook.
5. A supervisory or a red tag power outage is required. Exceptions may be granted on an individual basis after a review and approval by the Authority.
6. Hardhat requirements are enforced.
7. "Swing Stop" requirements may be instituted based on the hazards involved.
8. Use of Cranes and Derricks over common corridor railroads and highways is under the rules of the affected common corridor railroad or highway owner.

GG. All site visits for visitors and tours shall be coordinated through WMATA's Representative in accordance with the WMATA Construction Safety and Environmental Manual.

ENVIRONMENTAL SAFETY REQUIREMENTS

HH. The Contractors and Subcontractors shall be responsible for complying with the most stringent of federal, state, or local environmental regulations for air, water, land, and waste in order to maintain the safety and health of employees, WMATA patrons, and the community.

II. If the work task requires specialized licenses for example "lead or asbestos abatement contractor's license", Contractors and Subcontractors shall be required to show evidence of such registration prior to commencement of work. If

the work requires specialized training for example lead or asbestos training, Contractors and Subcontractors shall be required to show evidence that their employees have received such training prior to commencement of work.

- JJ. If the work requires transportation of hazardous materials or hazardous substances, Contractors and Subcontractors are required to provide evidence of Department of Transportation General Awareness Driver's Training in compliance with 49 CFR '172 and Commercial Driver's License in compliance with 49 CFR '390-397, prior to commencement of work.
- KK. All hazardous materials and hazardous substances, must be stored in "Performance Oriented Packaging" in compliance with 49 CFR '178, Subpart L.
- LL. If the work requires disposal of hazardous wastes, disposal must be to a Treatment/Storage/Disposal facility with a Part B Permit and the waste hauler must have a state or local license and U.S. EPA identification number. The Contractors and Subcontractors shall be required to provide evidence of all applicable licenses and permits along with the name and address of the waste disposal facility where hazardous waste materials are to be disposed, prior to commencement of work.
- MM. If the work involves response to spills of hazardous materials, hazardous substances or hazardous wastes, the Contractor or Subcontractor personnel shall have appropriate training that complies with 29 CFR '1910.120.
- NN. **CONTRACTOR'S SAFETY SUBMITTALS.**

On-site work activities shall not begin until the appropriate submittals are provided to WMATA by the prime Contractor and the Subcontractor performing the work shall submit the following documentation.

1. Job Hazard Analysis (prior to each phase of work).
2. Site-specific Emergency Response Plan.
3. Site-specific Temporary Fire Protection System Plan.
4. Documentation of Safety Superintendent's experience in construction safety.
5. Experience Modification Rating for the last 2 years.
6. Accident/illness rates for lost time accidents/illnesses over the last 2 years.
7. Record of federal, state, or local violations of environmental and occupational safety and health regulations for the last 2 years.
8. Organizational Health and Safety Program including OSHA required programs applicable to the work and site. For work and sites not addressed in the original Organizational Health and Safety Program, addenda may be added when the work and sites are identified, however, the addenda must be submitted to WMATA's Representative for review prior to the commencement of specified work.
9. Site-specific Waste Water Discharge Plan (if waste water is generated).
10. Site-specific Pollution Control Program.

11. Site-specific Dust and Debris Control Plan.
12. Blood-borne Pathogens Exposure Control Plan.
13. Hearing Conservation Program if employees are exposed to continuous noise in excess of the OSHA Action Level.
14. Respiratory Protection Program if employees are exposed to dust (including crystalline silica) or other toxic atmospheres in excess of the OSHA permissible exposure limits. If a respiratory program is required, the Contractor also must provide documentation of training, medical clearance for respirator use and respirator fit testing.
15. Hot Work Program.
16. Lockout Tagout Program.
17. Site-specific Confined Space Program.
18. Documentation of applicable training, licenses, certifications, including First Aid and CPR certificates and Blood-borne Pathogens training.
19. Identity of all materials or chemicals the Contractor will use on Authority property (including welding rods), material safety data sheets (MSDSs) for these products, and a brief explanation of how they will be used and if any wastes will be generated.
20. Identity of equipment that may generate toxic atmospheres such as gasoline or diesel-powered generators, welding and cutting equipment.
21. Documentation of licenses and certificates required for lead or asbestos abatement or other work requiring licensing or certification such as welding.
22. Certificate of Insurance, including pollution liability coverage, endorsed to WMATA is required for Contractors or subcontractors performing work involving hazardous materials, hazardous substances, hazardous wastes, or contaminated soil or water.
23. Results of sampling (paint, soil, water, or other materials) required for determining pre-work conditions and the presence of existing contamination.
24. Baseline biological monitoring for lead exposure (within the month prior to work on WMATA property that may involve exposure to lead).

The following submittals are required **at least weekly** after work activities have commenced on the site:

25. Notification of medical surveillance results that exceed action levels for all Contractor and Subcontractor employees working on this project.
26. Notification of all medical removals or restricted duty assignments of Contractor and Subcontractor employees working on this project.
27. Periodic noise monitoring, air monitoring, personal exposure data,

equipment emissions, and breathing air quality, as applicable.

28. Records of daily field calibration checks for monitoring equipment.
29. Results of laboratory analysis for any additional sampling (paint, soil, water, or other materials) conducted during the project. SARP will request the following documentation be submitted **by the Contractor upon completion of work**:
30. Results of laboratory analysis for any sampling (paint, soil, water, or other materials) collected after completion of activities at each site.
31. Documentation of final medical surveillance results. The samples are to be collected upon completion of work on this project and before employees start work on any other projects.

HAZARDOUS MATERIALS SUBMITTALS

The following documentation shall be provided to WMATA prior to transport or disposal of hazardous materials or substances:

1. Documentation of licenses, certificates, and U.S. EPA identification numbers required for transportation of hazardous materials, hazardous substances, or hazardous wastes.
2. Documentation of licenses, permits, and certificates required for disposal of hazardous wastes including the name and address of the waste disposal facility where hazardous waste materials are to be disposed.

2.16 SANITARY PROVISIONS

The OSHA standard for sanitation, 29 CFR 1910.141, shall be followed. Prior to starting work, the Contractor shall furnish for the use of his force on the work necessary toilet conveniences secluded from public view. They shall be kept in a clean and sanitary condition and shall comply with the requirements and regulations of the area in which the work is being performed. Potable drinking water shall be provided with individual cups and sanitary conditions for the water dispenser shall be maintained. A common drinking cup and other common utensils are prohibited.

2.17 SUBCONTRACTS

- a. The divisions or sections of the Specifications are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by a trade.
- b. The Contractor shall not enter into subcontracts totaling in amount more than the percentage of the total Contract price permissible under WORK TO BE PERFORMED BY THE CONTRACTOR article of these Special Conditions, without the written permission of the Contracting Officer or other delegated Authority's Representative.
- c. Before entering into any subcontracts, the Contractor shall submit a written statement to the Contracting Officer or other delegated Authority's Representative giving the name and address of the proposed subcontractor, the portion of the work and material which he is to perform and furnish, and any other information tending to prove that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the work in accordance with the terms and conditions of this Contract.

- d. No subcontractor shall be permitted to perform work at the site until he, or the Contractor, in compliance with the provisions of the INDEMNIFICATION AND INSURANCE article of these Special Conditions, has furnished satisfactory evidence of insurance as required.
- e. The Contractor shall promptly, upon request, file with the AR a conformed copy of the subcontract, with the price and terms of payment deleted.
- f. The Authority or its representatives will not undertake to settle any difference between the Contractor and his subcontractors or between subcontractors.

2.18 PAYMENT FOR USE OF EQUIPMENT – N/A

- a. Allowable ownership and operating expense for construction plant and equipment in sound workable condition, owned by the Contractor, Joint Venture Partnerships, organizations under common control, and any equipment under lease-purchase or sale-lease back agreements, will be paid for at hourly rates published in the most current Rental Rate Blue Book for Construction Equipment (Blue Book) by PRIMEDIA Information, Inc., by applying the following formula: the Regular Hourly Rate shall be 75 percent of the sum of the monthly rate (area adjustment map not used) divided by 176 and the estimated operating cost per hour. Regular Hourly Rate shall be full compensation for equipment ownership and operating expenses and shall include the cost of fuel, oil, lubricants, supplies, spare parts, repairs and maintenance, major overhauls, mechanic and servicing labor, depreciation, storage, insurance, interest, taxes, record keeping and all incidentals. The cost of equipment operators is not included. For forward pricing, the Blue Book rates in effect at the time of negotiations shall apply. For retrospective pricing, the Blue Book rates in effect at the time the work was performed shall apply. Manufactures ratings and manufacturer approved modifications shall be used to classify equipment for the determination of the Regular Hourly Rate.
- b. The hourly rates are calculated as shown in the following example:

	Regular Hourly Rate	Multi-Shift Hourly Rate	Standby Hourly Rate
Monthly \$	\$6,070.00	\$6,070.00	\$6,070.00
Divided by 176	176	176	176
Monthly \$ divided by 176	\$34.49	\$34.49	\$34.49
Estimated Operating Cost \$/Hr.	18.2	18.2	18.2
Subtotal	52.69	52.69	52.69
Rate Adjustment - 75%	75%	75%	75%
Subtotal	39.52	39.52	39.52
Status Adjustment	100%	60%	40%
Total Rate	\$39.52	\$23.71	\$15.81

- c. Equipment with a new cost of \$2,000 or less will be considered small tools.
- d. For Contractor owned equipment, as identified in paragraph (a), the first eight (8) hours, or fraction thereof, usage in any one day shall be paid for at the Regular Hourly Rate and any additional time in excess of eight (8) hours, shall be considered to be an additional shift, or fraction thereof, and shall be paid for at 60 percent of the Regular Hourly Rate. Standby

time, if authorized by the Contracting Officer or other delegated Authority's Representative, will be paid for at 40 percent of the Regular Hourly Rate. Any usage time less than 30 minutes shall be considered to be one half hour.

- e. For third party rented equipment the Authority will accept rental rates actually paid and substantiated by certified reproduced copies of invoices or bills. Such invoices or bills shall indicate the amount of operating expenses and/or operator wages and fringes, if any, included in the rental rate. In no case shall the bare rental rate per hour (operating expense, and/or operator wages and fringes not included) exceed the appropriate Regular Hourly Rate, excluding operating cost per hour. Where required, the operating costs per hour will be agreed upon between the Contractor and the Authority using operating costs per hour from the Blue Book for the same or similar equipment.
- f. The above methods of determination of construction plant and equipment cost shall apply to all adjustment of contract price arising under the articles of Section 1, General Provisions, except Article 1.25, Termination for Convenience of the Authority; Section 2, Special Conditions; and Technical Provisions of the Contract.
- g. These equipment rates shall apply to equipment in sound workable condition. The equipment shall be of approved size and capacity to provide normal output or production required for the work to be done. Equipment not meeting these requirements may be used only with the Contracting Officer or other delegated Authority's Representative's approval and at agreed, reduced rates. Usage time or standby time will not be allowed while equipment is inoperative due to breakdown and such equipment shall be removed from the job site at the direction of the Contracting Officer or other delegated Authority's Representative.

2.19 HISTORICAL AND SCIENTIFIC SPECIMENS – N/A

Articles of historical or scientific value including, but not limited to, coins, fossils and articles of antiquity which may be uncovered by the Contractor during the progress of the work shall become the property of the Authority. Such findings shall be reported immediately to the AR who will determine the method of removal, where necessary, and the final disposition thereof.

2.20 SALVAGE OF MATERIALS AND EQUIPMENT – N/A

- a. The Contractor shall maintain adequate property control records for materials or equipment specified to be salvaged. The Contractor shall be responsible for the adequate storage and protection of salvaged materials and equipment and shall replace all salvage materials and equipment which are broken or damaged during salvage operations as the result of his negligence or while in his care.
- b. All material not reused shall become the property of the Contractor and removed from the site.

2.21 ENVIRONMENTAL CONTROL

- a. The Contractor shall:
 - (1) Maintain temperature and humidity to protect work, in progress and in place, as well as permanent equipment and materials, stored and installed, against damage from heat, cold and dampness.
 - (2) Take such steps as necessary to protect such work from other adverse conditions.

2.22 SIGNS

- a. The Contractor shall furnish and erect at the work site one portable Authority project sign.
- b. Sign size, content, lettering and format shall be as shown at the end of this Section.
- c. The exact location of the sign shall be as directed.
- d. The sign shall be maintained during the work and removed upon its completion.

2.23 CONSTRUCTION SEQUENCE AND STAGING

2.23.1 CONSTRUCTION SEQUENCE

- a. Not Used.
- b. The Contractor shall conduct his work in a manner that will minimize interference with the operations of other contractors involved in the performance of related work. He shall bring his work to a stage of completion that will conform to the requirements specified in the WORK BY OTHERS article of these Special Conditions.
- c. The Contractor's particular attention is directed to the fact that both vehicular and pedestrian traffic must be maintained on the various existing streets within and adjacent to the project site at all times during the duration of the Contract.
- d. The Contractor shall coordinate all staging activities with the appropriate facilities managers as to work area, storage area and equipment movement

2.23.2 CONSTRUCTION STAGING - NOT USED

2.24 MEASUREMENTS

Dimensions shown on existing work and dimensions required for work that is to connect with work not in place shall be verified by the Contractor by actual measurement of the existing work. Discrepancies between the Contract Drawings and Specifications and the existing conditions shall be referred to the AR before work affected thereby has been performed.

2.25 OPERATION AND MAINTENANCE

Unless otherwise required by the technical specifications:

2.25.1 OPERATION AND MAINTENANCE MANUALS – N/A

- a. The Contractor shall furnish manuals for equipment and systems as required by the Specifications.
- b. Data copy included from standard catalogs shall be edited to reflect only conditions pertinent to this Contract.
- c. Data copy shall be suitable for dry-copy reproduction on standard office copy machines.

- d. All Drawings shall be in AutoCAD 2014 or later and the written portion of the manuals shall be Microsoft Word latest version. All electronic information shall be stored on CDs which shall be compatible with the current CD readers at WMATA. The contractor shall test each CD in one computer designated by the Authority Representative before final acceptance of any manuals.
- e. Manuals shall be prepared using the following materials.
 - (1) Binder:
 - (a) One of the following:
 - [1] Loose-leaf; three-ring with elliptical rings; stiff cover with covering resistant to oil, water and wear; reinforced hinges; label holder on spine; mechanical device to open, close and lock rings; and sheet lifters. Size for 8½- inch by 11-inch paper, three-inch maximum capacity.
 - [2] Loose-leaf three-post binder conforming to FS UU-B-320, Type II, Class 2, with covering resistant to oil, water and wear; label holder on spine; size for 8-½ inch by 11-inch paper; capacity as required, four-inch maximum thickness.
 - (b) When the assembled data exceeds the capacity of one binder, provide additional binders as necessary.
 - (2) Pages:
 - (a) Originals: White, 60-pound bond with plastic-reinforced binding edge.
 - (b) Catalog data: Offset-printed copy on white paper, with plastic-reinforced edge.
 - (c) Standard: 8-½ inches by 11 inches.
 - (d) Fold-out: 11 inches by 8-½ inches for binding portion of page plus 7-½ inches for each additional portion of folded page; title and page number visible without unfolding. Provide filler at the binding edge of fold-out pages, equal in thickness to the folded portion.
 - (e) Holes punched for standard three-ring binder.
 - (f) Consecutively numbered (format Page 1 of last number in section).
- f. Manuals shall include the following data (split into the following numbered sections):
 - (1) Table of contents.
 - (2) Contractors name, address and telephone number, with similar data for his 24-hour service organization (format shall be in table form rows and columns).
 - (3) Manufacturer's name, address and telephone number, with similar data for his local representative, distributor and service agency (format shall be in table form rows and columns).
 - (4) Catalog, model and serial number of equipment installed. Include WMATA unit numbers where applicable (format shall be in table form rows and columns).

- (5) Description of equipment.
- (6) Statement of warranty as specified.
- (7) Description of modification, servicing and repairs performed prior to start of warranty.
- (8) Dates warranty begins and expires.
- (9) Standard starting, stopping and operating procedures.
- (10) Emergency and special operating procedures.
- (11) Routine maintenance procedures.
- (12) Servicing and lubrication schedule (format shall be in table form rows and columns).
- (13) Manufacturers printed operating and maintenance instructions, manufacturer's parts list, illustrations and diagrams.
- (14) One copy of each wiring diagram for each shop track stinger system at each Rail Shop.
- (15) List of spare parts, prices and recommended stock quantities for routine maintenance of the equipment for one year and list of spare parts that are considered critical and for which extended time frames for acquisition would create undesirable down-time for the equipment.
- (16) List of special tools required to perform inspection, adjustment, maintenance and repair. Special tools are those developed to perform a unique function related to the particular equipment and are not available from commercial sources.
- (17) Copy of each approved shop drawing of the equipment and system. Include drawings which show outline dimensions weights and assembly data; do not include drawings which show manufacturing details.

g. Submittals: Manuals shall be submitted as follows: N/A

- (1) Four copies of sample formats and outlines of contents in draft form 120 calendar days prior to the scheduled date of final substantial completion of the first location if applicable.
- (2) Two copies of complete manual in final form 45 calendar days prior to the scheduled date of final substantial completion.
- (3) Six copies of approved manual(s) with electronic format as specified herein 10 calendar days after the scheduled date of final substantial completion.
- (4) If operation and maintenance training is included in this Contract, the Contractor shall provide to each trainee, a copy of approved Operation and Maintenance Manuals for this purpose.

OPERATION AND MAINTENANCE TRAINING – N/A

Unless otherwise required by the technical specifications:

a. General:

- (1) Where specified the Contractor shall develop and conduct a program to train selected Authority personnel in the operation and maintenance of equipment and systems furnished.
- (2) The Contractor shall furnish instructors, instructional materials and audiovisual aids and equipment.
- (3) The Authority will furnish physical facilities and equipment.

b. Qualification of instructors:

- (1) Instructors shall have full, precise and detailed knowledge of the design and functional characteristics of all aspects of the equipment and systems furnished with particular emphasis on operational and maintenance considerations and requirements.
- (2) Instructors shall present the instructional program in an effective manner.
- (3) Instructors will be subject to approval.

c. Program content:

As a minimum, instruction will include material covered in the operation and maintenance manual as well as the following:

- (1) Theory of operation.
- (2) Practical aspects of operation.
- (3) Description of system, equipment and components.
- (4) Functional characteristics of system, equipment and components.
- (5) Emergency operating procedures.
- (6) Location, removal and reinstallation of components.
- (7) Maintenance procedures.
- (8) Servicing intervals and schedules.
- (9) Diagnosis and problem solving (troubleshooting).
- (10) Repair.
- (11) Overhaul.

d. Submittals:

(1) The Contractor shall submit the following at the times stated:

(a) Preliminary submittal: Not later than 10 calendar days after NTP.

[1] Instructional outline: A complete, accurate and detailed listing of topics to be addressed in the instructional program using the specified content list.

[2] Specimens of instructional material to be used.

[3] Descriptions of audio-visual material and equipment to be used.

(b) Intermediate submittal: Not later than 60 calendar days after approval of preliminary submittal.

[1] All material submitted for preliminary submittal incorporating or resolving comments.

[2] Complete instructional plans including audio-visual aids and descriptions of instructional techniques and procedures.

(c) Final submittal: Not later than 30 calendar days prior to scheduled date of final substantial completion.

[1] All material submitted for intermediate submittal incorporating or resolving comments.

[2] Complete instructional plans including audio-visual aids and descriptions of instructional techniques and procedures.

(2) Operation and maintenance training shall be completed prior to scheduled date of final substantial completion.

2.26 ABBREVIATIONS

AASHTO: American Association of State Highway and Transportation Officials

ABS: Acrylonitrile-Butadiene-Styrene

AC: Alternating Current

ACI: American Concrete Institute

ACGIH: American Conference of Governmental Industrial Hygienists

AFD: Alexandria Fire Department

AHDGA: American Hot Dip Galvanized Association, Inc.

AI: Asphalt Institute

AISC: American Institute of Steel Construction

AISI: American Iron and Steel Institute

AMTRAK:	National Railroad Passenger Corporation
ANSI:	American National Standards Institute (synonymous with USASI-ASA)
AR	Authority Representative
AREA:	American Railway Engineering Association
ASHRAE:	American Society of Heating, Refrigerating and Air Conditioning Engineers
ASNT:	American Society of Nondestructive Testing
ASTM:	American Society for Testing and Materials
AWG:	American Wire Gauge (synonymous with Brown and Sharpe)
AWS:	American Welding Society
AWPA:	American Wood Preservers' Association
AWQB:	Air and Water Quality Bureau (Department of DCDES)
BG&E:	Baltimore Gas and Electric Company
BLS:	Bureau of Labor Statistics
B&O:	Baltimore & Ohio Railroad (Division of CSX Transportation)
BOCA:	Building Officials and Code Administrators International
BTU:	British Thermal Unit
BTUH:	British Thermal Units Per Hour
C:	Celsius (Centigrade)
CAGI:	Compressed Air and Gas Institute
CE:	U.S. Army Corps of Engineers
CFM:	Cubic Feet Per Minute
CISPI:	Cast Iron Soil Pipe Institute
CMU:	Concrete Masonry Unit
C&O:	Chesapeake and Ohio Railroad (Division of CSX Transportation)
CONRAIL:	Consolidated Rail Corporation (formerly Penn Central)
C&P:	Chesapeake and Potomac Telephone Company

CQCS:	Contractor's Quality Control System
CRSI:	Concrete Reinforcing Steel Institute
dB:	Decibel
DC:	Direct Current
DFT:	Dry Film Thickness
DILM:	Ductile Iron Pipe, Cement-Lined and Coated, Mechanical Joint
DILP:	Ductile Iron Pipe, Cement-Lined and Coated, Push-On Joint
DPST:	Double Pole, Single Throw
DTS:	Data Transmission System
EPA:	Environmental Protection Agency
EPR:	Ethylene Propylene Rubber
F:	Fahrenheit
FAA:	Federal Aviation Administration
FCCCR:	Foundation for Cross Connection Control Research of the University of Southern California Engineering Center
FHWA:	Federal Highway Administration
FM:	Factory Mutual Associates
FS:	Federal Specifications
FED STD:	Federal Standard
FTA:	Federal Transit Administration
GPH:	Gallons Per Hour
GSA:	General Services Administration
HOA:	HAND/OFF/AUTOMATIC
HP:	Horsepower
HVAC:	Heating, Ventilating and Air Conditioning
ICEA:	Insulated Cable Engineers Association
ICI	Industrial Coatings International
ID:	Inside Diameter

IEEE:	Institute of Electrical and Electronic Engineers
IPS:	Iron Pipe Size
ISEA:	Industrial Safety Equipment Association
JGB:	Jackson Graham Building (formerly OCCB)
kHz:	Kilo Hertz
kV:	Kilovolts
kVA:	Kilovolts amperes
kW:	Kilowatts
L/DR:	Length-to-Diameter Ratio
LED:	Light Emitting Diode
mV:	1,000 volts
mVA:	1,000-amperes
MCM:	1,000 Circular Mils
MCP:	Motor Circuit Protector
MDNR:	Maryland Department of Natural Resources
METRO:	Logo for the Washington Metropolitan Area Transit Authority
MNCPPC:	Maryland National Capitol Park and Planning Commission
MS:	Military Specification
MSDS:	Material Safety Data Sheet
MSG:	Manufacturers' Standard Gauge
MIL STD:	Military Standard
MSHA:	Maryland State Highway Administration
MSS:	Manufacturer's Standardization Society of the Valve and Fitting Industry
MWRA:	Maryland Water Resources Administration (Part of MDNR)
NAAMM:	National Association of Architectural Metal Manufacturers
NACE:	National Association of Corrosion Engineers
NBS:	National Bureau of Standards

NC:	Normally Closed
NCMA:	National Concrete Masonry Association
NEBB:	National Environmental Balancing Bureau
NEC:	National Electrical Code
NEMA:	National Electrical Manufacturers Association
NFPA:	National Fire Protection Association
NIOSH:	National Institute for Occupational Safety and Health
NO:	Normally Open
NPS:	National Park Service
NTP:	Notice to Proceed
NTIS:	National Technical Information Service
NWS:	National Weather Service (Formerly U.S. Weather Bureau)
OCCB:	Operations Control Center Building 600 Fifth Street, N.W. Washington, D.C. 20001 (See JGB)
OD:	Outside Diameter
ORD:	Operation Readiness Date
OS&Y:	Outside Stem and Yoke
OSHA:	Occupational Safety and Health Administration
PCI:	Pre-stressed Concrete Institute
PDI:	Plumbing and Drainage Institute
PE:	Polyethylene
PEI:	Porcelain Enamel Institute
PEPCO:	Potomac Electric Power Company
PGFD:	Prince Georges County, Fire Department
PGDPW&T:	Prince Georges County Department of Public Works and Transportation
PGSCD:	Prince Georges County Soil Conservation District

PPHM:	Parts Per Hundred Million
PPL:	Plantation Pipeline Company
PPM:	Parts Per Million
psf:	Pounds Per Square Foot
psi:	Pounds Per Square Inch
psig:	Pounds Per Square Inch Gauge
PVC:	Polyvinyl Chloride
RF&P:	Richmond, Fredricksburg and Potomac Railroad
rms:	Root Mean Square
rpm:	Revolutions Per Minute
ROD:	Revenue Operation Date
RQD:	Rock Quality Designation
RLA:	Redevelopment Land Agency (Department of DCHCD)
SDI:	Steel Deck Institute or Steel Door Institute, depending upon context in which it occurs
SMACNA:	Sheet Metal and Air Conditioning Contractors National Association
S1S:	Smooth One Side
S2S:	Smooth Both Sides
SJI:	Steel Joist Institute
SR:	Southern Railway Company
SPDT:	Single Pole, Double Throw
SPST:	Single Pole, Single Throw
SSPC:	Steel Structures Painting Council
TGA:	Thermo gravimetric Analysis
UL:	Underwriter's Laboratories, Incorporated
UPS:	Unit Price Schedule or Uninterruptible Power System, depending upon context in which it occurs
USBR:	U. S. Bureau of Reclamation

USCG:	U. S. Coast Guard
USCS:	U. S. Commercial Standard
USDA/SCS:	U. S. Department of Agriculture - Soil Conservation Service
USDOT:	U. S. Department of Transportation
USN/CD:	U. S. Navy, Chesapeake Division
USPS:	U. S. Product Standard
USSG:	United States Standard Gauge
WAD:	Washington Aqueduct Division (Element of U.S. Army C.E., Baltimore District)
WGL:	Washington Gas Light Company
WSSC:	Washington Suburban Sanitary Commission
WTC:	Washington Terminal Company (AMTRAK)
XLPE:	Cross-Linked Polyethylene

2.27 CONTRACT RECORD DRAWINGS

a. General:

- (1) During construction, the Contractor shall maintain a record set of Contract Drawings annotated to show all changes incorporated as work progresses. Information shall include, but not be limited to, the following:
 - (a) Depths of various elements of foundations in relation to survey data.
 - (b) Horizontal and vertical locations of underground electrical and utility facilities referenced to survey data. Unless otherwise specified, verify measurements within a 12-inch tolerance; verify storm and sanitary sewer pipe inverts within 0.01 foot.
 - (c) Location of interior utilities and appurtenances concealed in construction, referenced to visible and accessible features of the structure.
 - (d) Field changes of dimensions and detail.
 - (e) Changes accomplished by change orders.
 - (f) Construction left in place, such as temporary support systems and concrete outside neat lines of permanent structures, including notes defining types and locations of items.
- (2) Before the scheduled date of final substantial completion, the Contractor shall submit approved as-built drawings and microfilmed record drawings for the completed work.

b. As-built drawings:

- (1) The Authority will furnish the original computer data diskette copies of the Contract Drawings in AUTOCAD 2014 which the Contractor shall use in preparing as-built drawings. As built

reproductions shall be on Mylar. Images shall be clear, sharp and readily legible. The original Contract Drawings computer data diskettes shall be returned to the Authority not later than 10 calendar days after their receipt from the Authority.

- (2) Drafting shall be performed by skilled drafters using AUTOCAD 2014 and shall match original Contract Drawings in line weights, symbols and lettering style and size.
- (3) The Contractor shall submit three sets of prints of as-built drawings for review and approval.
- (4) Additions and corrections shall be incorporated and as-built original computer drawing files. Contractor shall submit one set of computer drawing diskette files in AUTOCAD 2014, three sets of prints and one set of reproducible prints on Mylar not later than 30 calendar days after receipt of review comments.
- (5) Completed as-built drawings shall bear the signature of an officer of the Contractor organization, certifying compliance with as-built conditions, using a rubber stamp as follows:

AS - BUILT

(DATE)

I CERTIFY THAT THIS DRAWING ACCURATELY DEPICTS THE WORK
AS CONSTRUCTED

(AN OFFICER OF THE CONTRACTOR)

CONTRACTOR'S NAME

2.28 CERTIFICATION OF NONSEGREGATED FACILITIES BY CONTRACTORS AND SUBCONTRACTORS

Prior to the award of any subcontract, or federally assisted construction contract or subcontract, required to contain the Equal Opportunity article contained in his Contract, the Contractor shall obtain the certification set forth in the Invitation for Bids. This certification may be required by the Contractor, either for each subcontract or for all subcontracts during a period, i.e., quarterly, semiannually, or annually.

2.29 WAGE RATES

- a. The minimum wages, which in addition to basic hourly rate of pay include fringe benefit payments to be paid laborers and mechanics on this project pursuant to the LABOR PROVISIONS article of the General Provisions, as determined by the Secretary of Labor to prevail for corresponding classes of laborers and mechanics employed on projects similar in character to the Contract work in the pertinent locality, are set forth as an appendix to these Special Conditions.

- b. Any class of laborers and mechanics not listed but employed on this Contract shall be classified or reclassified conformably to the schedule set out therein by mutual agreement between the Contractor and class of labor concerned, subject to the prior approval of the Contracting Officer or other delegated Authority's Representative. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question, accompanied by the recommendation of the Contracting Officer or other delegated Authority's Representative, shall be referred to the Secretary of Labor for final determination.

2.30 AFFIRMATIVE ACTION PROGRAM

- a. The Affirmative Action Program submitted in accordance with the Instructions to Bidders shall be implemented and maintained in force by the Contractor during the term of the Contract and be made available to affected disadvantaged groups. If such program is denied a group, the burden shall be on the Contractor to show that the group is not an affected group. Emphasis is placed on the following requirements not to the exclusion of other requirements of these instructions or the Contract Documents.
 - (1) To ensure equal employment opportunity the Contractor shall recruit disadvantaged individuals necessary to meet the requirements of the Affirmative Action Program and involve to the fullest, local vocational institutions and trade unions in the effort. Disadvantaged individuals shall be afforded every reasonable opportunity for training and advancement to ensure equality with non-disadvantaged employees. The Contractor, insofar as practicable, shall employ in the performance of the work, qualified citizens who are residents of the area comprising the Authority Transit Zone.
 - (2) It is the policy of the Authority that equal opportunity to participate in Authority procurements be provided to disadvantaged business enterprises. In order to ensure that a fair proportion of the purchases and contracts for supplies and services for the Authority are placed with disadvantaged business enterprises, the Contractor agrees to take affirmative action, to identify qualified disadvantaged firms, solicit bids and quotations from them and, in making awards and purchases, give equitable consideration to disadvantaged business enterprises. The method for accomplishing this shall be in accordance with the Instructions to Bidders.
 - (3) To implement the Affirmative Action Program on each of those contracts exceeding \$5,000,000, the Contractor shall provide for, and maintain, an Affirmative Action Officer (AAO) who will be a full-time employee who shall work full time on AAO duties and the Contractor may not designate the individual who is approved as AAO for this Contract as an AAO for a concurrent period on any other contract. On contracts of a lesser amount, the Contractor shall designate a person part time to act as the AAO. The AAO shall be the liaison between the Contractor and the Authorized Representative of the Contracting Officer or other delegated Authority's Representative with regard to Equal Employment Opportunity (EEO) and Disadvantaged Business Enterprise (DBE). The AAO shall be subject to approval by the Contracting Officer or other delegated Authority's Representative who will delegate such approval authority to the Director of Civil Rights. Once approved, the AAO shall not be replaced without prior written approval of the Director of Civil Rights. An approved AAO, who performs satisfactorily, shall be present (at the construction site) throughout the duration of the Contract. If at any time, the project is without the services of an approved AAO for a period exceeding 30 calendar days, or if the Director of Civil Rights notifies the Contractor that the AAO's performance is unsatisfactory and if, in the sole judgment of the Director of Civil Rights, that performance remains unsatisfactory for 30 days, the Contracting Officer or other delegated Authority's Representative may withhold progress payments until such time as an approved AAO, who performs satisfactorily, is present (on the site of the work). The AAO shall:

- (a) Submit all required or requested reports and shall record all efforts concerning the implementation of the Contractor's EEO Affirmative Action Program.
 - (b) Submit all required or requested reports and shall record all efforts to implement the Contractor's DBE Affirmative Action Programs/SBE Set Aside.
 - (c) Record all efforts to inform the disadvantaged community of available employment and procurement opportunities with the Contractor and record their responses.
 - (d) Investigate and make every effort to resolve all complaints of discrimination based on race, color, sex, religion or national origin within the company or at the construction site. Failure to resolve such problems shall be reported in writing to the Authorized Representative of the Contracting Officer or other delegated Authority's Representative.
- (4) The Contractor shall implement a uniform method of keeping data concerning ethnic classifications of all personnel and furnish all subcontractors with guidelines to develop a system of maintaining such records. The company format for such data keeping shall be as submitted to the Contracting Officer or other delegated Authority's Representative prior to the award of the Contract. Where the Contractor, after reasonable efforts, is unable to locate sufficient disadvantaged individuals and/or businesses to carry out the intent of the Affirmative Action Program, the Contracting Officer or other delegated Authority's Representative will:
 - (a) Review the documentation recording the Contractor's efforts, and
 - (b) Offer to the Contractor any reasonable alternatives or additional resources.
 - (c) The Contractor's efforts and Contracting Officer or other delegated Authority's Representative's review of these efforts should normally be accomplished in a time period of 30 calendar days after NTP during which time the Contractor shall proceed with his adopted construction schedule.
- (5) The Contractor shall publicly display in every employment advertisement that it practices equal opportunity employment. Additionally, posters issued by the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance shall be posted in places highly visible to all workers, supervisors and employees.
- (6) The Contractor shall make contact with local Contractor Associations and other organizations whose purpose is to promote equal employment opportunity.
- (7) The Contractor shall maintain a program for the advancement of apprentices. Apprentices shall be advanced in the trade as their abilities develop in accordance with the Manpower Development Training Program.
- (8) With respect to subcontractors, the Contractor shall:
 - (a) Determine those areas in which DBE subcontractors may be used.
 - (b) Determine if there are DBE subcontractors available to perform such Contract work and identify them.
 - (c) Contact the WMATA Office of Civil Rights if assistance in identifying DBE contractor capability is needed.
 - (d) Solicit bids from these subcontractors and award as appropriate.
- (9) The Contractor shall consult with the DBE subcontractor regarding the Contractor's requirements as they pertain to ability to perform, financial stability, and the utilization of subcontracts.

- (10) The primary obligation to establish and maintain a complete and effective program rests with the Contractor.

2.31 TECHNICAL REFERENCES

- a. When reference is made to codes, regulations, reference standards and specifications, the work shall conform to the edition current as of the date of receipt of bids, unless otherwise specified.
- b. Where reference standards and specifications conflict with Contract requirements, the Contract requirements shall govern.

2.32 COMMUNITY RELATIONS - NOT USED

2.33 DEFINITION OF TERMS

For the purposes of this Contract, the following terms and their derivative forms shall be accorded the meanings assigned below:

- a. Specified: Unless otherwise stated, as required by the Contract Specifications for the project.
- b. Shown: Unless otherwise specified, as shown on the Contract Drawings. Synonyms: Detailed, scheduled.
- c. Approved: Unless otherwise specified, as approved by the Engineer. Synonyms: Satisfactory, accepted.
- d. Directed: Unless otherwise specified, as directed by the Authority Representative or Contracting Officer. Synonyms: Designated, ordered, prescribed.
- e. AR: Authority Representative.
- f. Jurisdictional Authorities: State, federal and local authorities or agency thereof having jurisdiction over work to which reference is made.
- g. Work: Labor, supervision, services, materials, machinery, equipment, tools, supplies and facilities to accomplish the requirements of the Contract.
- h. Provided: Furnished, installed complete in place and successfully tested to demonstrate satisfactory operation.
- i. Submit: Unless otherwise specified, transmit to the AR for approval, information or record.
- j. Shall/Will/May:
 - (1) Shall: Indicates action which is mandatory on the part of the Contractor.
 - (2) Will: Indicates probable action by the Authority or its representatives.
 - (3) May: Indicates permissible action.

- k. 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.
- l. Including/consisting of:
 - (1) Including: Introduces a partial, representative listing of things or actions.
 - (2) Consisting of: Introduces a complete listing of things or actions which constitutes the whole.
- m. Article: An element of the Specifications bearing its own alphanumeric designation.

2.34 IDENTIFICATIONS

- a. Not used.
- b. Not used.
- c. CTC: Capital Transit Consultants.
- d. The Jurisdictional agencies:
 - (1) Occupational Safety and Health Administration
 - (2) Environmental Protection Agency
 - (3) Washington, D.C.
 - (4) State of Maryland.
 - (a) Prince Georges County
 - (b) Montgomery County
 - (5) State of Virginia
 - (a) Fairfax County
 - (b) City of Alexandria and all sub-agencies therein.

2.35 ENGINEER'S FACILITY - NOT USED

2.36 PRECONSTRUCTION INSPECTION

- a. Conditional inspection of buildings or structures in the immediate vicinity of the project which may reasonably be expected to be affected by the work will be performed by and be the responsibility of the Contractor.
- b. The Contractor shall document in writing, including photographs, the general condition and defects from the inspection and submit to the AR within five calendar days after inspection.

2.37 DETECTION OF MOVEMENT - NOT USED

2.38 PHOTOGRAPHS -

- A. As soon as the construction operations has been initiated at the site, the Contractor shall submit (to the AR) a series of digital photographs taken each month of progress and/or problems which effect his performance. These photos shall be submitted monthly or weekly (if needed by AR) until completion of all physical work. The actual number of photos and locations shall be based on the amount of progress/and or problems encountered each month. The photo's need to be coordinated with the AR and staff to ensure proper coverage or areas. For informational purposes, each new stage of work shall be photographed to include major work areas and activities in progress. Contractor shall not be paid until the photographs are submitted to the Engineer within 10 days after taking.
- B. Digital photo's shall be submitted to the AR monthly via CD's (i.e. by mail) and via email set (to AR's office) or as directed. Each print shall be identified on a permanent file so that the following data is recorded for each photo to include: the specific contract number; photo number, ex. Photo #1 of ..., job location such as survey stationing, to include looking north... or west...etc., date of the photo, progress or problems identified....in the lower right hand corner of the photo or on a separate file. The data shall be typewritten and arranged similar to the data listed below:

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

Contract No. _____
Contract Title: _____
Prime Contractor: _____
Date photo taken: _____ Photograph No. _____
Identify Job location, area, elev., Room#, facing north, south, etc. on each photo:
Description of work in progress: _____
or Problems encountered: _____

2.39 WORK BY OTHERS

- a. This Contract is one of a series of contracts for the construction of the Washington Metropolitan Area Transit System. During the progress of the work under this Contract it will be necessary for other contractors and persons employed by the Authority to work in or about the project. The Authority reserves the right to put such other contractors to work and to afford such access to the site of the work to be performed hereunder at such times as the Authority deems proper. The Contractor shall not impede or interfere with the work of such other contractors engaged in or about the work and shall so arrange and conduct his work that such other contractors may complete their work at the earliest date possible. The cooperation of the Contractor with the other contractors is mandatory.
- b. The exercise of such right aforesaid by the Authority to permit other Contractors and others to do work in or about the contract area shall in no way nor to any extent relieve the Contractor from liability for loss and damage to the work due to or resulting from his operations.
- c. The AR will decide any disputed questions regarding the performance of the work, access to the site, cleaning up the site and priority of performance between the various contractors.
- d. The Contractor shall inform the AR in writing of all agreements pertaining to coordinating his work with the work of other contractors engaged upon the project.

- e. Provisions similar to the above shall apply to the relations between the Contractor and utility companies performing work in connection with Authority construction. Permit free and clear access to utility personnel for purposes of inspection, maintenance, providing for additional service requirements and construction of new facilities.
- f. The Contractor shall cooperate with all other contractors requiring access to the work, regarding access to the site, maintenance of security, temporary facilities, cleaning of the site and like matters requiring common effort.
- g. Other contracts, as necessary, may be performed at this location at the sole discretion of the Authority. Further, the Authority may perform work with its own forces at any time during the contract period of performance.
- h. When transportation services, or other activities of the Authority are to be disrupted, the Contractor shall provide such advance notice as directed.

2.40 UTILITIES

- a. Within the limits of and adjacent to the project there may exist public and private utilities in the form of sanitary sewers, storm drains, traffic and street light systems, parking meters, streetcar tracks, gas lines, steam lines, water lines, fire hydrants, oil fill lines, and aerial and underground power, fire alarm, police, telegraph and telephone lines. The Contract or Informational Drawings may show some known public and private utilities in their approximate locations within the limits of the project which are expected to interfere with the work. The Contractor is, however, cautioned that these locations are not guaranteed, nor is there any guarantee that all utility lines in existence within the limits of the project have been shown. All utilities shown or encountered in the work shall be maintained and protected in their locations unless otherwise shown or specified.
- b. The Contractor shall, through the AR, establish and maintain direct and continuous contact, with the owners or operators of the respective utilities and shall cooperate with them at all times and in all places of the work. Before commencing construction, the Contractor shall verify the locations of all utilities which may be affected by his operations, and shall submit his plan for performing the work to the AR for review and approval and to the utility owner. No work in the vicinity of or which may affect utilities shall be started until approved.
- c. The Contractor shall notify the AR, aMiss Utility,@ utility companies and the jurisdictional agencies at least 48 hours in advance of construction which may interfere with the operation of such utilities.
- d. Damage to utility lines caused by the Contractor's operations shall be immediately reported by him to the AR and to the utility company or jurisdictional agency affected, which will, in general, make its own repairs at the Contractor's expense.

2.41 ACCESS TO FIRE HYDRANTS AND FIRE ALARM BOXES

- a. Whenever the work is being carried on, free access must be given to each fire hydrant, fire alarm box and connection to standpipe; when required, hydrants shall be extended by suitable tubes or piping to an accessible point as approved and to the satisfaction of the jurisdictional fire department. Obstructions shall not be piled at any time or placed within 10 feet of any fire hydrant, standpipe connections and other suppression devices or fire alarm box; where materials are unavoidably piled or placed in the vicinity of a fire hydrant, standpipe connections and other suppression devices or fire alarm box and to such height as to prevent the same from being readily seen, the position of such hydrants, standpipe connections and other suppression devices or fire alarm box shall be indicated by suitable signs and lights, both day and night.

- b. The Contractor shall safeguard, maintain and protect the wires, cables, ducts, manholes, posts and poles, signals, and alarm boxes of the fire departments. He shall not cause any interruption to fire department fire alarm telegraph service, and in case of accident, shall promptly notify the fire department. No fire department wire, cable, duct, manhole, post or pole, signal or fire alarm box shall be disturbed, except in the presence of a representative of the Bureau of Fire Alarm Telegraph. In case any such wire, cable, duct, manhole, post or pole, signal or fire alarm box is disturbed, the Contractor shall immediately notify the AR, and it shall be restored immediately to its original condition.

2.42 CONTRACTOR'S PLANT

- a. The Contractor shall submit a plan of his plant layout for approval within seven calendar days after receipt of NTP. All necessary construction in connection therewith shall be done in a neat workmanlike manner to the AR's satisfaction.
- b. Sufficient construction plant shall be provided and maintained at points where work is in progress to adequately meet demands of the work and with ample margin for emergencies or overload. The plant shall be of sufficient capacity, in the opinion of the AR, to permit a rate of progress which will ensure completion of the work within the time specified in the Contract. The AR shall have the right to reject or condemn each plant, apparatus, staging, or other appliance which in his opinion is unsafe, improper or inadequate. Whether the AR exercises this authority or not, the Contractor is not relieved from his responsibility for the safe, proper and lawful construction, maintenance and use of such plant, apparatus or staging. Condemned plants or equipment shall be brought to acceptable condition or shall be removed from the site.
- c. The location of all stationary equipment and the location of all miscellaneous mobile equipment shall be subject to approval.

2.43 CONTRACTOR'S EMPLOYEES (07/03)

- a. The Contractor and his subcontractors shall provide their personnel with distinctive badges showing the employer's name and employee's name or number. These badges shall be displayed in a prominent manner on each person while engaged on the work. Access to the sites shall be granted only to properly accredited representatives of the Contractors and his subcontractors.
- b. If any subcontractor or person employed by the Contractor appears to the AR to be incompetent or careless or to act in a disorderly or improper manner, his services in connection with the work shall be immediately terminated upon request by the AR and he shall not again be employed on the work.
- c. The Contractor and subcontractors requiring entry into the rail operating system for performance of Contract work shall provide such employees requiring entry with photo identification cards issued by the Authority. The Contractor shall obtain and be responsible for administering the use of the identification cards in accordance with most recent governing Authority POLICY/INSTRUCTION. The ID cards are not valid for transportation on Metrobus or Metrorail and will be valid for the duration of the contract up to a maximum of one year.

2.44 HOURS OF WORK

Within the limitations of these specifications, the Contractor shall work such hours per shift, with or without overtime, as many shifts per day and as many days per week as necessary to complete the various parts of the work and the entire work within the dates specified. Refer to Section 2.92.

2.45 NOISE CONTROL – N/A

- a. The Contractor shall take every action possible to minimize noise caused by his operations. When required by jurisdictional agencies, noise producing work shall be performed in less sensitive hours of the day or week as directed. Noise produced by the work shall be maintained at or below the decibel levels specified and within the time periods specified.

2.45.1 PROTECTION OF PUBLIC AND EMPLOYEES

- a. Noise abatement measures and precautions shall be taken in order to reduce exposure to noise. Permissible noise exposure shall be calculated in accordance with the procedures established under the Walsh-Healy Public Contracts Act. Sound levels for public noise exposure due to construction will be measured at the closest point adjacent to the site in normal use by the public while construction work is in progress. The Contractor is required to adhere to 29 CFR 1910.95 *Occupational Noise Exposure*, for all work on Authority property, including construction. Employee noise exposure levels will be measured at the employees' normal work station. In either case sound levels shall not exceed the following:

Exposure per day in hours	Sound level in dBA*
8	90
6	92
4	95
3	97
2	100
1½	102
1	105
2	110
1/4 or less	115

- b. Sound levels shall be measured on the A-weighted network of a general purpose sound level meter, conforming to ANSI S1.4 at slow response. Sound level for impulse or impact noise, i.e., noise of duration less than one second, shall not exceed a peak sound pressure level of 140 dB when measured on an approved impact noise analyzer. Instruments used for measurements should have a pulse range of at least 60 decibels (dB) and be capable of measuring impulses of duration down to 20 milliseconds.
- c. In underground or tunnel construction, individual hearing protection devices capable of reducing noise exposures to OSHA permissible exposure limits, shall be provided.
- d. The Contractor and all Subcontractors shall comply with all 29 CFR 1910.95 *Occupational Noise Exposure* for all work on Authority property, including construction. This standard requires that employees exposed to noise in excess of 85 dBA (slow response), participate in a Hearing Conservation Program.

2.45.2 NOISE RESTRICTIONS AT AFFECTED STRUCTURES

In addition to the provisions of Article 2.45.1, sound levels for noise due to construction activities will be monitored at the building line of structures affected acoustically by the Contractor's operations and plant. Sound levels for noise from equipment shall be measured at the building line on the A weighting network of a general purpose sound level meter at slow response. To minimize the effect of reflective sound waves at buildings, measurements may be taken three to six feet in front of the building face.

2.45.2.1 MOBILE EQUIPMENT

Sound levels for nonscheduled, intermittent, short term noise from mobile equipment shall not exceed the following dBA levels:**

RESIDENTIAL STRUCTURES	CATEGORIES			
	I	II	III	IV
Daily, except Sundays and Legal Holidays 7:00 AM to 7:00 PM	75	80	85	85
All other times	60	65	70	75
BUSINESS-COMMERCIAL STRUCTURES	CATEGORIES			
	I	II	III	IV
Daily, including Sundays and Legal Holidays, all hours; maximum	85	85	85	85

2.45.2.2 STATIONARY EQUIPMENT

Sound level limits for repetitively scheduled and relatively long-term noise from stationary equipment shall not exceed the following dBA levels:**

RESIDENTIAL STRUCTURES	CATEGORIES			
	I	II	III	IV
Daily, except Sundays and Legal Holidays 7:00 AM to 7:00 PM	60	65	70	75
All other times	50	55	60	65
BUSINESS-COMMERCIAL STRUCTURES	CATEGORIES			
	I	II	III	IV
Daily, including Sundays and Legal Holidays, all hours, maximum.	70	70	75	75

2.45.2.3 NOISE ABATEMENT MEASURES

The Contractor shall provide such equipment and sound-deadening devices and take such noise abatement measures that are necessary to comply with the requirements of this Contract, consisting of, but not limited to, the following:

- a. Shields or other physical barriers to restrict the transmission of noise.
- b. Soundproof housings or enclosures for noise-producing machinery.
- c. Efficient silencers on air intakes of equipment.
- d. Efficient intake and exhaust mufflers on internal combustion engines.
- e. Line hoppers and storage bins with the sound-deadening material.
- f. The prohibition of the use of air-driven or gasoline-driven saws.
- g. Conducting truck loading, unloading and hauling operations so that noise is kept to a minimum.
- h. Routing of construction equipment and vehicles carrying spoil, concrete or other materials over streets that will cause the least disturbance to residents in the vicinity of the work. The AR shall be advised in writing of the proposed haul routes prior to the Contractor securing a permit from the local government.
- i. Siting of stationary equipment shall be subject to the approval of the AR in accordance with the CONTRACTOR'S PLANT article of these Special Conditions.

2.45.3 CONSTRUCTION EQUIPMENT NOISE

Powered equipment, truck or power hand tool that produce a maximum sound level exceeding the following limits shall not be used during construction operations. The sound level limits specified are referenced to a distance of 50 feet from the equipment. Sound levels shall be measured in substantial conformity with the Standards and Recommended Practices established by the Society of Automotive Engineers, Inc., including the latest revisions to SAE J366a and SAE J952b.

- a. Construction and industrial machinery, such as crawler-tractors, dozers, rotary drills and augers, loaders, power shovels, cranes, derricks, motor graders, paving machines, off-highway trucks, ditchers, trenchers, compactors, scrapers, wagons, pavement breakers, compressors and pneumatic power equipment. Sound level limit: 90 dBA.
- b. Highway trucks: Sound level limit: 88 dBA.

- 2.45.4 Where required by agencies having jurisdiction, certain noise-producing work may have to be performed during other than regular working hours or only at specified periods.

**Measured on the A-weighted network of a general purpose sound level meter that conforms to the current American National Standards Institute specification S1.4, at slow response. Sound level for impulse or impact noise (noise of duration less than one second) shall not exceed a peak sound pressure level of 140 dB when measured on an approved impact noise analyzer. Instruments used for measurements should have a pulse range of at least 60 dB and be capable of measuring impulses of duration down to 20 milliseconds. Sound level for impulsive or impact noise (noise of duration less than one second) shall not exceed a peak sound pressure level of 140 dB when measured on an approved impact noise analyzer. In lieu of the above procedure, 125 dB measured on the C weighting network of a General Purpose sound level meter at fast response will be accepted as an equivalent measure of the peak sound pressure level.*

***Measured at the building line on the A-weighted network of a general purpose sound level meter at slow response. To minimize the effect of reflective sound waves at buildings, measurements may be taken three to six feet in front of building face.*

2.46 WORK, STORAGE AND PARKING AREA

- a. Parking facilities for the Contractor's personnel and those of his subcontractors personnel shall be the Contractor's responsibility. The storage and work facilities provided by the Authority shall not be used for parking by the Contractor or his personnel.
- b. The areas shown as the Contractor's work and storage area will be provided to the Contractor without charge. Additional work and storage space, if required, shall be obtained by the Contractor.

2.47 HAZARDOUS MATERIALS

- a. Explosives - The use of explosives for the performance of Contract work will not be permitted.
- b. Flammable Materials - The jurisdictional Fire Marshals prohibit the use of oxygen-acetylene welding/cutting equipment or flammable materials anywhere in the Metrorail system during hours of system operation. After each work shift, all flammable materials must be removed from Authority property.
- c. Chemicals and Hazardous Materials - Material Safety Data Sheets for all chemicals and hazardous materials to be used by the Contractor and Subcontractors, must be submitted for approval prior to use on Authority property.

The Authority will be responsible for the presence of and any associated consequences of asbestos, PCBs, petroleum, and other hazardous waste or like materials and radioactive materials (Hazardous Materials) on the Project if such presence is unknown, unexpected, or not identified in information provided by the Authority, or not otherwise known to the Contractor prior to the preparation of its Bid. The Contractor shall, upon encountering or recognizing such Hazardous Materials, immediately stop work in the affected area and report the condition to the Contracting Officer Representative in writing. The Contractor shall submit a hazardous material report in accordance with Section 01330, SUBMITTAL PROCEDURES. The Authority shall have no responsibility or liability for any Hazardous Material that is brought to the Project or handled by the Contractor or any Subcontractor.

AND/OR

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 materials five (5) 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 that involve exposure to hazardous materials or items containing these materials.

"Hazardous material," as used in this clause, is defined in Federal Standard No. 313B, in effect on the date of this Contract.

Neither the requirements of this clause nor the Authority's acts or omissions shall relieve the Contractor of any responsibility or liability for the safety of Authority's, personnel or property.

Nothing contained in this clause shall relieve the Contractor from complying with applicable federal, state, and local laws, codes, ordinances, and regulations (including the requirement to

obtain licenses and permits) in connection with hazardous materials.

The Authority's rights in data furnished under this Contract regarding hazardous materials are as follows:

To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to (i) apprise personnel of the hazards that they may be exposed to in using, handling, packaging, transporting, or disposing of hazardous materials (ii) obtain medical treatment for those affected by the materials; and (iii) have others use, duplicate, and disclose the data for the Authority for these purposes.

To use, duplicate, and disclose data furnished under this clause in accordance with subparagraph (e)(1) above, in precedence over any other provision of this Contract providing for rights in data.

The Authority is not precluded from using similar or identical data acquired from other sources.

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 data furnished under this Contract shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of the Contracting Officer. This legend shall be marked on any reproduction of this data."

The Contractor shall not place any restrictive legend on any data that (i) the Contractor or any subcontractor previously delivered to the Authority without limitations; or (ii) should be delivered without limitations under the "Rights in Technical Data" clause.

The Contractor shall insert this clause, 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 materials.

2.48 MOBILIZATION AND PREPARATORY WORK – N/A

- a. Mobilization and preparatory work shall include mobilization of construction equipment, materials, supplies, appurtenances and the like, manned and ready for commencing and continuing the work as well as subsequent demobilization and removal from the site of such equipment, appurtenances and the like upon completion of the work.
- b. Mobilization and preparatory work shall include assembly and delivery to the site of the plant, equipment, materials and supplies necessary for the prosecution of the work that are not intended to be incorporated in the work; the clearing of and preparation of the Contractor's work area; the complete assembly, in working order, of equipment necessary to perform the required work; personnel services and hire of plant on work preparatory to commencing actual work; plus all other preparatory work required to permit commencement of the actual work on construction items for which payment is provided under the terms of the Contract.
- c. The Contractor shall conduct his work in accordance with the requirements of the SAFETY REQUIREMENTS article of these Special Conditions.
- d. When separate payment for mobilization and preparatory work is provided in the Contract, payment will be made in the amount provided in the UPS.

- e. When separate payment for mobilization and preparatory work is provided in the Contract, such payment will be made progressively, up to 100 percent of the fixed lump sum Contract price for mobilization as shown on the UPS, as mobilization occurs. The payment will be made in the form of six equal monthly payments with the first payment beginning 30 calendar days after receipt of NTP.
- f. Partial payments may be reduced by an amount determined by the AR if, in his determination, one or a combination of the following conditions applies:
 - (1) The plant and equipment at the site are insufficient or are not suitable for the performance of the work.
 - (2) The plant and equipment brought on the project are not being utilized or sufficiently utilized for prosecution of the work.
 - (3) The plant and equipment brought on the project and committed to the work are removed from the project without permission of the AR.
- g. In the event of such a reduction in partial payments, the remainder of the partial payments which are unpaid at the date of such reduction will be paid with subsequent progress payments as and when the conditions stated are rectified.

2.49 MAINTENANCE OF TRAFFIC - NOT USED

2.50 POLLUTION ABATEMENT

- a. The Contractor shall by every means possible conduct his operations in a manner to minimize pollution of the environment surrounding the area of work. Specific controls shall be applied as follows:
 - (1) Material transport: Trucks leaving the site and entering paved public streets shall be cleaned of mud and dirt clinging to the body and wheels of the vehicles. Trucks arriving and leaving the site with materials shall be loaded so as to prevent dropping materials and debris on the streets. The Contractor shall maintain a suitable vehicle cleaning installation and inspection installation with permanent crew for this purpose. Spills of materials in public areas shall be removed immediately.
 - (2) Waste materials: No waste or erosion materials shall be allowed to enter natural or man-made water or sewage removal systems. Erosion materials from excavations, borrow areas or stockpiled fill shall be contained within the work area. The Contractor shall develop methods to control waste and erosion including such means as filtration, settlement and manual removal.
- (a) The Contractor shall comply with the following:
 - [1] Maryland:
 - [a] Chapter 245 of the Acts of the 1970 General Assembly of the State of Maryland which provides for a statewide erosion and sediment control program in Maryland under the guidance of the Department of Natural Resources.

[b] Prior to the start of the applicable earthwork construction the Contractor shall submit schedules for accomplishment of erosion control work in the State of Maryland as are applicable for earthwork under this Contract. No earthwork operations in the State of Maryland shall be started until the Contractor's erosion control schedules and methods of operation have been approved.

(3) Burning: No burning of waste shall be allowed without written permission. When permission is granted, burning shall be conducted in accordance with the regulations of the jurisdictional agency.

(4) Dust control: The Contractor shall by water sprinkling or other approved methods continuously control dust generated by his operations. These methods include but are not limited to:

Enclose the work area with full height dust proof barricades. Do not install barricades until plans for them are approved by Authority Representative.

Cut Work so as not to damage adjacent areas to be maintained operational.

Where physical cutting is required, cut with sawing and grinding tools. Do not cut with hammer and chipping tools. Only wet cutting of concrete block, concrete, and asphalt shall be permitted.

Dust shall be kept down at all times. Use water and adequate ventilation to control dust.

Soil at the site disturbed by the Contractor's operations and materials stockpiled for the project shall be treated with dust suppressors or covered to control dust.

Dry power brooming shall not be permitted. Vacuuming, wet mopping, wet sweeping, or wet power brooming shall be used instead.

Air blowing shall be permitted only for cleaning off non-particle debris, such as that from reinforcing bars.

Sandblasting shall not be permitted.

(5) The Contractor, subcontractors and suppliers must submit evidence to the Authority that the governing air pollution criteria will be met. This evidence and related documents will be retained by the Authority for on-site examination by FTA.

b. The Contractor shall submit a program for pollution control prior to beginning operations.

c. Demolition shall be performed in compliance with the requirements of the United States Environmental Protection Agency, National Emission Standards for Hazardous Air Pollutants, Section 112 of the Clean Air Act as amended 42 U.S.C. 1857 et seq. (the Act). This act covers air pollution from asbestos, beryllium, and mercury and requires prior notification to the Agency of intent to demolish a building having these materials and certain precautionary measures during demolition.

d. Clean air and water:

(1) The Contractor agrees as follows:

(a) To comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by Pub. L. 91-604) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500), respectively, relating to inspection, monitoring, entry, reports and

information, as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued there under before the award of this Contract.

- (b) That no portion of the work required by this prime Contract will be performed in a facility listed on the EPA List of Violating Facilities on the date when this Contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.
 - (c) To comply with clean air standards, clean water standards, and the Resource Conservation and Recovery Act (RCRA), at the facility in which the Contract is being performed.
 - (d) To insert the substance of the provisions of this clause into any nonexempt subcontract, including this paragraph.
 - (e) To obtain any necessary waste water discharge permits prior to discharging waste water generated at the work site.
- (2) The terms used in this article have the following meanings:
- (a) The term Air Act means the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604).
 - (b) The term Water Act means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500).
 - (c) The term clean air standards means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions or other requirements which are contained in, issued under or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in Section 110(d) of the Clean Air Act (42 U.S.C. 1857c-5(d)), an approved implementation procedure or plan under Section 111(c) or Section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or an approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).
 - (d) The term clean water standards means any enforceable limitation, control, condition, prohibition, standard or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the EPA or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).
 - (e) The term compliance means compliance with clean air or water standards and with the Resource Conservation and Recovery Act (RCRA). Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the EPA or an air or water pollution control agency in accordance with the requirements of the Air Act, Water Act, RCRA, and regulations issued pursuant thereto.
 - (f) The term facility means any building, plant, installation, structure, mine, vessel or other floating craft, location or site of operations, owned, leased or supervised by a contractor or subcontractor, to be utilized in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant installation or structure, the entire location or site shall be deemed

to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

(g) The term RCRA means the Resource Conservation and Recovery Act of 1976.

2.51 RESTORATION OF EXISTING FACILITIES

During construction operations on this Contract certain areas currently grassed, landscaped or otherwise improved may be disturbed or damaged. The Contractor shall restore such areas disturbed or damaged by his operations.

2.52 ACCESS TO ADJACENT PROPERTY

The Contractor shall conduct construction operations in such a manner as to cause as little inconvenience as possible to owners of property affected by such operations. Convenient access to all property from roads and highways along the line of work shall be maintained. When access to adjacent properties is temporarily cut off due to the Contractor's operations, the Contractor shall render every assistance to provide access to the property and the transfer of commodities, including refuse, to and from the property.

2.53 PAVEMENT RESTORATION

The Contractor shall secure permits from each jurisdictional agency for all pavement restoration within the limits of said agency's jurisdiction. The Contractor shall submit working drawings of such pavement restoration prepared in accordance with the requirements of the Contract Documents and the jurisdictional agency to the AR for approval by the agency

2.54 LICENSES

2.54.1 CONTRACTOR'S LICENSE

- a. The Contractor, whether resident or nonresident of the state in which the work will be performed, will be required to show evidence of a certificate of registration as required by the following:
 - (1) District of Columbia
 - (2) Maryland
 - (3) Virginia and including any local jurisdictions therein.

2.55 ENGINEER'S CHANGE HOUSE FACILITY - NOT USED

2.56 WORK ON OR UNDER NATIONAL PARK SERVICE LAND - NOT USED

2.57 BASIS OF PAYMENT

The basis of payment will be based on the breakdown of the Price Schedule as agreed and approved by the AR and staff. The contractors work effort and progress will be evaluated on a monthly basis, by the AR and staff, and paid to the contractor as work is completed up to the Total Bid Price amount; which shall constitute complete compensation for the performance of all work required by the Contract.

2.58 QUALITY ASSURANCE COMPLIANCE

PART 1 GENERAL

2.58.1 DESCRIPTION

This Section specifies the Quality System that is to be established, documented, maintained, and executed by the Contractor to ensure that the performed work conforms to the specified requirements. The Quality System shall be consistent with the ISO 9001 standard. Certification of the Contractor to ISO 9001 is not required. However, certain suppliers and manufacturers shall be certified as required in the specifications.

A. Quality System elements include the following documentation:

1. A Quality Management System (including a Quality Manual and Quality Procedures) to consist of:
 - a. Document Control Procedures
 - b. Subcontracting and Purchasing Procedures
 - c. Process Control Procedures
 - d. Inspection and Test Plans
 - e. Integrated System Test Plan [Not Applicable]
 - f. Procedures for Control of Inspection, Measuring and Test Equipment
 - g. Procedures for Reporting, Review and Disposition of Nonconforming Product
 - h. Procedures for Control of Quality Records
 - i. Procedures for Performing Internal Quality Audits

B. Quality Assurance Standards applicable to the work include the following:

1. ISO 9001: Quality systems - Model for quality assurance in design, development, production, installation and servicing.
2. ISO 10013 - Guidelines for Developing Quality Manuals.

C. For definitions regarding quality used in this clause 2.58, refer to ISO 8402, Quality management and quality assurance - Vocabulary.

2.58.2 RELATED DOCUMENTS

General Requirements
Technical Specifications Requirements
Safety Rules and Procedures Manual
Metrorail Safety Rules and Procedures Handbook

2.58.3 PROGRAM REQUIREMENTS

- A. The Contractor shall maintain a documented, operational, and approved Quality Management System throughout the term of the Contract. This system shall generally be as prescribed in ISO 9001 and as supplemented in the Contract Documents.
- B. Certification of the Contractor under ISO 9001 is not required. The purpose of this program is for the Contractor to document how it will execute the work to assure that:
 - 1. Material, equipment, construction, and workmanship are furnished in conformance with the original Contract Design Drawings and Design Specifications Issued for Construction and with all jurisdictional codes and regulations, including the requirement for certification of American with Disabilities Act Accessibility Guideline (ADAAG) regulations compliance submittal at completion of construction by the Contractor. The Contractor's attention is directed to the fact that all projects are subject to FTA assessment for ADAAG compliance.
 - 2. The work is properly completed, tested, and furnished to the Authority on time as specified in this Contract, WMATA Safety and Security Certification Program Plan.
- C. During the term of the Contract, the Contractor shall exercise positive control over all of the work, including that of sub-consultants, subcontractors, fabricators, manufacturers, installers, and suppliers (suppliers and subcontractors) in accordance with the Quality Manual and Quality Procedures described in an approved Contractor Quality Management System.
- D. In addition to the basic Quality Management System, the Contractor shall develop, implement, and update specified Plans that are fundamentally required to assure satisfactory execution of the work. These Contractor Plans shall supplement and shall be integral components of the Quality Management System.
- E. The Quality Management System shall be revised, updated, and approved as necessary throughout the term of the Contract to reflect changes determined by management review, internal audit and/or WMATA audit to be necessary to improve the system.

2.58.4 OVERVIEW OF PROPOSED QUALITY MANAGEMENT SYSTEM

- A. Initial Quality Management System describing the proposed Quality Management System including the Quality Plan from a past similar project that was modeled on ISO 9000 or similar quality control system shall be submitted with the Phase One Qualifications or Technical Proposal.
- B. Unless specified elsewhere, the Overview shall provide:
 - 1. A description of the approach, plan and schedule for providing a documented Quality Management System as required in this Section and elsewhere in the Contract Documents.
 - 2. Interim steps to be taken by the Contractor to assure quality while the Finalized Quality Management System is being developed, approved, and implemented.
 - 3. Identification of staffing (e.g. positions) for personnel who will fulfill key functions affecting quality, including key managers of design, construction, and the quality staff.
 - 4. A contract-specific Design Control Plan Overview for this project.

5. The planned approach for construction and systems inspection and testing including that of suppliers and subcontractors.
6. The planned approach for systems testing, including that of Contractor's suppliers and subcontractors.
7. Planned means for communication of quality requirements of this section to sub-consultants, subcontractors and manufacturers including requirements for Quality Plans to management, plant/site visits and discussions with subcontractor executive management.
8. Development and implementation of subcontractor quality oversight by the Contractor including inspection, and testing required by the Contract Documents.
9. Development of Quality Management System requirements for critical subcontract elements.
10. The planned approach for employee training.
11. The planned approach for performing internal audits and audits of subconsultants and subcontractors.
12. A quality Plan from a past similar project that was modeled on ISO 9000 or similar quality control system.

2.58.5 FINALIZED QUALITY MANAGEMENT SYSTEM

- A. The Contractor shall develop a Quality Management System for the project using article 4.0 of the ISO 9001 and ISO 10013 Standards as guides. The QMS shall be an executable system of Quality Assurance and Quality Control that addresses all twenty elements of the Standard and the System. As a minimum, it shall include a Quality Manual, Procedures, and the Plans specified in this clause 2.58. Further, the Quality Manual shall show the connection and relationship of all Procedures and Quality Plans to the Quality Manual.
- B. The Quality Manual, Procedures, and Plans shall be approved by the Executive(s) responsible for the Contracting entity.
- C. Initial submission and subsequent revisions of the Quality Manual and Quality Procedures shall require Authority approval. In addition, the execution of the Quality Management System shall be subject to Authority audit throughout the term of the Contract.
- D. Work instructions shall be approved at the appropriate level within the Contractor organization and are subject to audit by the Authority.

2.58.6 CLARIFICATIONS AND ADDITIONAL REQUIREMENTS – N/A

The following clarifications and additional requirements, as they relate to the ISO 9001 Standard and ISO 10013, shall be incorporated in the Quality Management System:

A. Organization

1. Responsibility and Authority - Contractor personnel responsible for implementing the quality system shall have the authority to stop the work.
2. There shall be a clearly articulated Quality Policy approved by the Executive(s) of the Contractor entity and which shall be widely publicized and known throughout the project team.
3. The Quality Manager shall perform as the Management Representative.
4. Management Review shall occur monthly during the first six months of the Contract and no less than quarterly thereafter. Written summaries of findings and major corrective actions shall be provided to the Authority Representative within five business days following completion of each Review.
5. Organizational and Technical Interfaces shall be defined in a manner that assures inter-discipline coordination and communication among and between builders, major subcontractors, manufacturers, systems and facilities personnel, and the Authority.

B. Document Control

The Contractor shall use a computerized database to identify and manage the current revision of instructions, procedures, drawings, software revision numbers and specifications. The database shall be kept current throughout the term of the Contract. The Contractor shall provide the Authority real-time access to the information in this database through a direct connection, dial up modem connection, or web-page access.

C. Subcontracting & Purchasing

1. Purchased material, equipment, and services shall be controlled to ensure that they are properly integrated into the Work.
2. Procedural means shall be included to assure that Contractor sub-consultants, suppliers and subcontractors satisfactorily demonstrate and document an adequate system for managing quality to the Contractor.
3. The Contractor shall have procedures for providing adequate surveillance of sub-consultants, subcontractors and suppliers to assure conformance with the Quality Management System and Specification requirements. This surveillance shall include inspection and audit of off-site activities of Contractor sub-consultants, subcontractors and suppliers.

D. Product Identification and Traceability

The Contractor's quality system shall include provisions to identify and trace products and materials where appropriate and as required in the WMATA Standard and Technical Specifications.

E. Process Control

The Contractor shall include procedures for control of, including but not limited to, the following processes:

1. Completion of quality procedures, work instructions, pre-activity and coordination meetings, and training prior to the start of a related activity.
2. A formal system of continuous feedback of problems and their resolution shall be developed between the Contractor's Design Professional and construction staff.
3. Documented Procedures for checking of survey computations.
4. Documented Procedures for verifying the accuracy of and the maintenance of secondary survey controls.

F. Inspection and Testing/General

1. The Contractor shall establish an integrated Inspection and Test Plan that conforms to the Quality Management System and the individual technical specifications and that allows for tracking of actual performance of inspections and tests.
2. Inspection procedures shall include instructions necessary to implement: source inspections; receiving inspections; inspection of work in progress; hold point inspections and completion inspections.
3. Test procedures shall utilize forms for recording test results and authorized approval signatures. Each test procedure shall identify the applicable specification section, article, and paragraph.
4. Daily Quality Reports shall be provided to the Authority that summarize the construction activities, record the inspections and tests completed and the results, and record deficiencies identified, during the previous 24 hours.

G. Control of Inspection, Measuring and Test Equipment Processes will be included to assure that test equipment used by the Contractor and subcontractors meets the requirements of the standards, and that the equipment and instruments are controlled, maintained and calibrated by a nationally recognized certification entity/agency. Devices used to calibrate measuring and test equipment or other measurement standards shall be traceable to one or more of the following:

1. U.S. national standards maintained by the U.S. National Institute of Standards and Technology (NIST) and the U.S. Naval Observatory.
2. Fundamental or natural physical constants with values assigned or accepted by the U.S. NIST.
3. National standards of other countries, which are correlated, with U.S. national standards.
4. Comparison to consensus standards.

H Review and Disposition of Nonconforming Product

The authority within the Contractor organization to review and provide disposition of nonconforming products shall be identified. The disposition of product that does not conform to Contract Requirements shall be subject to approval by the Authority Representative.

I. Control of Quality Records

1. The Contractor shall establish and implement measures to identify, collect, index, file, and store. These procedures shall include a database to track and maintain control over all Quality Records generated by the Contract Work.
2. Quality control records shall be available at designated, controlled, but accessible areas at work locations. Procedures shall identify the responsible custodians for these records.
3. Quality control records shall be stored and maintained in such a way that they are readily retrievable and provided with a suitable environment that minimize deterioration or damage, and prevent unauthorized alteration or loss.
4. Quality control records shall be legible, reproducible, identifiable with the item involved, and contain the date of origination and identity of the originator, verifier, and/or responsible supervisor.
5. Applies as well to quality records, as appropriate, from subcontractors, suppliers, fabricators, and test laboratories.
6. Retention period for quality control records shall be defined as seven (7) years unless otherwise specified in the Contract. Quality control records shall be made available to the Authority throughout the retention period.

J. Internal Quality Audits N/A

1. Perform internal audits at least quarterly.
2. Record in the audit results any deficiencies in the quality system, the causes of deficiencies in the Quality System, and the status of corrective action or preventive action, when appropriate.
3. Provide the audit results to the Authority Representative and complete required corrective actions within 30 days of the audit.

2.58.7 INSPECTION AND TEST PLANS – As Applicable

- A. The Contractor shall submit Inspection and Test Plans that delineate the specific inspections and tests required to assure that characteristic design and Contract requirements of structures, components and systems are fully complied with. These Plans shall be an extension of the Quality Management System required and established in accordance with this clause 2.58. The Contractor shall submit for approval the Inspection and Test Plans for the Civil and Structural areas of construction and Inspection and Test Plans for the other areas of work.
- B. The Inspection and Test Plans shall include the following:
 1. A matrix of all tests required by the Contract Documents to be performed by Contractor, suppliers, or subcontractors.
 2. Samples of test reports - the test reports are to meet the minimum requirements called for in the applicable test standards or specifications.
 3. Provisions for coordinating onsite and offsite testing.

4. Provisions for meeting the Authority notification criteria for planned tests and inspections specified to be witnessed by the Authority. Provide the Authority a minimum of 14 calendar days advance notice.
- C. Where required by the Contract Documents, the Contractor shall separate inspection and testing requirements into sub-plans. This shall be done to facilitate coordination, and tracking of results through the "Final Completion" date.
- D. As a minimum, the Test Plans shall include the following information:
1. Specification section, article, paragraph
 2. Description of test
 3. Type of test (e.g. total System, sub-system, factory)
 4. Applicable standard
 5. Test frequency
 6. Responsibility for test performance
 7. Completion status
 8. Means of tracking and recording corrective actions being taken to assure compliance with the Contract Documents.
 9. Means for recording test results.
- E. As a minimum, the Inspection Plans shall include the following information:
1. A matrix of all inspections required by the Contract Documents and the Design Specifications and Design Drawings to be performed by Contractor, suppliers, or subcontractors and their frequency.
 2. Established hold points.
 3. Checklists to be utilized.

2.58.8 SUMMARY OF SUBMITTALS – N/A

A. Quality Management System

1. Finalized Quality Management System (Quality Manual and Quality Procedures)

One (1) original and one (1) electronic copy (NTP plus 30 calendar days and when revised)
2. Daily Quality Reports

One (1) original and one (1) electronic copy (Daily)
3. Summary of Management Review

One (1) original and one (1) electronic copy (monthly during the first six (6) months after NTP; no less than quarterly thereafter)

4. Review and Disposition of Nonconforming Product

One (1) original and one (1) electronic copy (as occurring)

5. Report of Audit Results including sub/supplier Audits

One (1) original and one (1) electronic copy (within five days of the completion of an audit)

6. Report of Completion of Corrective Actions

One (1) original and one (1) electronic copy (within 30 days of an audit)

7. Statement of Compliance Quality Certification for Payment Verification

One (1) original and one (1) electronic copy (included with each payment request)

B. Quality Plans

1. Inspection and Test Plans

One (1) original and one (1) electronic copy (NTP plus 60 calendar days for Civil and Structural work, others minimum thirty (30) calendar days in advance of the covered work scheduled to start).

C. All submittals shall be submitted for approval to the Authority.

PART 2 PRODUCTS [Not Applicable]

PART 3 EXECUTION

2.58.9 EXECUTION

A. QUALITY SYSTEM

The Contractor will submit and execute a Quality Management System and the executable Plans as prescribed in this Section.

B. QUALITY SYSTEM MANAGER AND OTHER RESOURCES

1. The Contractor shall appoint a Quality System Manager. The Quality System Manager shall be a degreed engineer, trained as a Lead Auditor in a RAB approved course to the requirements of ISO 9000:2000; and shall have 10 years of related experience including 5 years of management positions in a production, manufacturing, or construction environment and experience in QA/QC auditing
2. The Quality System Manager shall:
 - a. Report directly to and be supervised by an Officer of the Contractor at a level above that of the Project Manager responsible for the project.
 - b. Serve as a liaison officer with WMATA and the jurisdictional agencies on matters relating to the Contractor's quality system

- c. Be responsible for ensuring that the Quality System is effective in ensuring that the Contract requirements are satisfied.
 - d. Be responsible for the oversight of onsite and offsite testing by the Contractor.
 - e. In the event that the Quality System Manager is not found to be competent or to have sufficient relevant experience, the Authority will request that the Quality System Manager be removed from the project pursuant to Section 00710, PROJECT MANAGEMENT, SUPERINTENDENT AND KEY PERSONNEL. In that event, the Contractor shall submit a new candidate for consideration within 10 calendar days by submitting a resume.
3. In addition to the Quality System Manager, the Contractor shall assign additional trained and experienced staff to fulfill Contract and Contractor requirements for meeting quality. The Contractor shall provide sufficient resources to effectively manage quality related functions including the following:
- 1. Quality Management System Administration
 - 2. Design Quality
 - 3. Construction Quality
 - 4. Subcontractor Quality
 - 5. Oversight of Quality Control
 - 6. Configuration Management

C. AUTHORITY QUALITY OVERSIGHT

- 1. The principal role of the Authority in the implementation of the Quality Program will be oversight of the effectiveness of the Contractor's Quality Management System including quality control and quality assurance activities. However, the Authority reserves the right to conduct inspection of all phases of design of the Designer of the Contractor and onsite construction work activities of the Builder of the Contractor and subcontractors by Authority field staff. Any deficiencies discovered shall be brought to the immediate attention of the Contractor including written follow-up notification to the Contractor.
- 2. At its sole discretion, the Authority may conduct audits, tests, and inspections in addition to those performed by the Contractor. The Office of Quality Assurance and Warranty shall conduct the necessary audits and oversight activity for this project.

2.58.10 QUALITY MANAGER AND OTHER RESOURCES

- A. The Contractor shall appoint a full-time Quality Manager. The Quality Manager shall be a degreed engineer, trained as a Lead Auditor in a RAB approved course to the requirements of ISO 9000; and shall have 10 years of related experience including 5 years of management positions in a production, manufacturing, or construction environment and experience in QA/QC auditing.
- B. The Quality Manager shall:
 - 1. Have no other assigned duties except to establish, implement and maintain the Quality Management System for this contract.
 - 2. Report directly to and be supervised by an Officer of the Contractor at a level above that of the Project Manager responsible for the project

3. Serve as a liaison officer with WMATA and the jurisdictional agencies on matters relating to the Contractor's quality system
 4. Be responsible for ensuring that the Quality System is effective in ensuring that the Contract requirements are satisfied.
 5. Be responsible for the oversight of onsite and offsite testing by the Contractor.
- C. In the event that the Quality Manager is not found to be competent or to have sufficient relevant experience, the Authority will request that the Quality Manager be removed from the project. In that event, the Contractor shall submit a new candidate for consideration within ten (10) calendar days by submitting a resume.
- D. In addition to the Quality Manager, the Contractor shall assign additional trained and experienced staff to fulfill Contract and Contractor requirements for meeting quality. The Contractor shall provide sufficient resources to effectively manage quality related functions including the following:
1. Quality Management System Administration
 2. Construction Quality
 3. Subcontractor Quality
 4. Oversight of Quality Control
 5. Configuration Management
 6. System Testing

2.58.11 AUTHORITY QUALITY OVERSIGHT

- A. The principal role of the Authority in the implementation of the Contractor Quality Program will be oversight of the effectiveness of the Contractor's Quality Management System including quality control and quality assurance activities. However, the Authority reserves the right to inspect onsite construction work activities of the Contractor and subcontractors by Authority field staff. Any deficiencies discovered shall be brought to the immediate attention of the Contractor including written follow-up notification to the Contractor.
- B. At its sole discretion, the Authority may conduct audits, tests, and inspections in addition to those performed by the Contractor.
- C. When the Authority determines that the approved Quality Management System or Plans, or any portion or feature thereof, is not controlling work sufficiently for the work to conform to Contract standards, the Contractor shall take appropriate action to correct such deficiencies. The Authority Representative may stop the work activities if the Quality Management System is not working due to lack of Contractor's staff or for any other Contract non-compliance.
- D. Notwithstanding the above, Authority inspection, testing, or other actions shall not constitute acceptance of work, nor shall it relieve the Contractor of its contractual responsibilities.
- E. When Authority inspection is required, the Contractor shall add to the purchasing document the following statement:

"Authority inspection is required prior to shipment from your plant. Upon receipt of this

order, promptly notify the Authority's Representative at the Authority, in writing, so that appropriate planning for Authority inspection can be accomplished."

2.58.12 AUDITS OF THE CONTRACTOR'S QUALITY PROGRAM

- A. There will be an ongoing review and evaluation of implementation of the Contractor's Quality Management System to verify that the Contractor is effectively controlling the quality of design and construction. If the implementation of the Contractor's Quality Management System is determined to be ineffective by the Authority, the Authority, at its sole discretion, may withhold payment at the appropriate percentage for any and all work it deems to be deficient or nonconforming to the Contract Documents, approved Final Design Specifications, approved Final Design Drawings, and/or appropriate standards. The Contractor will be expected to make whatever changes are necessary in the organization or in the Contractor Quality Management System to provide effective control of the quality of the work.
- B. The Authority will perform audits to verify that the Contractor is effectively controlling the quality of the work. The basis for the audits will be the Contractor Quality Management System and the Contract Documents and Final Design Drawings and Final Design Specifications Issued for Construction.

2.58.13 INSPECTION AND TESTING PROGRAM

- A. The Inspection and Test programs shall be designed by the Contractor to assure that testing is performed to demonstrate that systems or components perform satisfactorily in service. Testing shall be performed by qualified and experienced personnel in accordance with approved test procedures. These procedures shall incorporate acceptance limits defined by industry codes and standards or by the Specifications; the more restrictive standard shall take precedence. All test results shall be documented and submitted to the Authority for review.
- B. Inspection and test equipment shall be controlled and maintained in serviceable condition and within correct calibration with primary standards traceable to the NIST, or an approved alternative, shall be maintained. The system shall assure the accuracy of equipment and tools used to support this procurement.
- C. Subcontractors testing their own work shall be supervised and managed by the Contractor. Overall, responsibility for testing and subcontractor performance remains with the Contractor.
- D. If tests or certifications conducted by the Authority disclose that work is not in conformance with the Contract Documents and Final Design Drawings and Final Design Specifications Issued for Construction, then the Authority will advise the Contractor as to the particular defects to be remedied. Upon correction of the defects, Contractor shall provide written notification to the Authority Representative and additional testing or certification shall be conducted as necessary to result in a proven and certified system(s). Further, in the case of such non-conformance with the Contract Documents and Final Design Drawings and Final Design Specifications Issued for Construction, the Contractor shall provide details on the preventive action taken consistent with the requirements of ISO 9001; Article 4.14 and the Contractor's approved Quality Management System.

2.58.14 STATEMENT OF COMPLIANCE QUALITY CERTIFICATION FOR PAYMENT VERIFICATION

The Contractor shall provide the original and six (6) paper copies and an electronic copy of an approved QA/QC Manager's Statement of Compliance Quality Certification with each pay request stating that the Quality System has effectively ensured that the items requested for payment have been designed or constructed to meet the design requirements, or have been inspected and tested as required to comply with Contract requirements including those of the Quality Management System. Work for which satisfactory records for design, testing, inspection or other quality elements are not available shall not qualify for payment.

2.59 EXISTING SURFACES

- a. Existing surfaces shall be carefully protected during placing of concrete and other operations under this Contract to avoid damaging existing surfaces.
- b. Existing surfaces marred or damaged by operations under this Contract shall be repaired or replaced by the Contractor as directed and at no additional cost to the Authority.
- c. The Contractor shall maintain precast concrete protective coverings, if provided under a previous contract, from the completion of the previous contract to the completion of this Contract, at which time he shall remove and dispose of the precast concrete protective covering.

2.60 EMBEDDED ITEMS – N/A

When reinforcing steel or other items embedded in the concrete are encountered in a drilling or coring operation, the operation shall be stopped. The AR shall be notified and determination made by him whether the embedded item may be cut through. If it is not permissible to cut through the embedded item, the holes shall be drilled in another location and the original holes patched to the AR's satisfaction.

2.61 PROTECTIVE DEVICES

- a. General requirements:
 - (1) Wherever necessary, shown or specified, the Contractor shall erect and maintain signs, fences, barricades and pedestrian bridges and provide watchmen for the protection of public travel, the work site, adjoining property and adjoining public places.
 - (2) The Contractor shall take positive measures to prevent entry into the site of the work and storage areas by children, animals and unauthorized adults and vehicles.
 - (3) Protective devices shall be in accordance with the regulations of the jurisdictional agencies.
- b. Fences - Not Used
- c. Barricades - The Contractor shall provide and maintain during the stinger installation a fall warning device system along all adjacent shop floor pits.

2.62 WORKING AREA WOODEN FENCING - NOT USED

2.63 AUTHORITY-FURNISHED PROPERTY - NOT USED

2.64 SPARE PARTS – NOT USED

2.65 RELIABILITY – N/A

A. Requirements: This article specifies the establishment of a System Reliability Program which shall be applied to all the equipment to be furnished under this contract. The Proposer shall furnish predicted design reliabilities.

B. Reliability Table: The Proposer shall provide a table with a line item for each piece of equipment. Each line item shall be assigned: a unit of measure, an importance index, a decision risk, the minimum MTBF and the maximum MTTR. In general the following shall be included in the table separately or if not available as part of the larger unit: the trolley unit, the D.C. collector shoe unit, the service power tips (clothes-pin types), the pendant mounted pushbutton station, the A.C. conductor unit and the pushbutton control unit.

C. DEFINITIONS

1. Meanings of terms not defined herein are in accordance with the latest edition of Rapid Transit Systems Glossary of Reliability, Availability and Maintainability Terminology," as prepared by the American Public Transit Association," Washington, D.C.

2. Mean Time Between Failures (MTBF): The average time that an equipment will operate without a chargeable failure.

$$\text{MTBF} = \frac{\text{operating time}}{\text{number of chargeable failures}}$$

3. Decision Risks:

Authority Risk - The probability of accepting the total system with a true MTBF equal to the reported MTBF.

Proposer Risk - The probability of rejecting the total system with a true MTBF equal to the reported MTBF.

4. Importance Index: A factor used to convert the MTBF of all line items of the Table of Reliability to a common base for the purpose of trade off analysis and requirement distribution. The following factors are considered in selecting the value of the Importance index for each line item:

a. Impact of failures in this line item on system operation.

b. Repair time required per failure.

c. Estimated quantity used in system.

5. Failure: Any malfunction or fault which prevents or limits equipment from performing its function in accordance with these specifications.

6. Mean Time to Restore (MTTR) The combined average time required to: (1) troubleshoot, and (2) repair the equipment for operation after report of a failure.

$$\text{MTTR} = \frac{\text{restore time accumulated}}{\text{number of chargeable failures}}$$

- D. The System Reliability Program shall describe how the reliability data was collected, what standards were used, and any clarifications or comments necessary for reviewers to evaluate the information including a description of the test facilities. If information is from an installation site not owned by the manufacturer, the owners name, address, contact person, phone number, and nature of operations shall be included.

2.66 CORRECTION OF DEFICIENCIES – N/A

- a. Definitions: As used in this Article:

(1) Deficiency:

- (a) Materials or equipment will be regarded as having a deficiency if a type of material or equipment in like service accumulates a failure rate greater than five percent within a period of 24 months following final acceptance by the Authority.
- (b) Systems or subsystems will be regarded as having a deficiency if they exhibit any condition or characteristics which are not in compliance with the requirements and intent of this Contract anytime during a period extending for 24 months following their final acceptance by the Authority.

(2) Correction:

- (a) Correction of materials or equipment exhibiting a failure rate greater than five percent means taking of any and all actions necessary to correct the deficiencies, including removal and replacement of all pieces of material or equipment in like service in a manner satisfactory to the Engineer.
- (b) Correction of systems or subsystems exhibiting one or more deficiencies means taking any and all actions necessary to eliminate any and all deficiencies in a manner satisfactory to the Engineer.

- b. General:

(1) The rights and remedies of the Authority provided in this Article:

- (a) Shall not be affected in any way by any other provisions under this Contract concerning the conclusiveness of inspection and acceptance; and
- (b) Are in addition to and do not limit any rights afforded to the Authority by any other article of this Contract.

(2) This Article shall apply only to those deficiencies discovered by either the Authority or the Contractor within 24 months after acceptance.

(3) The Contractor shall not be responsible under this Article for the correction of deficiencies in Authority-furnished property, except for deficiencies in installation, unless the Contractor performs or is obligated to perform any modifications or other work on such

property. In that event, the Contractor shall be responsible for correction of deficiencies to the extent of such modifications or other work.

- (4) The Contractor shall not be responsible under this Article for the correction of deficiencies caused by the Authority.

c. Deficiencies of accepted materials, equipment, systems or subsystems:

- (1) Notice of deficiency to Contractor: If the Contracting Officer determines that a deficiency exists in any of the materials, equipment, systems or subsystems provided the Authority under this Contract, he shall promptly notify the Contractor of the deficiency, in writing, within 30 days.
- (2) Recommendation for correction: Upon timely notification of the existence of such a deficiency, or if the Contractor independently discovers a deficiency in accepted materials, equipment, systems or subsystems, the Contractor shall promptly submit to the Contracting Officer his recommendation for corrective actions, together with supporting information in sufficient detail for the Contracting Officer to determine what corrective action, if any, shall be undertaken. The recommendation shall be submitted to the Contracting Officer within 15 working days of discovery or receipt of notice of the deficiency.
- (3) Direction to Contractor concerning correction of deficiencies: Within 30 days after receipt of the Contractor's recommendations for corrective action and adequate supporting information, the Contracting Officer, at his sole discretion, shall give the Contractor written notice not to correct any deficiency, or to correct or partially correct any deficiency within a reasonable time and at a specified location.
- (4) Correction of deficiencies by Contractor: The Contractor shall promptly comply with any timely written direction by the Contracting Officer to correct or partially correct a deficiency, at no increase in the Contract price. The Contractor shall also prepare and furnish to the Authority data and reports applicable to any correction required under this Article (including revision and updating of all other affected data called for under this Contract) at no increase in the Contract price.
- (5) Schedule of deficiency corrections: The Contractor shall prepare Schedule of Deficiency Corrections and deliver it to the Authority for approval within 15 working days of discovery of deficiency by the Contractor or receipt of notice of discovery of a deficiency by the Authority.
- (6) Modification of Contract with respect to uncorrected deficiencies: In the event of timely notice of a decision not to correct or only to partially correct a deficiency, the Contractor shall submit within 15 working days, a technical and cost proposal to amend the Contract to permit acceptance of the affected materials, equipment, systems or subsystems in accordance with the revised requirements, and an equitable reduction in Contract price shall promptly be negotiated by the parties and stated in a modification to this Contract.

- d. Deficiencies in materials, equipment, systems or subsystems: If the Contractor becomes aware at any time before acceptance by the Authority (whether before or after tender to the Authority) that a deficiency exists in any materials, equipment, systems or subsystems, he shall promptly correct the deficiency or, if he elects to invoke the procedures in Paragraph c. above, he shall promptly communicate information concerning the deficiency to the

Contracting Officer, in writing, together with his detailed recommendation for corrective action.

e. No extension in time for performance; no increase in Contract price:

- (1) In no event shall the Authority be responsible for extension or delays in the schedule deliveries or periods of performance under this Contract as a result of the Contractor's obligations to correct deficiencies, nor shall there be any adjustment of the delivery schedule or period of performance as a result of such correction of deficiencies, except as may be agreed to by the Authority in a supplemental agreement with adequate consideration.
- (2) It is hereby specifically recognized and agreed by the parties hereto that this Article shall not be construed as obligating the Authority to increase the Contract price of this Contract.

f. Transportation charges:

- (1) When the Authority returns supplies to the Contractor for correction or replacement pursuant to this Article, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the designated destination point under this Contract to the Contractor's plant, in addition to any charges provided for by (2) below. The Contractor shall also bear the responsibility for the supplies while in transit.
- (2) When compliance with the terms of this Article by the Contractor involves shipment of corrected or replacement supplies from the Contractor to the Authority, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the Contractor's plant to the designated destination point under this Contract, in addition to any charges provided for by (1) above. The Contractor shall also bear the responsibility for the supplies while in transit.

g. Failure to correct: If the Contractor fails or refuses to (1) present a detailed recommendation for corrective action in accordance with c. above, (2) correct deficiencies in accordance with c.(3) above, or (3) prepare and furnish data and reports in accordance with Paragraph c.(4) above, the Contracting Officer shall give the Contractor written notice specifying the failure or refusal and setting a period after receipt of the notice within which it must be corrected. If the failure or refusal is not corrected within the specified period, the Contracting Officer may, by contract or otherwise, as required:

- (1) Obtain detailed recommendations for corrective action;
- (2) (a) Correct the materials, equipment, systems or subsystems, or
 - (b) Replace the materials, equipment, systems or subsystems; and if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of non-conforming materials, equipment, systems or subsystems for the Contractor's account in a reasonable manner, in which case the Authority is entitled to reimbursement from the Contractor or from the proceeds for the reasonable expense of care and disposition, as well as for excess costs incurred or to be incurred; and
- (3) Obtain applicable data and reports; and charge to the Contractor the cost occasioned to the Authority thereby.

- h. Correction of deficient replacements and reperformances: Any materials or equipment corrected or furnished in replacement and any systems or subsystems revised pursuant to this Article shall also be subject to all the provisions of the Contract to the same extent as materials, equipment, systems or subsystems initially accepted, i.e., for a new 24-month period.
- i. Disassembly/reassembly expense: The Contractor shall be liable for reasonable cost of disassembly/reassembly of larger items necessary to remove the materials or equipment to be inspected and/or returned for correction or replacement.
- j. Warranties:
 - 1. The Contractor shall remedy at his own expense any failure of the work for a period of **one year** to conform to Contract Specifications and any defect of material, workmanship, or design in the work, but excluding any defect of any design furnished by the Authority under the Contract, provided that the CO or the AR gives the Contractor notice of any such failure or defect promptly after discovery but not later than two years after final acceptance of the work, except that in the case of defects or failure in part of the work of which the Authority takes possession prior to final acceptance, such notice shall be given not later than two years from the date the Authority took such possession. The Contractor, at his own expense, shall also remedy damage to equipment, the site, or the buildings or the contents hereof which is the result of any failure or defect, and restore any work damaged in fulfilling the terms of this Article. Should the Contractor fail to remedy any such failure or defect within a reasonable time after receipt of notice thereof, the Authority shall have the right to replace, repair or otherwise remedy such failure or direct at the Contractor's expense. This Warranty shall not delay final acceptance of or final payment for the Contract work.
 - 2. The AR shall perform a Substantial Completion Inspection (SCI) by Construction Phase. The warranty shall be applied by phase commencing with the SCI date by phase.
 - 3. All subcontractor's, manufacturers' and suppliers' warranties and guarantees, expressed or implies, respecting any part of the work and any materials used therein shall be deemed obtained and shall be enforced by the Contractor as the agent and for the benefits of the Authority without the necessity of separate transfer or assignment thereof; provided that, if directed by CO, the Contractor shall require such subcontractors, manufacturers and suppliers to execute such warranties and guarantees in writing to the CO or the AR.
 - 4. Any work repaired or replaced pursuant to this Article shall also be subject to the provisions of this Article to the same extent as work originally performed, the rights and remedies of the Authority provided in this Article are in addition to and do not limit any rights afforded to the Authority by any other article of this Contract.

2.67 CLEANING UP

In addition to and in accordance with the requirements of the General Provisions, the Contractor shall accomplish the following:

- a. Clean up each work site and surrounding area at the end of each work day or work shift as directed, and secure equipment and materials so as to prevent safety hazards and to permit normal movement of passengers and Authority personnel on and along the station platform area.

- b. Ensure that the track drains and the trainway, consisting of trackbed and adjacent areas, remain continuously free of debris and other foreign matter.
- c. Take all necessary steps to ensure that public areas are entirely free of obstructions, tools, debris, etc., at all times during their use by the public.
- d. Dispose of removed materials off site in accordance with regulations of federal, state and/or local jurisdictional agencies as applicable.

2.68 CONTRACTOR'S QUALIFICATIONS – N/A

- a. In addition to the Bidder's Qualifications outlined in the Solicitation Instructions, the Contractor and/or its subcontractor(s) shall have performed at least three contracts of similar scope to these specified in Section 3 of the Technical Provisions within the past five years. The degree of difficulty of these projects must at least be equal to the scope of work outlined in this contract. The Contractor must show that he was the principal contractor for this work.
- b. Personnel: The contractor shall submit a list of the supervisory personnel that supervised the above projects. The contractor must also furnish the AR with a list of personnel that will supervise the contract. Must have an approved individual, present for all shifts, with experience working on signaling circuits, in operating transit or railroad equipment rooms.

2.69 TIME EXTENSIONS DUE TO AUTHORITY ACTIONS

(NOTE: This provision is supplemental to General Provision Article 1.5 TERMINATION FOR DEFAULT, DAMAGES FOR DELAY AND TIME EXTENSIONS)

- a. The possibility exists that interruptions to work may occur, both scheduled and unscheduled, at the Authority's convenience, or specific direction, for operational or emergency reasons during contract performance. Such interruptions include, but are not limited to: access delays, power outages, equipment failure. For the purpose of determining whether or not such delay, if any, should result in an extension to the final completion date, Two (2) types of delay will be recognized as follows:
 - (1) An Access Delay, defined as any recorded instance of contractor inability to enter a scheduled station location due to Authority action at the beginning of a work shift which the Contractor had scheduled and the AR approved. In order to be recognized, any such delay must be of a continuous nature with a duration of not less than 30 minutes, and must be mutually agreed to by the Contractor and the AR.
 - (2) A Work Stoppage Delay, defined as any recorded instance of Authority-directed or controlled delay (not including stop work orders issued for Safety or Work Quality problems as permitted by the Contract) to the actual work performance of the contractor during the period of work in and around the immediate work area during the work hours which the Contractor had scheduled and the AR approved. In order to be recognized, any such work stoppage must be of a continuous nature with a duration of not less than 30 minutes per instance, and must be mutually agreed to by the Contractor and the AR.
- b. An extension to the final completion date, as applicable, of one (1) day will be granted for each recognized instance of Access Delay combined with Work Stoppage Delay which has a cumulative impact of 90 minutes for work performed on Weekdays. The maximum time extension per week is seven (7) calendar days.

- c. If concurrent work will be performed at more than one station location on any given workday and that recognized delays could occur at more than one work location, a time extension will not be allowed for such concurrent delay. That location with the greatest amount of recognizable delay per day will be used to determine the applicable time extension, if any, with the following conditions:
- (1) Access Delay and Work Stoppage Delay of the greatest continuous duration will only be recognized at one location per day of work performance.
 - (2) Access Delays and Work Stoppage Delays will be cumulative within the workweek in which they occur, with the exception that concurrent delays will not be recognized for more than one location per day of work performance.
 - (3) Each recognized instance of Work Stoppage Delay will be applied to the cumulative total.
- d. Administration of these time extensions, if any, will be as follows: As stated under Section b. cumulative recognized instances of Access Delay shall total 120 minutes (in increments of 30 minutes or more) in order to be considered for a time extension. The Contractor shall submit his claim, if any, to the AR on a weekly basis. Carryover, if any, will not be applied to the subsequent period for determination of time extension.

2.70 PROJECT MANAGEMENT SOFTWARE SYSTEM – N/A

The Contractor shall use the Authority's internet based project management software system for submitting, reviewing and tracking documents of this Contract, The system is provided and administered by the Authority and is currently called "Procore".

The Contractor shall use this internet, web based project management software system to manage all the documents issued to the Authority. This system was selected by the Authority and is designed to address the record keeping and communications requirements for the Authority's contracts, including this Contract.

The Contractor is encouraged to include this requirement in contracts with its subcontractors to facilitate the flow of documentation. If a subcontract is executed without this requirement it shall not relieve the Contractor's obligation to the Authority.

1. The Authority retains control and ownership of the system's database during the duration and upon completion of the Contract.
2. The Contractor shall, at no additional cost to the Authority, provide the necessary equipment and services at the Contractor's facilities to actively participate in the above mentioned internet based project management software system.

As a minimum, this requirement shall include:

- a. All hardware to operate the system at the Contractor's facilities.
- b. The necessary telephone or other data lines to connect the hardware to the internet at the Contractor's facilities [a Digital Subscriber Line (DSL) is the minimum recommended for optimum performance];

- c. An internet service provider for access by the Contractor's personnel to the Web site of the internet based project management software system; and
 - d. The necessary project personnel to participate.
3. The Authority will provide informal training to Contractor's key project personnel in using the internet based project management software system. Training will be provided at the Authority's location that will be determined after the Contract award. The number of individuals that will be trained shall be limited to only those Contractor's employees who will actively participate in the system.
 4. The Authority reserves the right during the period of this Contract to expand the data that is to be entered into the internet based project management software system for document control

2.71 PRE-INSTALLATION MEETINGS – N/A

- a. When required in individual Specification Sections, convene pre-installation meetings at the Project Site before starting the Work of those specific Sections.
- b. Require attendance of the parties directly affecting, or affected by, the Work of specific Section.
- c. Notify the Authority Representative 4 days in advance of the pre-installation meeting date.
- d. Prepare a meeting agenda for and preside over the pre-installation meeting.
 - (1) Review conditions of installation, preparation, and installation procedures.
 - (2) Review coordination with related Work.
- e. Notify the Authority Representative 4 days in advance of the pre-installation meeting date.
- f. Record minutes and distribute copies to participants within 2 days after the pre-installation meeting, with 2 copies each to the Engineer, Owner, and those affected by decisions made.

2.72 PRODUCT WARRANTIES – if applicable

- a. Obtain warranties and bonds executed in duplicate by responsible Subcontractors, suppliers, and manufacturers within 10 days after completion of the applicable item of Work.
- b. Execute and assemble transferable warranty documents and bonds from Subcontractors, suppliers, and manufacturers.
- c. Verify the documents are in the proper form, contain full information, and are notarized.
- d. Co-execute submittals when required.
- e. Include a table of contents, and assemble the documents in a three D side ring binder with a durable plastic cover.
- f. Submit the warranties and bonds to the Authority Representative prior to the final Application for Payment.

- (1) For equipment or component parts of equipment put into service during construction with the Owner's permission, submit warranty and bond documents within 10 days after acceptance.
- (2) For equipment or component parts of equipment other than those put into service during construction with the Owner's permission, submit warranty and bond documents within 10 days after the date of final substantial completion, but prior to the final Application for Payment.
- (3) For items of Work for which acceptance is delayed beyond final substantial completion, submit warranty and bond documents within 10 days after acceptance, listing the date of acceptance as the beginning of the warranty or bond period.

2.73 PRODUCT SUBSTITUTION PROCEDURES – N/A

- a. The Contract is based on products and standards established in the Contract Documents without consideration of proposed substitutions.
- b. The products specified define the standard of quality, type, function, dimension, appearance, and performance required.
- c. Substitution proposals are permitted for specified products except where specified otherwise.
 - (1) Do not substitute products unless the substitution has been accepted and approved in writing by the Authority Representative.
- d. The Authority Representative will consider requests for substitutions only within 15 days after date of execution of the Owner-Contractor Contract Agreement.
- e. Substitutions may be considered when a product becomes unavailable through no fault of Contractor.
- f. Document each request with complete data, substantiating compliance of the proposed substitution with the requirements of the Contract Documents, including:
 1. The proposed substitution's manufacturer's name and address, product, trade name, model, or catalog number, performance and test data, and reference standards.
 2. Itemized point-by-point comparison of the proposed substitution with the specified product, listing variations in quality, performance, and other pertinent characteristics.
 3. Reference to the Article and Paragraph numbers in Specification Section.
 4. Cost data comparing the proposed substitution with the specified product, and the amount of net change to the Contract Price.
 5. Changes required in other Work.
 6. Availability of maintenance service, and the source of replacement parts as applicable.
 7. Certified test data to show compliance with the performance characteristics specified.
 8. Samples when applicable or requested.
 9. Other information as necessary to assist Authority Representative's evaluation.

- g. A request constitutes a representation that the Offeror or Contractor:
- (1) Has investigated the proposed product, and determined that it meets or exceeds the quality level of the specified product.
 - (2) Will provide the same warranty for substitution as for the specified product.
 - (3) Will coordinate the installation, and make changes to other Work that may be required for the Work to be complete with no additional cost to Authority.
 - (4) Waives claims for additional costs or time extension that may subsequently become apparent.
 - (5) Will coordinate the installation of the an accepted substitute, making such changes as may be required for the Work to be complete in all respects.
 - (6) Will reimburse the Authority for review or redesign services associated with re-approval by the Authorities Having Jurisdiction.
- h. Substitutions will not be considered when they are indicated or implied on Shop Drawing or Product Data submittals without a separate written request or when acceptance will require revision to the Contract Documents.
- i. Substitution Submittal Procedure:
1. Submit requests for substitutions on the form attached to end of this Article.
 2. Submit 3 copies of each Request for Substitution for consideration.
 - (a) Limit each request to one proposed substitution.
 3. Submit Shop Drawings, Product Data, and certified test results attesting to the proposed product equivalence.
 - (b) The burden of proof is on the proposer.
 4. The Authority Representative will notify the Offeror or Contractor in writing of the decision to accept or reject each substitution request.

REQUEST FOR SUBSTITUTIONS FORM	
PROJECT: _____	DATE: _____
LOCATION: _____	
PROJECT NO: _____	SUBSTITUTION REQUEST NO. _____
RE: _____	
SPECIFICATION SECTION(S) / DRAWING(S) TO WHICH THIS REQUEST APPLIES	
Section Title(s): _____ _____	Section/Drawing Number(s) : _____ _____

Section Article(s)/ Paragraph(s)/ Subparagraph(s): _____	Section Page Number(s) : _____													
PROPOSED SUBSTITUTION														
Substitution Description:														
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 50%; text-align: center;">Original</th> <th style="width: 50%; text-align: center;">Proposed Substitution</th> </tr> <tr> <td>Supplier:</td> <td></td> </tr> <tr> <td>Trade/Brand Name:</td> <td></td> </tr> <tr> <td>Model Number(s):</td> <td></td> </tr> <tr> <td>Installer(s):</td> <td></td> </tr> <tr> <td rowspan="2">Differences Between Proposed Substitution and Specified Product:</td> <td></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> Point-by point comparative data attached</td> </tr> </table>	Original	Proposed Substitution	Supplier:		Trade/Brand Name:		Model Number(s):		Installer(s):		Differences Between Proposed Substitution and Specified Product:		<input type="checkbox"/> Point-by point comparative data attached
Original	Proposed Substitution													
Supplier:														
Trade/Brand Name:														
Model Number(s):														
Installer(s):														
Differences Between Proposed Substitution and Specified Product:														
	<input type="checkbox"/> Point-by point comparative data attached													
Substitution History	<input type="checkbox"/> New Product <input type="checkbox"/> 1–4 Years Old <input type="checkbox"/> 5–10 Years Old <input type="checkbox"/> More Than 10 Years Old													
Does the substitution affect other parts of the Work? <input type="checkbox"/> No <input type="checkbox"/> Yes (If yes, explain below)														

BENEFITS TO OWNER OF ACCEPTING SUBSTITUTION	
Savings to Owner: _____ \$ _____	Change in Contract Time? <input type="checkbox"/> No <input type="checkbox"/> Yes _____ Days Added _____ Days Deducted

REASON(S) FOR NOT PROVIDING SPECIFIED ITEM OR METHOD				
Supporting Data Attached:	<input type="checkbox"/> Drawings	<input type="checkbox"/> Product Data	<input type="checkbox"/> Samples	<input type="checkbox"/> Tests
	<input type="checkbox"/> Reports	<input type="checkbox"/> Other_____		
Attachments:				
<hr/>				
<hr/>				
<hr/>				
<hr/>				
<hr/>				
<hr/>				

CONTRACTOR CERTIFICATION AND SIGNATURES			
Submitted by: _____		Firm: _____	
<p>The Undersigned certifies that the:</p> <ul style="list-style-type: none"> Proposed substitution has been fully investigated and determined to be equal or superior in all respects to the specified product. Same warranty will be furnished for the proposed substitution as for the specified product. Same maintenance service and source of replacement parts, as applicable, is available. Proposed substitution will have no adverse effect on other trades and will not affect or delay the progress schedule. Cost data as stated above is complete; claims for additional costs, related to the accepted substitution, which may subsequently become apparent are to be waived. Proposed substitution does not affect dimensions and functional clearances. Contractor will make payment for changes to design, including Engineer's design, equipment, detailing, and construction costs caused by the substitution. Coordination, installation, and changes in the Work as necessary for accepted substitution will be complete in all respects. 			
Contractors Signature: _____		Date: _____	
ENGINEER'S REVIEW AND DISPOSITION			
<input type="checkbox"/> Substitution approved: Make submittals in accordance with Specification Section 01 25 00 Substitution Procedures.			
<input type="checkbox"/> Substitution approved as noted: Make submittals in accordance with Specification Section 01 25 00 Substitution Procedures.			
<input type="checkbox"/> Substitution rejected: Provide specified materials and methods.			
<input type="checkbox"/> Substitution request received too late: Provide specified materials and methods.			
Engineers Signature: _____		Date: _____	
Additional Comments:	<input type="checkbox"/> Contractor <input type="checkbox"/> Manufacturer	<input type="checkbox"/> Supplier <input type="checkbox"/> Engineer	<input type="checkbox"/> Subcontractor <input type="checkbox"/> Other _____

2.74 MANUFACTURING'S INSTALLATION INSTRUCTIONS

- a. Submit the manufacturer's installation instructions for the Authority Representative's knowledge.
- b. Submit printed instructions for the delivery, storage, assembly, installation, startup, adjusting, and finishing, to the Authority Representative in quantities specified for Product Data.
- c. Indicate special procedures, perimeter conditions requiring special attention, and special environmental criteria required for application or installation.

2.75 MANUFACTURER'S FIELD REPORTS

- a. Submit reports for the Authority Representative's knowledge.
- b. Submit the report in duplicate within 5 days 24 hours of observation to the Authority Representative for information.
- c. Submit the reports for information for assessing conformance with the information given and the design concept expressed in Contract Documents.

2.76 MANUFACTURING'S FIELD SERVICES

- a. When specified in individual Specification Sections, require material or product suppliers or manufacturers to provide qualified staff personnel to observe Site conditions; conditions of surfaces and installation; quality of workmanship; startup of equipment; testing, adjusting, and balancing of equipment; and commissioning] as applicable, and to initiate instructions when necessary.
- b. Submit the qualifications of the observer to the Authority Representative 30 days in advance of the required observations.
- c. The observer is subject to the approval of the Authority Representative.
- d. Report observations and site decisions or instructions given to applicators or installers that are supplemental or contrary to the manufacturer's written instructions.
- e. Refer to the "Manufacturer's Field Reports" Article for reporting requirements.

2.77 MOCK-UP REQUIREMENTS

- a. Tests will be performed under provisions identified in this Article and identified in individual product Specification Sections.
- b. Assemble and erect the specified or indicated items with the specified or indicated attachment and anchorage devices, flashings, seals, and finishes.
- c. Accepted mockups shall be the comparison standard for remaining Work.
- d. Where a mockup has been accepted by the Authority Representative and is specified in the product Specification Sections to be removed, remove the mockup and clear the area when directed to do so by the Authority Representative.

2.78 TESTING AND INSPECTION SERVICES

- a. Employ and pay for the services of an independent testing agency or laboratory acceptable to Owner to perform specified testing.

- (1) Before starting Work, submit the testing laboratory name, address, and telephone number, and the names of a full-time Professional Engineer or specialist and responsible officer.
 - (2) Certify that the independent testing agency or laboratory complies with the recommended requirements of the American Council of Independent Laboratories or ASTM E329.
 - (3) Submit a copy of the report of the laboratory facilities' inspection made by the Materials Reference Laboratory of the National Bureau of Standards during its most recent inspection, with the memorandum of remedies of deficiencies reported by the inspection.
- b. The independent testing agency or laboratory will perform tests, inspections, and other services specified in individual Specification Sections and as required by the Authority Representative or the Authorities Having Jurisdiction.
- (1) Laboratory: The laboratory must be authorized to operate at the Project location.
 - (2) Laboratory Staff: The laboratory must maintain a full-time Professional Engineer or other specialist on staff to review services.
 - (3) Testing Equipment: The laboratory must only use test equipment calibrated at reasonable intervals with devices of an accuracy traceable to the National Bureau of Standards or accepted values of natural physical constants.
 - (4) As specified in Paragraph 2.5.6, if specified in the technical specifications and approved under similar Authority contracts, the Contractor may in lieu of testing submit certified test reports of previous testing of factory supplied components.
- c. Testing, inspections, and source quality control may occur on or off the Project Site.
- (1) Perform off-Site testing as required by the Authority Representative.
- d. The original and two copies of Test Reports shall be submitted by the independent firm to the Authority Representative, Contractor, and Authorities Having Jurisdiction, in duplicate, indicating the observations and results of tests and compliance or noncompliance with the Contract Documents.
- (1) Submit a final report indicating correction of Work previously reported as noncompliant.
- e. Cooperate with the independent firm; furnish samples of materials, design mix, equipment, tools, storage, safe access, and assistance by incidental labor as requested.
- (1) Notify the Authority Representative and the independent firm 24 hours before the expected time for operations requiring services.
 - (2) Make arrangements with the independent firm, and pay for additional Samples and tests required for the Contractor's use.
- f. Employment of the testing agency or laboratory shall not relieve the Contractor of the obligation to perform the Work according to requirements of the Contract Documents.
- g. Retesting or re-inspection required because of nonconformance with specified or indicated requirements shall be performed by the same independent firm on instructions from the Authority Representative

- (1) Payment for retesting or re-inspection will be charged to the Contractor by deducting testing charges from Contract Sum/Price
- h. Testing Agency/Laboratory Responsibilities:
 - (1) Test Samples of mixes submitted by the Contractor.
 - (2) Provide qualified personnel at the site.
 - (3) Cooperate with the Authority Representative and Contractor in performance of services.
 - (4) Perform sampling and testing of products indicated in the Contract Documents according to specified standards.
 - (5) Ascertain compliance of materials and mixes with the requirements of Contract Documents.
 - (6) Promptly notify the Authority Representative and Contractor of observed irregularities or nonconformance of Work or products.
 - (7) Perform additional tests required by the Authority Representative.
 - (8) Attend preconstruction meetings and progress meetings.
- i After each test, have the Testing Agency/Laboratory promptly prepare and submit the original copy of the test report to the Authority Representative, Contractor, and certified copies to the Authorities Having Jurisdiction.
 - (1) When requested by the Authority Representative, provide an interpretation of the test results.
 - (2) The test report shall include the following information:
 - (a) Date issued.
 - (b) Project title and number.
 - (c) Name of inspector.
 - (d) Date and time of sampling or inspection.
 - (e) Identification of product and Specification Section.
 - (f) Location in Project.
 - (g) Type of inspection or test.
 - (h) Date of test.
 - (i) Results of tests.
 - (j) Conformance with Contract Documents.
- j. Limits on Testing Agency/Laboratory Authority:
 - (1) The agency or laboratory may not release, revoke, alter, or enlarge on the requirements of the Contract Documents.
 - (2) The agency or laboratory may not approve or accept any portion of the Work.
 - (3) The agency or laboratory may not assume the duties of Contractor.
 - (4) The agency or laboratory has no authority to stop the Work.

2.79 PRODUCT DELIVERY REQUIREMENTS

- a. Transport and handle products according to the manufacturer's instructions.
- b. Promptly inspect shipments to ensure the products comply with the requirements, the quantities are correct, and the products are undamaged.
- c. Provide equipment and personnel to handle products; use methods to prevent soiling, disfigurement, or damage.

2.80 PRODUCT STORAGE AND HANDLING REQUIREMENTS

- a. Store and protect products according to the manufacturer's instructions.
- b. Store products with seals and labels intact and legible.
- c. Store sensitive products in weathertight, climate-controlled enclosures in an environment suitable for the product.
- d. For exterior storage of fabricated products, place products on sloped supports aboveground.
- e. Provide bonded off-site storage and protection when the site does not permit on-site storage or protection.
- f. Cover products subject to deterioration with impervious sheet covering; and provide ventilation to prevent condensation and degradation of products.
- g. Store loose granular materials on solid flat surfaces in a well-drained area, and prevent mixing them with foreign matter.
- h. Provide equipment and personnel to store the products; and use methods to prevent soiling, disfigurement, or damage.
- i. Arrange the storage of products to permit access for inspection.
 - (1) Periodically inspect the stored products to verify they are undamaged and are maintained in acceptable condition.

2.81 SPARE PARTS AND MAINTENANCE PRODUCT – N/A

- a. Furnish spare parts in accordance with the requirements specified in Special Provision 2.64 (WMATA to Confirm Provision Number) and as indicated herein.
- b. Furnish spare parts, maintenance, and extra products in quantities specified in individual Specification Sections.
- c. Deliver spare parts, maintenance, and extra products to the project site and place them in a location as directed by the Authority Representative; and obtain receipts for them prior to final payment.

2.82 MAINTENANCE SERVICE- N/A

- a. Furnish service and maintenance of components indicated in Specification Sections during the warranty period.
- b. Examine system components at a frequency consistent with reliable operation.
- c. Clean, adjust, and lubricate components as required.

- d. Include a systematic examination, adjustment, and lubrication of components.
- e. Repair or replace parts whenever required.
- f. Use parts produced by the manufacturer of the original component.
- g. Do not assign or transfer maintenance service to an agent or Subcontractor without prior written consent of the Authority Representative.

2.83 CUTTING AND PATCHING

- a. Employ skilled and experienced installers to perform cutting and patching.
- b. Submit written request in advance of cutting or altering elements affecting:
 - (1) Structural integrity of element.
 - (2) Integrity of weather-exposed or moisture-resistant elements.
 - (3) Efficiency, maintenance, or safety of element.
 - (4) Visual qualities of sight-exposed elements.
 - (5) Work of Owner or separate contractor.
- c. Execute cutting, fitting, and patching [including excavation and fill] to complete Work and to:
 - (1) Fit the several parts together, to integrate with other Work.
 - (2) Uncover Work to install or correct ill-timed Work.
 - (3) Remove and replace defective and nonconforming Work.
 - (4) Remove samples of installed Work for testing.
 - (5) Provide openings in elements of Work for penetrations of mechanical and electrical Work.
- d. Execute Work by methods to avoid damage to other Work and to provide proper surfaces to receive patching and finishing.
- e. Cut masonry and concrete materials using masonry saw or core drill.
- f. Restore Work with new products according to requirements of Contract Documents.
- g. Fit Work tight to pipes, sleeves, ducts, conduits, and other penetrations through surfaces.
- h. Maintain integrity of wall, ceiling, or floor construction; completely seal voids.
- i. At penetrations of fire-rated walls, partitions, ceiling, or floor construction, completely seal voids with fire-rated material according to the technical specifications to the full thickness of the penetrated element.
- j. Refinish surfaces to match adjacent finishes.
 - (1) For continuous surfaces, refinish to the nearest intersection; for assembly, refinish entire unit.
- k. Identify hazardous substances or conditions exposed during the Work to Architect/Engineer for decision or remedy.

2.84 PROTECTING INSTALLED CONSTRUCTION

- a. Protect installed Work and provide special protection where specified in individual Specification Sections.
- b. Provide temporary and removable protection for installed products. Control activity in immediate Work area to prevent damage.
- c. Provide protective coverings at walls, projections, jambs, sills, and soffits of openings.
- d. Use durable sheet materials to protect finished floors, stairs, and other surfaces from traffic, dirt, wear, damage, or movement of heavy objects.
- e. Prohibit traffic or storage upon waterproofed or roofed surfaces. When traffic or activity is necessary, obtain recommendations for protection from waterproofing or roofing material manufacturer.
- f. Prohibit traffic from landscaped areas.

2.85 FINAL CLEANING

- a. In addition to the requirements specified in Special Provision 2.67, perform the final cleaning specified in this Article.
- b. Execute final cleaning prior to final Project assessment.
 - 1. Employ experienced personnel or professional cleaning firm.
- c. Clean interior and exterior glass and surfaces exposed to view; remove temporary labels, stains, and foreign substances; polish transparent and glossy surfaces; and vacuum carpeted and soft surfaces.
- d. Clean equipment and fixtures to sanitary condition with appropriate cleaning materials.
- e. Replace filters of operating equipment.
- f. Clean debris from roofs, gutters, downspouts, and drainage systems.
- g. Clean the site; sweep paved areas, rake clean landscaped surfaces.
- h. Remove waste and surplus materials, rubbish, and construction facilities from the site.

2.86 TESTING, ADJUSTING, AND BALANCING

- a. Owner will appoint, employ, and pay for services of an independent firm to perform testing, adjusting, and balancing.
- b. The independent firm will perform services specified in the mechanical technical specifications.
- c. Reports will be submitted by independent firm to the Authority Representative indicating observations and results of tests and indicating compliance or noncompliance with requirements of Contract Documents.

2.87 STARTING OF SYSTEMS- N/A

- a. Coordinate the schedule for startup of various equipment and systems.
- b. Notify the Authority Representative 7 days prior to the startup of each item.
- c. Verify that each piece of equipment or system has been checked for proper lubrication, drive rotation, belt tension, control sequence, and for conditions which may cause damage.
- d. Verify that tests, meter readings, and electrical characteristics agree with those required by the equipment or system manufacturer.
- e. Verify that wiring and support components for equipment are complete and tested.
- f. Execute startup under the supervision of manufacturer's representative or Contractors' personnel according to the manufacturer's instructions.
- g. When specified in individual Specification Sections, require the manufacturer to provide an authorized representative who will be present at site to inspect, check, and approve the equipment or system installation prior to startup and who will supervise placing the equipment or system in operation.
- h. Submit a written report that verifies the equipment or system has been properly installed and is functioning correctly.

2.88 PROTECTION OF EXISTING BUILDINGS AND EQUIPMENT

- a. The Contractor shall take precautions to protect both the existing building and the existing equipment. In addition, all shop equipment in and around the limits of work must remain operational throughout the entire construction process. Should the need to limit the use of a WMATA equipment item for any reason during construction, the Contractor must get prior approval from the owner.

2.89 SITE SPECIFIC WORK PLANS

- a. Prior to performing the Work (**all** construction activities including but not limited to electrical, mechanical, plumbing, structural, concrete, etc.), the Contractor shall prepare a Site Specific Work Plan (SSWP) in accordance with WMATA standards for review and approval by the Authority Representative. The standard SSWP format is shown in Appendix F; prior to any submissions the contractor is to verify with the AR for any changes in the format.
- b. The SSWP shall be submitted in Microsoft Word form a minimum of 90 days prior to the start of the portion of the construction for which the SSWP is applicable.
- c. The AR will need to obtain switching orders (SO) for any power related work, as well as any work requiring support personnel (i.e. sprinkler, fire alarm, etc.). The SO's must be requested, in writing, a minimum of 30 day prior to beginning work on the task covered by the SO.
- d. Contractor shall prepare a Site Specific Work Plan (SSWP) for each Bid Items in this Contract.
- e. The contractor is to provide a detailed description of the work to be conducted under the SSWP, this information needs to be provided in the Description of work and in the Work Activity Schedule.

- f. Prior to performing the Work (all construction activities included but not limited to electrical, mechanical, plumbing, structural, concrete, etc.), the Contractor shall prepare a Site Specific Work Plan (SSWP) in accordance with WMATA standards for review and approval by the Authority Representative. The standard SSWP format is shown in Appendix F and shall be submitted in Microsoft Word form 90 days prior to the start of construction. The contractor shall verify with AR for any changes in the format.

2.90 TEMPORARY STORAGE AND STAGING AREAS

- a. WMATA will provide onsite staging areas at each facility.

2.91 BARRIERS

- a. Description

- (1) Contractor is required to provide and maintain barriers, enclosures and/or fencing required by the Authority Representative, including barricades for designated Contractor work areas, Contractor laydown areas, and to protect shop areas that shall remain open during each phase of the project, including:

- (a) Dustproof and smoke resistant barricades
- (b) Drawings and general provisions of the Contract apply to this Section

- b. Submittals:

- (1) The contractor shall submit drawings of proposed barricade construction and layout to the Authority Representative for review and approval.
- (2) Barricades shall not be installed until the drawings for them have been approved by the Authority Representative.

- c. Action Submittals:

- (1) Location plans for temporary barriers and enclosures to be used in each phase and stage of construction

Details of field assembled barricade construction

Product and manufacturer data for moveable prefabricated barricade elements such as concrete vehicle barriers and chain link fencing.

- d. Project Conditions:

- (1) In all work areas, barricades shall enclose and prevent entry into the Work area and shall be full height and dustproof. Traffic cones and/or stakes with ribbons shall not be used.
 - (a) When this requirement is not feasible (equipment removal, equipment installation, etc.); written approval from the Authority Representative to waive this requirement is required.
- (2) The Contractor shall take all means to alleviate any or all tripping and falling hazards, both within the work area and around the shop floor.
- (3) Temporary barricades shall be a minimum of 6 feet high of solidly sheathed construction to obstruct views and prevent passage of dust and debris created by construction activity. Areas used exclusively for lay down purposes, and gates provided for vehicle or equipment access, may be of chain link fence construction with opaque cloth vision and dust protection.

e. Requirements:

- (1) Sheet material for dust and smoke control: Reinforced, fire-retardant Polyethylene Sheet, 10-mil minimum thickness, with flame-spread rating of 15 or less per ASTM E 84 and passing NFPA 701 Test Method 2.
- (2) For any materials used that are not fire-resistant treated, apply approved fire and smoke resistant paint coatings.

f. Installation and Maintenance:

- (1) Install barricades, including gates, doors, and dustproofing, in accordance with approved plans and details for each stage and phase of the Project.
- (2) Provide suitable temporary protection for all elements within the Project that are scheduled to remain. This protection shall be suitable to maintain the current condition of those existing elements.
- (3) When barricades are removed, restore the work area to its original location.
- (4) Maintain the temporary barricades as needed to they appear in "like new" conditions at all times. Maintenance on the barricades shall continue until they are removed.

2.92 CONTRACTOR WORKING HOURS

- a. Normal contractor work hours shall be as follows: (These scheduling constraints shall be at no additional cost to WMATA).
 - (1) Monday through Friday: 6:00 am – 4:00 pm
- b. Work that involves increased noise and or dust (Refer to Section 2.45 and 2.5) shall be done during the following hours:
 - (2) Monday through Friday: 3:00 pm to 5:00 am
- c. No work will be permitted on WMATA observed holidays.
- d. Contractor work hours for evolutions that require coordination such as shutdown of electrical circuits or clearing of railcars and equipment from the work areas shall be scheduled at times and days of the week to minimize impact on facility operations. Typically minimum impact will require evening and/or weekend work schedules.
- e. Work outside the above stated hours will only be permitted if directed by the Authority Representative or with prior approval from the Authority Representative

2.93 PROJECT PROGRESS AND SAFETY MEETING – if applicable

- a. The Contractor shall conduct Progress meetings in the Washington Metropolitan Area bi-weekly at regularly scheduled times convenient for all parties involved. Progress meetings are in addition to specific meetings held for other purposes, such as coordination and special pre-installation meetings. A two week work plan shall be developed by the Contractor prior to the start of the meeting as specified in Section 01322, CONTRACT PROGRESS REPORTING and will be discussed during the planning portion of the agenda. Additionally, discussions will address administrative and technical issues of concern, determining resolutions, and development of deadlines for resolution within allowable time frames. The Authority Representative or designee shall attend all progress meetings.
- b. The Contractor shall determine, together with the Authority Representative, who should attend the meeting in addition to representatives of the Authority, the Contractor, and those subcontractors, suppliers, or other entities critical to the current progress or involved in

planning, coordination or performance of future activities that are part of the Work. The parties shall each be represented by persons thoroughly familiar with and authorized to conclude matters relating to the work described in the approved Final Design Drawings and Final Design Specifications Issued for Construction.

- c. Agenda discussion items shall include, but are not limited to, review of minutes of the previous progress meeting prepared by the Contractor. The Contractor shall publish an agenda at least 3 calendar days prior to the meetings and submit to the Authority Representative in accordance with Section 01330, DESIGN AND CONSTRUCTION SUBMITTAL and will document issues of significance including submittals, schedules, quality control/assurance, safety, problems encountered, and the assignment of responsibilities for future action. Agenda items may include other items of significance that could affect progress such as:
- Contractor's design and/or construction schedule.
 - Interface requirements.
 - Time.
 - Sequences.
 - Deliveries.
 - Off-site fabrication problems.
 - Access.
 - Site utilization.
 - Updated Submittals List and Submittals.
 - Requests for Information.
 - Non-Compliance Notices.
 - Temporary facilities and services.
 - Hours of Work.
 - Resource allocation.
 - Hazards and risks.
 - Housekeeping.
 - Quality and Work standards.
 - Safety issues.
 - Change Orders
 - Documentation of information for payment requests.
 - ADMG compliance.
- d. The Contractor shall record meeting results and distribute copies to everyone in attendance and to others affected by decisions or actions resulting from each meeting

* * *

Volume 4

TECHNICAL SPECIFICATIONS/DRAWINGS **Construct and Install Data Center & Operation Control Center HVAC Rooftop Work Platforms**

WMATA is requesting construction of two rooftop work platforms at the Authority's Carmen Turner Facility (CTF) located at 3500 Pennsy Drive Building B Hyattsville, Maryland 20785. The rooftop units will support Heating, Ventilation and Air Condition (HVAC) for the Data Center & the Operations Control Center (OCC). The HVAC rooftop work platforms must be in accordance with the Technical Specifications and Drawings (attached) and installed within forty-five (45) days after receipt of contract/purchase order.

GENERAL NOTES:

1. Contractor shall field verify all dimensions of the existing support steel framing prior to preparing shop drawings for fabrication. Drawings should be submitted for approval prior to work beginning. It will be the responsibility of the contractor that the fabricated members fit all the connections. Any discrepancies between the existing conditions and the contract drawings shall be brought to the attention of the engineer for resolution prior to fabrication.
2. Design Live load - 50 PSF or a concentrated load of 2,000 pounds acting anywhere on the platform.
3. All wide flange structural steel shapes shall be ASTM A709 grade 50, or ASTM A992 Grade 50. Plates, angles, channels, and bars shall be ASTM A36 or A572 Grade 50. Steel pipes to conform to ASTM A53, Grade B.
4. WELDING: All welding of structural steel shall be in accordance with AWS D.1.1 (latest edition). Where the size of weld is not shown on the drawing, use the minimum size required by AISC (AWS) manual, 9th edition.
5. All fabricated assemblies shall be hot dip galvanized. Any damage to galvanizing during transporting and installation shall be repaired by touching up with zinc rich paint.
6. BOLTS: All bolts shall be ASTM A325 Type 1, galvanized U.N.O. bolt holes shall be bolt diameter plus 1/16 inch diameter U.N.O.
7. Grating shall be galvanized grating 2"x 3/16" bearing bars @ 1 3/16" O.C. w/ cross bars @ 4" O.C. All the hardware for attaching the grating to the steel framing shall be as required and provided by the grating manufacturer.

CONSTRUCTION NOTES:

1. The Contractor shall use protective covering over the roof rubber waterproofing membrane on all work, storage and traffic areas including under the platforms. The protective covering shall be adequate to prevent any damage to the rubber waterproofing membrane and roof structure in order to avoid damage to roof structure and rubber waterproofing membrane, the equipment, materials and structural members shall not be disturbed so that the maximum uniform load on the roof shall not exceed 20 psf. based on the existing roof framing (see attached reference drawing). The contractor shall prepare working drawings (certified by a professional engineer in the State of Maryland) showing the laydown areas and the details of protective covering.
2. The Contractor shall coordinate with mechanical and electrical groups when necessary to reroute existing conduits and pipes.
3. The Contractor shall perform inspection of the existing structures and working spaces prior to bidding to plan the construction activities.

4. All contractor's personnel working on this project will have to apply for a WMATA's contractor SMARTRIP Identification badge and pass a WMATA back ground check to be granted access to our property. These form will be provide at time of Notice To Proceed Meeting.
5. Any material to be loaded on to the roof will have to be done on a weekend day to minimize interruption to WMATA's daily work flow and parking considerations.

No welding to be done on site.

6. Hours of delivery shall be between 8:00 a.m. and 4:00 p.m. local time Monday through Friday, exclusive of legal holidays for WMATA. The Contractor shall notify COTR of deliveries within forty-eight (48) hours in advance. The Contractor shall contact and co-ordinate with Ms. Sherri Eley at 301-955-7062 for delivery/installation instructions.

Appendix A – Index of Drawings

- | | |
|-----|--|
| S-1 | GENERAL NOTES AND INDEX OF DRAWINGS |
| S-2 | PLATFORM A - STRUCTURAL FRAMING PLAN |
| S-3 | STEEL TYPICAL CONNECTION SECTIONS AND DETAILS |
| S-4 | PLATFORM B - STRUCTURE FRAMING PLAN |
| S-5 | STEEL TYPICAL CONNECTION SECTIONS AND DETAILS |
| S-6 | TYPICAL GUARD RAIL AND LADDER SECTIONS AND DETAILS |

APPENDIX B-1

ATTACHMENT A

NOTICE OF REQUIREMENTS FOR SMALL BUSINESS ENTERPRISE (SBE) PROGRAM

May 2015

~Applies only if proposal price is \$500,000 or less.

SMALL BUSINESS ENTERPRISE PROGRAM (SBE)

SMALL BUSINESS ENTERPRISE PROGRAM (SBE)

SMALL BUSINESS PROGRAM POLICY

It is the policy of the Authority (WMATA), the Federal Transit Administration (FTA), and US Department of Transportation (USDOT) to foster small business participation in federally funded contracts. In order to facilitate competition and maximize participation by small businesses, the Authority will assign small business participation within the established threshold on a contract-by-contract basis on USDOT assisted construction and on non-construction procurements (i.e., contracts for services, supplies and equipment have a total value not to exceed five hundred thousand dollars (\$500,000.00). The threshold may be satisfied by utilizing one or more small business concerns as Primes or Subcontractors or Suppliers of goods and services provided that the small business performs a minimum of fifty-one percent (51%) of the tasks pursuant to the awarded contract. The Contractor hereby agrees to carry out this policy in the award and administration of subcontracts to the fullest extent possible consistent with efficient Contract performance. Refer to Appendix B-1 for more detail on the SBE Program.

QUALIFICATIONS

- (a) A firm that is currently WMATA DBE certified under the Metropolitan Washington Unified Certification Program will automatically be certified as SBE. All other firms that meet the eligibility requirements must apply to the Authority's SBE Coordinator in the WMATA's DBE Program Office (DBEPO) for SBE status. All SBE certified firms will appear in the online WMATA SBE Directory.
- (b) A firm must be a small business as defined by the U.S. Small Business Administration (SBA) by applying current SBA business size standards found in 13 CFR Part 121 that are applicable to the type of work the firm seeks to perform in USDOT-assisted contracts.
- (c) The firm's average gross receipts cannot exceed the overall USDOT size standard for a small business (\$23.98 million averaged over the three previous fiscal years or part of year which the business has been in existence). Set forth in 49 CFR 26.65.
- (d) At least 51% of the firm's ownership must be held by individuals who meet the personal net worth (PNW) cap of \$1.32 million as prescribed by 49 CFR 26.67.
- (e) A firm must be organized for profit in order to be eligible for SBE certification.
- (f) The 51% owner must be a U.S. Citizen or Permanent Resident.
- (g) **Each firm must be qualified as a SBE before the solicitation process. Proposals and bids will not be accepted from non-SBE qualified firms.**

CERTIFICATIONS

- (a) Each certified SBE firm that is a Non-DBE firm must annually submit an affidavit to the WMATA DBEPO affirming its continued eligibility to participate in the SBE program. SBE/DBE firms do not have to submit an affidavit annually as long as they stay in DBE compliance.

- (b) A firm seeking SBE certification and/or annual renewal must cooperate fully with WMATA DBEO's requests for information relevant to the certification and annual renewal process. Failure or refusal to provide such information may result in the denial or removal of certification.

The SBE firm is responsible for listing the North American Industry Classification System (NAICS) Code(s) that is/are the primary activities of the business and ensuring the NAICS Code(s) have been approved by WMATA's SBE Coordinator.

Each SBE firm shall complete and adhere to all requirements in Appendix B-1.

~ APPENDIX B-1

SMALL BUSINESS ENTERPRISE (SBE) PROGRAM

1. SMALL BUSINESS ENTERPRISE (SBE) REQUIREMENT:

The SBE requirements of the Authority's DBE Program Plan apply to this contract. Accordingly, the Contractor shall carry out the requirements of the Authority's DBE Program Plan and this Appendix in the performance of this U.S. Department of Transportation (US DOT) assisted contract.

2. POLICY:

It is the policy of the Authority (WMATA), the Federal Transit Administration (FTA), and USDOT to foster small business participation in federally funded contracts. In order to facilitate competition and maximize participation by small businesses, WMATA will assign small business participation within the established threshold on a contract-by-contract basis on USDOT assisted construction contracts and on non-construction procurements (i.e., contracts for services, supplies and equipment having a total value not to exceed \$500,000). The threshold may be satisfied by utilizing one or more small business concerns as Primes or Subcontractors or Suppliers of goods and services provided that the small business performs a minimum of 51% of the tasks pursuant to the awarded contract. The Contractor hereby agrees to carry out this policy in the award and administration of subcontracts to the fullest extent possible consistent with efficient Contract performance.

3. DEFINITIONS:

- A. **Appendix B-1.** The Notice of Requirements for Small Business Enterprise Program, which when attached to a solicitation, implements the SBE requirements of the Authority's DBE Program Plan in the award and administration of federally funded Authority contracts.
- B. **Certified SBE.** Is a for-profit small business concern (a) that is at least 51 percent owned by one or more individuals who are economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; (b) whose management and daily business operations are controlled by one or more of the economically disadvantaged individuals who own it; and (c) whose eligibility is evidenced by a current MWUCP (WMATA or D.C. Department of Transportation Certification letter), or an SBE certification letter issued by WMATA's Disadvantaged Business Office.
- C. **Contractor.** One who participates, through a contract or subcontract (at any tier), in a US DOT assisted highway, transit or airport program.
- D. **Commercially Useful Function (CUF).** An SBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the SBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an SBE is performing a commercially useful function, the Authority will consider the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing.
 - (1) An SBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of SBE participation.

- (2) If an SBE does not perform or exercise responsibility for at least 51 percent of the total cost of its contract with its own work force, or if the SBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work, the Authority will presume that the SBE is not performing a commercially useful function.
- E. The following factors will be used by the Authority in determining whether an SBE trucking company is performing a commercial useful function:
 - (1) The SBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible for on a particular contract.
 - (2) The SBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract.
 - (3) The SBE may lease trucks from another SBE firm, including an owner-operator who is certified as an SBE.
 - (4) The SBE may also lease trucks from a non-SBE firm, including an owner-operator. The SBE who leases trucks from a non-SBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement.
 - (5) The lease must indicate that the SBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the terms of the lease with the consent of the SBE, so long as the lease gives the SBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the SBE.
- F. **DC DOT.** The District of Columbia Department of Transportation.
- G. **Joint Venture.** An association of an SBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the SBE is responsible for a distinct, clearly defined portion of the work of the contract and shares in the capital contribution, control, management, risks, and profits of the joint venture commensurate with its ownership interest.
- H. **Metropolitan Washington Unified Certification Program (MWUCP).** A unified certification program mandated by 49 CFR §26.81 between two federal transit recipients (WMATA and the D.C. Department of Transportation). The agreement became effective January 2005.
- I. **Race-conscious.** A measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs.
- J. **Race-neutral.** A measure or program that is, or can be, used to assist all small businesses. For the purposes of the SBE and DBE programs, race-neutral includes gender-neutrality.
- K. **Small Business Concern.** With respect to firms seeking to participate as SBE's in US DOT assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration implementing regulations (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26.65(b).
- L. **Economically Disadvantaged Individual.** Any individual who is a citizen (or other lawfully admitted permanent resident) of the United States and, in general, whose net worth is less than \$1.32 million (excluding equity in personal residence and applicant firm)
- M. **US DOT Assisted Contract.** Any contract between the Authority and a contractor (at any tier) funded in whole or in part with US DOT financial assistance, including letters of credit or loan guarantees.

- N. **WMATA.** Washington Metropolitan Area Transit Authority, the transit system (rail and bus) serving the metropolitan Washington area, including parts of Virginia and Maryland.

4. SOLICITATION REQUIREMENTS:

The proposer shall submit the following with its solicitation package. Any proposer/bidder who fails to complete and return this information with its solicitation package shall be deemed to be not responsive and may be ineligible for contract award. Proposers/bidders that are not SBE certified shall be deemed to be not responsible and will be ineligible for Contract award.

The proposer/bidder shall submit the following items within ten (10) calendar days after notification that they are the apparent successful proposer:

- A. A copy of a current WMATA, D.C. DOT or MWUCP certification letter(s) or SBE certification letter shall be attached to evidence SBE pre-certification. All SBE firms must be pre-certified. Participation by a firm that is not currently certified as an SBE by the Authority at the time of the due date for offers on a contract, does not count. All SBE firms must be in compliance with 49 CFR, Part 26.
- B. Information for Determining Joint Venture Eligibility, if applicable (Attachment 1, pgs. 1, 2, 3, 4). Submittal shall be signed by all parties, dated and notarized.
- C. Copy of Joint Venture Agreement, if applicable. Submittal shall be signed by all parties, dated and notarized.
- D. Completed "Schedule of Participation for SBE Contracts" (Attachment 2) identifying the area of work and percentage of contract performance for SBE prime contractor and all subcontractors. The SBE must perform, at least 51% of the total contract value, to meet the SBE contract performance requirement.
- E. Executed "Letter of Intent to Perform as Subcontractor on SBE Contract" (Attachment 3) must be submitted for all subcontractors.

5. CONTRACT ADMINISTRATION REQUIREMENTS:

The following requirements apply after contract award:

- A. The Contractor shall include the following provision in the General Provisions of each subcontract it awards:

"The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in termination of this contract or such other remedy as the Buyer deems appropriate."
- B. The Contractor shall report on SBE performance on the attached, SBE Prime Contractor Prompt Payment Report (Attachment 4) which shall be submitted monthly with each payment request. Failure to submit these report(s) may result in suspension of contract payments. The contractor shall certify with each payment request that payment has been or will be made to all subcontractors due payment, within ten (10) days after receipt of payment from the Authority for work by that subcontractor. The Contractor shall inform the COR or COTR, with their payment request, of any situation in which scheduled subcontractor payments have not been made and the reason therefore. The Contractor shall require each subcontractor to complete and forward to the Small Business Coordinator on a monthly basis a "SBE Subcontractor Prompt Payment Report" (Attachment 5). The subcontractor shall certify that payment has been received.

- C. The Contractor must have the prior written approval of the contracting officer and the SBE office before substitution for an SBE subcontractor, regardless of the reason for substitution. Failure to obtain Authority approval could result in the Authority declaring the Contractor ineligible to receive further Authority contracts for three years from the date of the finding.
- D. The contractor shall forward copies of all subcontracts to the Small Business Coordinator at the time of their execution.
- E. If the contracting officer or other delegated authority's representative determines that the Contractor has failed to comply with this Appendix B-1, he/she will notify the Contractor of such non-compliance and the action to be taken. The Contractor shall, after receipt of such notice, take corrective action. If the Contractor fails or refuses to comply promptly, the contracting officer or other delegated authority's representative may issue a "stop work order" stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop work order shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor. When the Authority proceeds with such formal actions, it has the burden of proving that the Contractor has not met the requirements of this Appendix, but the Contractor's failure to meet its Appendix B-1 goal shall shift to it the requirement to come forward with evidence to show that it has met the good faith requirements of this Appendix.
- F. The Contractor agrees to cooperate in any studies or surveys as may be conducted by the Authority which are necessary to determine the extent of the Contractor's compliance with this Appendix.
- G. The Contractor shall keep records and documents for three years following performance of this Contract to indicate compliance with this Appendix. These records and documents, or copies thereof, shall be made available at reasonable times and places for inspection by any authorized representative of the Authority and will be submitted upon request together with any other compliance information which such representative may require.
- H. If the Authority, the FTA or the US DOT has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements regarding the SBE Program, the matter shall be referred to the WMATA's DBE office.
- I. Failure by the Contractor to carry out the requirements of this Appendix is a material breach of this Contract, which may result in the termination of this Contract under the Default provision of this Contract or such other remedy as the Authority deems appropriate.

Information For Determining Joint Venture Eligibility

Page 1

.....
Name and address of Joint Venture:

Contact Person: _____ Telephone: _____

Have you attached a copy of the Joint Venture agreement? ☐ Yes ☐ No

NOTE: Affidavit will not be processed without a copy of the Joint Venture agreement.
.....

Name and address of Joint Venture partner:

Contact Person: _____ Telephone: _____

Status of firm: ☐ DBE ☐ Non-Minority ☐ Female ☐ Veteran.

Does firm have current WMATA, DC DOT or MWUCP DBE certification? ☐ Yes ☐ No
.....

Name and address of Joint Venture partner:

Contact Person: _____ Telephone: _____

Status of firm: ☐ DBE. ☐ Non-Minority ☐ Female ☐ Veteran.

Does firm have current WMATA, DC DOT or MWUCP DBE certification? ☐ Yes ☐ No
.....

Describe the nature of the Joint Venture business:

Describe the role in the Joint Venture of each partner listed above:

Describe the experience and business qualifications of each partner in the Joint Venture listed above:

Information For Determining Joint Venture Eligibility

Page 2

Indicate the percentage of ownership in the Joint Venture for each Joint Venture partner, indicating dollar amounts wherever applicable.

Name of Partner	Percentage of Ownership	Profit and Loss Sharing	Capital Contributions including Equipment	Other Agreements
-----------------	-------------------------	-------------------------	---	------------------

TOTALS:

Identify by name, title, race, sex and company affiliation those individuals responsible for the management control of and participation in this contract:

1. Financial decisions, such as payroll, insurance, surety and/or bonding requirements:

Name: _____ Race: _____

Title: _____ Sex: ☐ Male ☐ Female

Company affiliation: _____

2. Management decisions, such as estimating, marketing and sales, hiring and firing, purchasing supplies:

Name: _____ Race: _____

Title: _____ Sex: ☐ Male ☐ Female

Company affiliation: _____

3. Supervision of field operations:

Name: _____ Race: _____

Title: _____ Sex: ☐ Male ☐ Female

Company affiliation: _____

M

Information For Determining Joint Venture Eligibility

Page 3

The undersigned swear that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operations of our following named Joint Venture:

and the intended participation by each Joint Venturer in the undertaking. Further the undersigned covenant and agree to provide the Authority current, complete and accurate information regarding actual Joint Venture work and the payment thereof and any proposed changes in any of the Joint Venture arrangements and to permit the audit and examination of the books, records and files of the Joint Venture, or those of each Joint Venturer relevant to the Joint Venture, by authorized representatives of the Authority or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal and State laws concerning false statements.

It is recognized and acknowledged that the Authority's SBE Program shall have access to the information provided herein above for the purpose of establishing eligibility of the Joint Venture.

It is understood that trade secrets and information privileged by law, as well as commercial, financial, geological and geophysical data furnished will be protected.

(NAME OF FIRM)

(NAME OF SECOND FIRM)

(SIGNATURE OF AFFIANT)

(SIGNATURE OF AFFIANT)

(PRINT NAME)

(PRINT NAME)

(TITLE)

(TITLE)

(DATE)

(DATE)

.....

M

Date: _____ State: _____ County: _____

On this _____ day of _____, 20_____,

before me appeared _____
(Name)

to me personally known, who, being duly sworn, did execute the foregoing Affidavit, and did state that he or she was properly authorized by

(Name of Firm)
to execute the Affidavit and did so as his or her free act and deed.

(Seal) Sworn and subscribed before me _____
(Notary Public)

Commission Expires: _____

.....
Date: _____ State: _____ County: _____

This _____ day of _____, 20_____,

before me appeared _____
(Name)

To me personally known, who, being duly sworn, did execute the foregoing Affidavit, and did state that he or she was properly authorized by

(Name of Firm)
to execute the Affidavit and did so as his or her free act and deed.

(Seal) Sworn and subscribed before me _____
(Notary Public)

Commission Expires: _____
.....

S U B M I T W I T H B I D / P R O P O S A L
SCHEDULE OF PARTICIPATION on SBE Contract

Contract No. _____

Project Name _____

Name of Bidder/Proposer _____

The bidder/proposer shall complete this Schedule by identifying those firms, with scope of work and price, who have agreed to perform work on this Contract. The bidder/proposer agrees to enter into a formal agreement with the firm(s) listed for the work and at, or greater than, the prices listed in this Schedule subject to award of a Contract with the Authority.

Name of Subcontractor	Address	Type of Work (Electrical, Paving, Etc.) and Contract Items or Parts Thereof to be Performed and Work Hours Involved	Agreed Price
Subtotal \$ Subcontractors			\$_____
Name of Prime Contractor	Address	Type of Work (Electrical, Paving, Etc.) and Contract Items or Parts Thereof to be Performed and Work Hours Involved	Agreed Price
Subtotal \$ SBE Prime Contractor			\$
TOTAL \$ ALL CONTRACTORS		TOTAL	\$

Signature & Title of Contractor Representative

Date

**LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR/JOINT VENTURE
(ALL ITEMS MUST BE COMPLETED)**

TO: _____
(Name of Bidder/Proposer)

The undersigned intends to perform work in connection with the above projects as (check one):

_____ an individual _____ a corporation
_____ a partnership _____ a joint venture

Specify in detail particular work items or parts thereof to be performed:

at the following price: \$ _____

Please indicate _____% of the dollar value of the subcontract that will be awarded to subcontractors, if applicable. The undersigned will enter into a formal agreement with you for the above work upon your execution of a contract with the Authority.

Name of SBE Firm's Subcontractor/Joint Venture

Phone Number

Address

WMATA Vendor ID

Signature & Title

Date

The following is to be completed by the Prime Contractor. A copy of this letter must be returned to the subcontractor to indicate acceptance.

To: _____
(Name of Subcontractor)

You have projected your interest and intent for such work, and the undersigned is projecting completion of such work as follows:

WORK ITEMS:

PROJECTED SUBCONTRACTOR COMMENCEMENT DATE: _____

PROJECTED SUBCONTRACTOR COMPLETION DATE: _____

(Name of Prime Contractor & Acceptance Signature) _____

Washington Metropolitan Area Transit Authority (WMATA)

SMALL BUSINESS ENTERPRISE (SBE)
PRIME CONTRACTOR'S PROMPT PAYMENT REPORT

Page _____ of _____
Reporting Period _____
Contract Number _____

This Report is required to be submitted to the DBE Office, Attn: Coordinator, Small Business Programs, 8201 Ardwick Ardmore Road, Landover, MD 20785, pursuant to the requirements of WMATA's DBE Program Plan and 49 CFR Part 26.

Name of SBE Prime Contractor:

Prime Contract Amount: :

Name of Sub-Contractor	SBE (Y/N)	Description of Work	Date Contract Awarded	Amount of Sub-Contractor Award	Amount Paid This Reporting Period	Cumulative Paid To Sub- Contractor

I certify the information furnished with respect to subcontractor performance correct to the best of my knowledge and represents a current status of the SBE prime contractor with subcontractors for the designated period covered by this report. Further, those subcontractors, due payment pursuant to the terms of their subcontracts will be paid within ten days after receipt of payment from WMATA.

Signature & Title of Authorized Representative: _____ Date: _____

Washington Metropolitan Area Transit Authority (WMATA)

SMALL BUSINESS ENTERPRISE (SBE)
SUBCONTRACTOR'S PROMPT PAYMENT REPORT

Page _____ of _____
Reporting Period _____
Contract Number _____

This Report is required to be submitted to the DBE Office, Attn: Coordinator, Small Business Programs, 8201 Ardwick Ardmore Road, Landover, MD 20785, pursuant to the requirements of WMATA's DBE Program Plan and 49 CFR Part 26.

Subcontractor: _____

SBE Prime Contractor: _____ Subcontract Amount: _____

Description of Service/Product Performed	Invoice Date	Invoice Amount	Payment Received From Prime Contractor (<i>Check # or EFT Confirmation #</i>)	Cumulative Payments Received From Prime Contractor

I certify the information furnished with respect to payment(s) by the prime contractor for the above services/products is true and accurate to the best of my knowledge.

Signature & Title of Authorized Representative: _____ Date: _____

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 or graphic instructions issued to clarify, revise, add, or delete IFB 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.

Bid: A submission made by an interested party seeking to receive award of a Contract pursuant to this Solicitation that, if accepted by the Authority, would bind the Bidder to perform the resultant Contract.

Bid Bond: An insurance agreement, accompanied by a monetary commitment, by which a third party (surety) accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds in the required amount and if the contract is awarded to the bonded bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount.

Bidder: A party submitting a Bid pursuant to this Solicitation.

Bid Security. A bond or deposit that guarantees that the Bidder, if awarded the Contract, will accept the Contract as bid.

Bidder's Default: The unjustified failure or refusal of the Bidder to whom WMATA tenders a Contract pursuant to this Solicitation to accept the award of, and proceed to execute upon the Work of, such Contract.

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.*

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: The documents consist of the IFB Documents, all Amendments issued before the effective date of the Agreement, and all Modifications issued after the effective date of the Contract; the Notice to Proceed; including the Contractor's Bid, as 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.*

Disadvantaged Business Enterprise ("DBE"): A for-profit small business concern that has been certified by the Authority to be at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more individuals, and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Descriptive literature: Information provided by a Bidder, 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.

Explanation: Additional information or clarification provided by an Authority representative to one or more prospective Bidders 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.

FTA: Federal Transit Administration, an agency within the United States Department of Transportation that provides financial and technical assistance to local public transit agencies.

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.*

Government: *The government of the United States of America.*

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 Bid 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 Bidders or adversely impact the interests of the Authority.*

Modification: *A written document issued which alters the scope of the Work, the Schedule, the Contract Price, the Period of Performance, or makes any other change to the Contract after award or execution of the Contract.*

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.*

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 Bidders or Contractor request clarification, verification, or information concerning a portion of the IFB or the Work.

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 Invitation for Bids (IFB) 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 CAD Manual: Document that establishes drafting criteria for drawings and electronic files that provide templates for drawing/plotter configuration to Bidders and Contractor.

WMATA Manual of Design Criteria: Document that outlines the design criteria and process requirements that must be followed for the submittal of project information to WMATA, and measures that are required when constructing a project in the vicinity of, or impacting WMATA systems and facilities.

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 design and construction services, including supervision, quality control and quality assurance, labor, materials, machinery, equipment, tools, supplies and facilities required to complete the Project, or the various separately identifiable parts thereof including but not limited to Safety, Security, System Safety Certification and Commissioning requirements, in accordance with the terms of the Contract.

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.

Appendix D - Wage Rates

IFB/CONTRACT NUMBER: FQ16140

All on-site work to be performed at the **BUILDING** Rates.

NOTICE: In accordance with 29 CFR, Part 1, the contractor will be required to pay wages which are not less than those established by the final Wage Determination Decision contained in the solicitation.

General Decision Number: MD160058 06/17/2016 MD58

Superseded General Decision Number: MD20150058

State: Maryland

Construction Type: Building

County: Prince George's County in Maryland.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.15 for calendar year 2016 applies to all contracts subject to the Davis-Bacon Act for which the solicitation was issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.15 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2016. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/08/2016
1	01/15/2016
2	02/19/2016
3	05/20/2016
4	06/03/2016
5	06/10/2016
6	06/17/2016

ASBE0024-007 10/01/2015

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 34.33	13.92

Includes the application of all insulating materials, protective coverings, coatings and finishes to all types of mechanical systems

ASBE0024-010 10/01/2015

	Rates	Fringes
ASBESTOS WORKER: HAZARDOUS MATERIAL HANDLER (Removal of hazardous material from ceilings, floors, mechanical systems, and walls).....	\$ 21.61	5.54

* BRMD0001-006 05/01/2016

	Rates	Fringes
TILE SETTER.....	\$ 27.25	10.68

* BRMD0001-011 05/01/2016

	Rates	Fringes
BRICKLAYER (Excluding Pointing, Caulking and Cleaning).....	\$ 30.61	9.70

* BRMD0001-012 05/01/2016

	Rates	Fringes
MASON - STONE.....	\$ 35.91	16.17

* BRMD0001-013 05/01/2016

	Rates	Fringes
TERRAZZO WORKER/SETTER.....	\$ 27.25	10.68

CARP0132-017 01/01/2016

	Rates	Fringes
CARPENTER (Including Acoustical Ceiling Installation, Drywall Hanging, Metal Stud Installation and Form Work).....	\$ 27.56	9.18

CARP1831-002 04/01/2013

	Rates	Fringes
MILLWRIGHT.....	\$ 31.59	8.58

ELEC0026-021 09/01/2014

	Rates	Fringes
ELECTRICIAN (Communication and Sound Equipment).....	\$ 27.05	8.58

ELEC0026-022 06/06/2016

	Rates	Fringes
--	-------	---------

ELECTRICIAN (Including low
voltage wiring for and
installation of alarms, HVAC
controls).....\$ 43.70

16.06+a

- a. PAID HOLIDAYS: New Year's Day, Inauguration Day, Martin Luther King Jr.'s Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the day after Thanksgiving Day and Christmas Day.

ELEV0010-001 01/01/2016

Rates

Fringes

ELEVATOR MECHANIC.....\$ 41.90

29.985+a+b

- a. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Day and the Friday after Thanksgiving.
- b. VACATIONS: Employer contributes 8% of basic hourly rate for 5 years or more of service; 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

ENGI0077-017 05/01/2013

Rates

Fringes

POWER EQUIPMENT OPERATOR:

Backhoe.....\$ 32.40

8.45+a

Bulldozer.....\$ 31.65

8.45+a

- a. PAID HOLIDAYS: New Year's Day, Inaugural Day, Decoration Day, Independence Day, Labor Day, Martin Luther King's Birthday, Veterans' Day, Thanksgiving Day, Friday after Thanksgiving and Christmas Day.

IRON0005-005 06/01/2015

Rates

Fringes

IRONWORKER, STRUCTURAL AND

ORNAMENTAL.....\$ 30.65

18.135

IRON0201-006 05/01/2015

Rates

Fringes

IRONWORKER, REINFORCING.....\$ 27.50

18.58

LABO0657-021 06/01/2015

	Rates	Fringes
LABORER (Common or General).....	\$ 14.93	7.31
LABORER: Mason Tender -		
Cement/Concrete.....	\$ 22.63	7.31
LABORER: Pipelayer.....	\$ 22.63	7.31

PAIN0051-014 06/01/2014

	Rates	Fringes
GLAZIER		
Glazing Contracts \$2		
million and under.....	\$ 24.77	9.85
Glazing Contracts over \$2		
million.....	\$ 28.61	9.85

PAIN0051-019 06/01/2014

	Rates	Fringes
PAINTER		
Brush, Roller, Spray and		
Drywall Finisher/Taper.....	\$ 24.89	9.05
Industrial.....	\$ 29.60	9.05

PLAS0891-005 07/01/2013

	Rates	Fringes
PLASTERER.....	\$ 28.33	5.85

PLAS0891-006 02/01/2014

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 27.15	9.61

PLAS0891-008 08/01/2015

	Rates	Fringes
PLASTERER (Fireproofing		
Including Sprayer, Mixer, and		
Handler)		
Handler.....	\$ 16.50	4.59
Mixer/Pump.....	\$ 18.50	4.59
Sprayer.....	\$ 23.00	4.59

PLUM0005-010 08/01/2015

	Rates	Fringes
PLUMBER.....	\$ 39.67	16.60+a

- a. PAID HOLIDAYS: Labor Day, Veterans' Day, Thanksgiving Day and the day after Thanksgiving, Christmas Day, New Year's Day, Martin Luther King's Birthday, Memorial Day and the Fourth of July.

PLUM0602-011 08/01/2015

	Rates	Fringes
PIPEFITTER (Including HVAC Pipe and System Installation)....	\$ 38.89	19.97+a

- a. PAID HOLIDAYS: New Year's Day, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and the day after Thanksgiving and Christmas Day.

ROOF0030-016 05/01/2016

	Rates	Fringes
ROOFER.....	\$ 28.75	11.74

SFMD0669-001 01/01/2016

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 32.40	18.52

SHEE0100-015 01/01/2016

	Rates	Fringes
SHEET METAL WORKER (Including HVAC Duct Installation).....	\$ 39.79	16.77+a

- a. PAID HOLIDAYS: New Year's Day, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and Christmas Day

SUMD2010-092 08/04/2010

	Rates	Fringes
LABORER		
Grade Checker.....	\$ 16.00	2.90
Landscape.....	\$ 9.23	0.00
Mason Tender - Brick.....	\$ 13.28	2.95
Mason Tender - Stone.....	\$ 14.03	0.00
Mason Tender for Pointing, Caulking and Cleaning.....	\$ 14.15	0.00

Mortar Mixer.....	\$ 16.61	9.08
-------------------	----------	------

POINTER, CAULKER, CLEANER,

Includes pointing, caulking, cleaning of existing masonry, brick, stone and cement structures (restoration work); excludes pointing, caulking, cleaning of new or replacement masonry, brick, stone or cement.....\$ 19.14

POWER EQUIPMENT OPERATOR:

Asphalt Roller.....	\$ 21.35	5.38
Bobcat/Skid Loader.....	\$ 18.05	8.78
Boom.....	\$ 21.44	8.29
Crane.....	\$ 20.95	6.18
Excavator.....	\$ 20.00	0.00
Forklift.....	\$ 16.00	5.12
Gradall.....	\$ 20.50	8.42
Grader/Blade.....	\$ 14.50	5.18
Loader.....	\$ 24.00	5.40
Paver.....	\$ 17.47	6.36
Roller excluding Asphalt....	\$ 17.60	3.88

TILE FINISHER.....	\$ 17.87	7.32
--------------------	----------	------

TRUCK DRIVER

Dump Truck.....	\$ 15.90	1.12
Tractor Haul Truck.....	\$ 17.87	9.98

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in

this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7).

Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION

Appendix G - Safety And Security Certification Process

PART 1 GENERAL

1.01 Summary

This section specifies the process used to certify the safety and security related elements of the WMATA system contract.

1.02 Related Documents

WMATA Safety & Security Certification Program Plan
Project Specific Safety and Security Program Plan (To be formulated and provided by Contractor)
Preliminary Certifiable Items List (CIL) (To be provided prior to award)
WMATA Daily ATC Certification Procedures
WMATA ATC System Integrity Maintenance Practices
FTA Handbook for Transit Safety & Security Certification
Section 01113, System Integration
Section 01114, Safety & Environmental Requirements
Section 01142, Site Specific Work Plan

1.03 General

The purpose of the Safety and Security Certification Program is to ensure that:

The design, construction, fabrication, installation, testing and commissioning of all critical elements (civil, structural and systems) have been evaluated for conformance with the safety and security requirements and to verify their readiness for operational use.

WMATA's bus and rail systems are operationally safe and secure for customers, employees and the general public.

The objective is to achieve acceptable risk through a systematic approach to hazard analysis and management, criteria adherence, design and construction certification and review, and formal contract acceptance. This is accomplished through documentation and verification that:

System safety hazards are identified, assessed, and mitigated to acceptable and manageable risk levels.

Security vulnerabilities are identified and assessed, and documented action is taken to resolve identified unwarranted risk.

Appropriate codes, guidelines and standards have been reviewed to provide a basis for safety and security considerations in final design documents.

Facilities, systems and/or equipment have been designed, constructed, inspected and tested in accordance with applicable codes and standards.

1.04 Safety and Security Certification Process Requirements

WMATA SAFE, with the coordination and cooperation of WMATA's SCRC, shall ensure the Contractor establishes and maintains a systematic, documented, comprehensive, verifiable, and continuous System Safety and Security Certification process that is applied throughout the duration of the contract to implement the intent of the WMATA Safety & Security Certification Program Plan. At a minimum, WMATA SAFE and members of the WMATA SCRC shall ensure that the Contractor's Safety & Security Certification Program:

Complies with the WMATA Safety & Security Certification Program Plan. When applicable the Contractor will be required to prepare a Project Specific Certification Plan (also referred to as the project's Safety and Security Certification Management Plan (SSCMP)).

Requires that Contractor assign a Certification Manager and additional resources as required to manage the Safety & Security Certification process from the notice-to-proceed throughout the lifecycle of the project on behalf of the contractor. The Certification Manager shall be subject to review and approval by WMATA SAFE.

Requires that Safety and Security Certification activities be included on the project master schedule critical path for each phase of the project lifecycle (design, construction, testing and pre-revenue service) and that clear certification milestones be identified throughout the life cycle of the project. The Contractor must track the completion of the Safety and Security Certification effort and provide bi-monthly (every 60 days) reports to WMATA Project Management and WMATA SAFE on the progress of the certification effort.

Perform a Hazard Analyses (HA) and a Threat and Vulnerability Assessments (TVA) to identify potential hazards, threats and vulnerabilities that may present risks to the system and to identify and implement acceptable mitigations to eliminate and/or control identified risks.

Participate in WMATA led working groups whose purpose is to oversee and manage the administration of the safety and security certification for the Project and to ensure all WMATA requirements with regards to safety are being met.

Support development of a Certifiable Items Lists (CIL), which can be developed using the results of hazard analyses and threat and vulnerability assessments or other methods that are acceptable to WMATA SAFE and Project Management, and support maintenance of an electronic CIL that shall be updated based on inputs from the working group.

Demonstrate, document and certify that Final Design has been performed in compliance with and satisfies all applicable codes and standards.

Conduct tests and inspections to demonstrate and document compliance with contract requirements; to demonstrate that actions taken to eliminate and control risks identified through the hazard analysis and threat and vulnerability assessment processes have been implemented and are effective; and to demonstrate that completed facilities, systems, and equipment function as intended.

Maintain a database that documents completed analyses, approvals of designs, design changes and variances, inspections, tests, and other necessary information required for each certifiable item identified on the CIL. This shall include the maintenance of an electronic document management system that enables retrieval of the aforementioned documentation for each certifiable element.

Encompasses personnel training and qualification requirements. This shall include the provision of documentation that verifies that all required personnel training and qualification for operations, maintenance, and emergency response has been completed by all necessary personnel.

Documents that the requirements for operational and system integrated tests have been fulfilled to WMATA's satisfaction.

Includes the issuance of a Safety and Security Certificate for each CIL element upon completion of the certification effort for that element. The Safety and Security Certificate must be signed by the Contractor Representative, the WMATA Project Manager, the AGM of Rail/Bus Operations, and by Plant Maintenance (as applicable) prior to being signed by the Chief Safety Officer.

Final acceptance and substantial completion notification shall not be issued until the Safety & Security Certification Report (see part 2.01 of this section) has been received and approved by WMATA's Safety Certification Review Committee and signed off by WMATA's Executive Management. Receipt of this acceptance is provided by the issuance of the WMATA System Safety & Security Certification Certificate of Compliance.

- 1.05 Additional Information – Roadway Worker Protection Training – All Contractor personnel that will be on site will be required to attend and complete WMATA Roadway Worker Protection Training, Level 1.

PART 2 PRODUCTS

When applicable, the contractor may be required to develop and submit for approval a Project Specific Certification Plan (also referred to as project's Safety and Security Certification Management Plan). This plan must be developed at the beginning of the project along with the project's other management plans. It must adhere to the requirements of WMATA's Safety and Security Certification Program Plan, and must specify how the project will be certified.

- 2.02 This Section specifies requirements to produce a Safety and Security Certification Report which shall certify that at the time of final acceptance, all Safety Critical Elements of the Contract are safe for passengers, WMATA employees, emergency responders, and the general public. The Safety and Security Certification Report must also ensure that all Safety Critical Elements are in compliance with regulatory codes and WMATA's standards.

The Safety Certification Report must consist of:

Completed Safety and Security Certifiable Items List

One paper copy of Safety and Security Certifiable Items List's referenced backup documentation

Final electronic copy of a populated CIL with all backup referenced documents

Record of Safety and Security Certification upon completion of each phase of the project life cycle (design, construction, testing and pre-revenue service) to include copies of the Certificates of Compliance that were issued per element completion.

Preparation of an Open Item Status Report, to display the status of all open items identified during the conduct of the certification program.

Preparation of a chronological summary report to display and discuss the safety certification activities that have been conducted.

PART 3 EXECUTION

Certification Manager

The Contractor shall appoint a Certification Manager to lead and coordinate the Contractor's Safety & Security Certification Program Plan. The Certification Manager shall have more than 10 years of safety and security related experience working with large multiple disciplinary rail transit projects in a management role and specific design experience with transit facilities and systems (train control, communications, fire protection, vehicles, and traction power). The Certification Manager shall be subject to review and approval by WMATA SAFE and will be in place from the notice-to-proceed throughout the lifecycle of the project.

PART 4 MEASUREMENT AND PAYMENT

4.01 Measurement

Safety and Security Certification must be included on the project master schedule critical path for each phase of the project life cycle (design, construction, testing and pre-revenue service) and certification milestones must be identified within the life cycle of the project.

4.02 Payment

Final acceptance and substantial completion notification shall not be issued until the Safety & Security Certification Report (see part 2.01 of this section) has been received and approved by WMATA's Safety Certification Review Committee and signed off by WMATA's Executive Management. Receipt of this acceptance is provided by the issuance of the WMATA System Safety & Security Certification Certificate of Compliance.

END OF SECTION