



Invitation For Bid

[Federal]

DIRECT FIXATION RAIL FASTENERS

IFB NO.: FQ16119/LP

Issue Date: May 2, 2016

IFB Due Date: May 18, 2016

Contract Administrator: Lydia Pepper

A public bid-opening will be conducted

TABLE OF CONTENTS

NOTICE TO BIDDERS	0
NOTICE TO ALL VENDORS	1
SOLICITATION, OFFER AND AWARD	1
PRICE SCHEDULE	2
BASE YEAR	2
PRICE SCHEDULE	3
OPTION YEAR 1	3
PRICE SCHEDULE	4
OPTION YEAR 2	4
PRICE SCHEDULE	5
OPTION YEAR 3	5
PRICE SCHEDULE	6
OPTION YEAR 4	6
PRICE SCHEDULE	7
ACKNOWLEDGMENT OF AMENDMENTS	8
SOLICITATION INSTRUCTIONS	10
1. INTRODUCTION	11
2. GOODS TO BE FURNISHED/SERVICES TO BE PERFORMED	11
3. COMMUNICATIONS WITH THE AUTHORITY	11
4. EXPLANATIONS TO BIDDERS	12
5. PRE-BID MEETING – N/A	12
6. AMENDMENTS TO IFB	12
7. ACKNOWLEDGMENT OF AMENDMENTS	13
8. PREPARATION OF BIDS	13
9. SUBMITTAL OF BIDS	13
10. RESPONSIVE BIDS	14
11. LATE BIDS AND MODIFICATIONS OR WITHDRAWALS PRIOR TO BID OPENING	14
12. BID ACCEPTANCE PERIOD AND BIDDER’S DEFAULT	15
13. BID GUARANTEE – N/A	15
14. BID MISTAKE	15
15. REPRESENTATIONS, CERTIFICATIONS, AND ACKNOWLEDGMENTS	16
16. LAWS AND REGULATIONS	16
17. ROYALTY INFORMATION	16
18. REQUIREMENT FOR COST DATA FOR CONTRACT AWARD	17
19. PRE-AWARD INFORMATION/BIDDER RESPONSIBILITY	17
20. PRE-AWARD MEETING	17
21. SITE VISIT/INSPECTION OF BIDDER’S FACILITIES	17
22. BASIS FOR AWARD	18

23.	CONTRACT AWARD	18
24.	EQUAL EMPLOYMENT OPPORTUNITY	18
25.	DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS	18
26.	OPPORTUNITY FOR DISADVANTAGED BUSINESS ENTERPRISES TO BID.....	19
27.	NOTICE OF PROTEST POLICY.....	19
28.	WMATA’S TAX EXEMPT STATUS	19
29.	ENGLISH LANGUAGE AND UNITED STATES CURRENCY	20
30.	BRAND NAME OR EQUAL – N/A	20
31.	PERFORMANCE AND PAYMENT BONDS – N/A.....	20
	REPRESENTATIONS AND CERTIFICATIONS.....	21
	PRE-AWARD EVALUATION DATA.....	28
	TERMS AND CONDITIONS.....	33
	CHAPTER I – GENERAL PROVISIONS.....	34
1.	AGREEMENT.....	34
2.	ARRANGEMENT OF CONTRACTUAL PROVISIONS	34
3.	ORDER OF PRECEDENCE	34
4.	REQUIREMENTS CONTRACT – N/A	34
5.	AUDIT, AVAILABILITY, AND INSPECTION OF RECORDS	34
6.	AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR	35
7.	CONTRACTING OFFICERS TECHNICAL REPRESENTATIVE (COTR).....	35
	CHAPTER II – TIME/DELAYS/LIQUIDATED DAMAGES.....	38
1.	PERIOD OF PERFORMANCE.....	38
2.	LIQUIDATED DAMAGES FOR DELAY – N/A.....	38
3.	EXTENSIONS OF TIME/FORCE MAJEURE	38
4.	AUTHORITY DELAY OF WORK.....	39
5.	NOTICE TO THE AUTHORITY OF LABOR DISPUTES.....	40
	CHAPTER III – ACCEPTANCE/INSPECTIONS/DEFICIENCIES	41
1.	INSPECTION OF SERVICES.....	41
2.	INSPECTION OF SUPPLIES	42
3.	ACCEPTANCE OF SUPPLIES.....	42
4.	NEW MATERIAL [SUPPLIES].....	43
5.	CORRECTION OF DEFICIENCIES & WARRANTY	43
6.	FIRST ARTICLE INSPECTION – N/A	44
7.	F.O.B. DESTINATION	44
8.	QUALITY ASSURANCE/QUALITY CONTROL.....	45
24.	PACKAGING AND HANDING INSTRUCTIONS.....	45
	CHAPTER IV—CHANGES/ PRICING ADJUSTMENTS.....	46
1.	CHANGE ORDERS.....	46
2.	PRICING OF ADJUSTMENTS.....	47
3.	ACCOUNTING AND RECORD KEEPING FOR ADJUSTMENTS	47
	CHAPTER V – INVOICES/PAYMENTS/ DEDUCTIONS	49
1.	BILLING AND PAYMENT.....	49

2.	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA – MODIFICATIONS	49
3.	SUBCONTRACTOR PAYMENTS	50
4.	GARNISHMENT OF PAYMENTS	50
CHAPTER VI – CONTRACT TERMINATION/STOP WORK ORDERS/DISPUTES		51
1.	STOP WORK ORDERS	51
2.	TERMINATION FOR DEFAULT	53
3.	TERMINATION FOR CONVENIENCE	53
4.	ASSIGNMENT	57
5.	DISPUTES	57
CHAPTER VII – INDEMNIFICATION/INSURANCE/RISK OF LOSS		59
1.	TITLE AND RISK OF LOSS	64
CHAPTER VIII – INTELLECTUAL PROPERTY RIGHTS		65
1.	PATENT INDEMNITY	65
2.	WITHHOLD/SET-OFF	65
3.	RIGHTS IN TECHNICAL DATA- GENERAL – N/A	65
4.	RIGHTS IN TECHNICAL DATA – UNLIMITED	65
5.	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT [SUPPLIES]	67
CHAPTER IX – ADDITIONAL COVENANTS/LEGAL REQUIREMENTS		68
1.	NONDISCRIMINATION ASSURANCE	68
2.	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION	69
3.	WALSH-HEALEY PUBLIC CONTRACTS ACT	70
4.	DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS – N/A	70
5.	CONVICT LABOR	70
6.	COVENANT AGAINST CONTINGENT FEES	71
7.	SEAT BELT USE POLICY	71
8.	SENSITIVE SECURITY INFORMATION	71
9.	LAWS AND REGULATIONS	71
10.	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA	71
11.	LIVING WAGE	74
12.	METRIC SYSTEM	73
13.	WHISTLEBLOWER PROTECTION	74
14.	DRUG AND ALCOHOL TESTING	76
15.	EMPLOYMENT RESTRICTION WARRANTY	76
16.	GRATUITIES	77
17.	OFFICIALS NOT TO BENEFIT	78
18.	ORGANIZATIONAL CONFLICT OF INTEREST	78
19.	CONTRACTOR PERSONNEL – N/A	80
CHAPTER X – MISCELLANEOUS ADDITIONAL PROVISIONS		81
1.	FEDERAL, STATE, AND LOCAL TAXES	81
2.	FEDERAL/LOCAL/STATE SALES TAX	81
3.	PUBLIC COMMUNICATION	82

4.	CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE	82
5.	SEVERABILITY	82
6.	SURVIVAL	82
7.	ALL NECESSARY FEDERAL PROVISIONS DEEMED INCLUDED	82
CHAPTER XI – FEDERAL PROVISIONS		83
1.	NOTIFICATION OF FEDERAL PARTICIPATION	83
2.	ACCESS TO THIRD PARTY CONTRACT RECORDS	83
3.	RIGHTS IN DATA AND COPYRIGHTS — FTA	83
4.	BUY AMERICA ACT	85
5.	CHARTER BUS REQUIREMENTS – N/A	85
6.	SCHOOL BUS REQUIREMENTS – N/A	85
7.	BUS TESTING – N/A	85
8.	CARGO PREFERENCE	85
9.	CLEAN AIR	85
10.	CLEAN WATER	86
11.	RECYCLED PRODUCTS	86
12.	ENERGY CONSERVATION	86
13.	CHANGES TO FEDERAL REQUIREMENTS	86
14.	FLY AMERICA REQUIREMENTS	87
15.	PAYMENT DEDUCTIONS - NONCOMPLIANCE WITH DBE REQUIREMENTS	87
16.	GOVERNMENT-WIDE DEBARMENT OR SUSPENSION	87
17.	INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS	88
18.	NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES	88
19.	FALSE STATEMENTS OR CLAIMS CIVIL AND CRIMINAL FRAUD	88
20.	RECOVERED MATERIALS	89
21.	LOBBYING	89
22.	NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS	89
23.	CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS	90
CHAPTER XII-WMATA POLICIES		91
1.	SAFETY REQUIREMENTS	91
2.	PRE-EMPLOYMENT CRIMINAL BACKGROUND CHECK REQUIREMENT	92
3.	WORKPLACE VIOLENCE/ZERO TOLERANCE	92
MID-ATLANTIC PURCHASING TEAM RIDER CLAUSE		93

INTRODUCTORY INFORMATION

SOLICITATION CERTIFICATIONS PAGE

IFB NUMBER: FQ16119/LP

Direct Fixation Rail Fasteners, TRST 2017 - 2021

APPROVED FOR RELEASE

END OF SECTION

DATE: May 2, 2016

SUBJECT: Invitation for Bid (IFB) No.: FQ16119

Washington Metropolitan Area Transit Authority (WMATA) is seeking bids from authorized vendors to provide Direct Fixation Rail Fasteners. The IFB contains a ten (10) percent DBE Goal requirement.

A pre-bid conference will not be held. Your bid must be submitted in accordance with IFB terms and delivered to WMATA's, Office of Procurement and Materials, 600 Fifth Street, N.W., Room 3C02, Washington, DC 20001. **Bids must be no later than 2:00 P.M. on May 18, 2016.**

If you have any questions, Technical, Contractual or Administrative please email them to the Contract Administrator, Lydia Pepper at lpepper@wmata.com **no later than 2:00 P.M, local time May 06, 2016.** WMATA will provide written answers, by email to all those who obtain the IFB and provide their email addresses.

The following required documents are to be submitted with Bidders' bid response:

- Bid Form - Solicitation, Offer & Award Form
- Price Schedule/s
- Pre-Award Evaluation Data
- Compliance Matrix
- Representations and Certifications
- Certificate of Insurance
- Specifications
- Appendix B

Sincerely,

Laura A. Marshall
signed

Laura A. Marshall
Contracting Officer

**NOTICE TO BIDDERS
IMPORTANT
PLEASE READ CAREFULLY**

To ensure 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 on Price Schedule/s for math errors?
2. If Amendments are included, have you acknowledged and recorded the number of Amendments on the bid envelope and Bid Form?
3. Have you completed, signed, date and submitted the Solicitation, Offer & Award Bid Form?
4. Have you completed each 'Schedule' and included the Pre - Award Evaluation Data AND the Compliance Matrix?
5. Have you properly completed and checked the appropriate box for each Representations and Certifications? Have you included the Representations and Certifications with your bid?
6. Have you complied with the Appendix B requirement? Met the required ten **10%** DBE goal and completed the appropriate DBE forms for submittal with your bid?
7. Contractor's pricing, if offered to other jurisdictions, will be the same regardless of quantities ordered and that the Authority makes no representations regarding the quantities that may be ordered by any such jurisdictions.
8. Copy of Certificate of Insurance and Insurance Policy
9. Bid envelope must be marked with Solicitation number and addressed to the Contract Administrator, Ms. Lydia Pepper.

NOTICE TO ALL VENDORS

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

New Vendor Registration.

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

Forgot User ID/Password.

Registered Vendor Benefits:

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

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

SOLICITATION, OFFER AND AWARD

CONTRACT NO. <p style="text-align: center;">FQ16119</p>	SOLICITATION NO. IFB NO.: FQ16119/LP <input checked="checked" type="checkbox"/> ADVERTISED <input type="checkbox"/> NEGOTIATED	DATE ISSUED May 2, 2016	ADDRESS OFFER TO OFFICE OF PROCUREMENT Office of Procurement 600 Fifth Street NW Washington, DC 20001
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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 May 18, 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
001-012	DIRECT FIXATION (DF) RAIL FASTENERS TRST 2017-2021 (See continuation of price schedules on pages 2-7)	SEE	PRICE	SCHEDULES	

DUN & BRADSTREET ID NUMBER: _____

BIDDER

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

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 \$ _____

 Laura A. Marshall
 Contracting Officer (Print of Type)

 WASHINGTON METROPOLITAN TRANSIT AUTHORITY

 AWARD DATE

SOLICITATION, OFFER AND AWARD (CONTINUATION SHEET)

PRICE SCHEDULE

BASE YEAR

Description: Direct Fixation Rail Fasteners, TRST 2017 - 2021

Line Item	Delivery Days Required after Notice of Award	Quantity	Unit of Issue	Unit Price	Extended Total Price
1	45	3,000	EA	\$ _____	\$ _____
2	75	10,000	EA	\$ _____	\$ _____
3	105	10,000	EA	\$ _____	\$ _____
4	135	3,000	EA	\$ _____	\$ _____
5	165	3,000	EA	\$ _____	\$ _____
6	195	3,000	EA	\$ _____	\$ _____
7	225	2,000	EA	\$ _____	\$ _____
8	255	2,000	EA	\$ _____	\$ _____
9	285	1,000	EA	\$ _____	\$ _____
10	315	1,000	EA	\$ _____	\$ _____
11	345	1,000	EA	\$ _____	\$ _____
12	365	1,000	EA	\$ _____	\$ _____
TOTAL - BASE YEAR I					\$ _____

SOLICITATION, OFFER AND AWARD (CONTINUATION SHEET)

PRICE SCHEDULE

OPTION YEAR 1

Description: Direct Fixation Rail Fasteners, TRST 2017 - 2021

Line Item	Description Delivery Days Required after Notice of Award	Quantity	Unit of Issue	Unit Price	Extended Total Price
1	45	4,000	EA	\$ _____	\$ _____
2	75	4,000	EA	\$ _____	\$ _____
3	105	4,000	EA	\$ _____	\$ _____
4	135	4,000	EA	\$ _____	\$ _____
5	165	3,000	EA	\$ _____	\$ _____
6	195	3,000	EA	\$ _____	\$ _____
7	225	3,000	EA	\$ _____	\$ _____
8	255	3,000	EA	\$ _____	\$ _____
9	285	3,000	EA	\$ _____	\$ _____
10	315	3,000	EA	\$ _____	\$ _____
11	345	3,000	EA	\$ _____	\$ _____
12	365	3,000	EA	\$ _____	\$ _____
TOTAL PRICE – OPTION YEAR 1					\$ _____

SOLICITATION, OFFER AND AWARD (CONTINUATION SHEET)

PRICE SCHEDULE

OPTION YEAR 2

Description: Direct Fixation Rail Fasteners, TRST 2017 - 2021

Line Item	Delivery Days Required after Notice of Award	Quantity	Unit of Issue	Unit Price	Extended Total Price
1	45	2,500	EA	\$ _____	\$ _____
2	75	2,500	EA	\$ _____	\$ _____
3	105	2,500	EA	\$ _____	\$ _____
4	135	2,500	EA	\$ _____	\$ _____
5	165	2,500	EA	\$ _____	\$ _____
6	195	2,500	EA	\$ _____	\$ _____
7	225	2,500	EA	\$ _____	\$ _____
8	255	2,500	EA	\$ _____	\$ _____
9	285	2,500	EA	\$ _____	\$ _____
10	315	2,500	EA	\$ _____	\$ _____
11	345	2,500	EA	\$ _____	\$ _____
12	365	2,500	EA	\$ _____	\$ _____
TOTAL PRICE – OPTION YEAR 2					\$ _____

SOLICITATION, OFFER AND AWARD (CONTINUATION SHEET)

PRICE SCHEDULE

OPTION YEAR 3

Description: Direct Fixation Rail Fasteners, TRST 2017 - 2021

Line Item	Delivery Days Required after Notice of Award	Quantity	Unit of Issue	Unit Price	Extended Total Price
1	45	2,500	EA	\$ _____	\$ _____
2	75	2,500	EA	\$ _____	\$ _____
3	105	2,500	EA	\$ _____	\$ _____
4	135	2,500	EA	\$ _____	\$ _____
5	165	2,500	EA	\$ _____	\$ _____
6	195	2,500	EA	\$ _____	\$ _____
7	225	2,500	EA	\$ _____	\$ _____
8	255	2,500	EA	\$ _____	\$ _____
9	285	2,500	EA	\$ _____	\$ _____
10	315	2,500	EA	\$ _____	\$ _____
11	345	2,500	EA	\$ _____	\$ _____
12	365	2,500	EA	\$ _____	\$ _____
TOTAL PRICE – OPTION YEAR 3					\$ _____

SOLICITATION, OFFER AND AWARD (CONTINUATION SHEET)

PRICE SCHEDULE

OPTION YEAR 4

Description: Direct Fixation Rail Fasteners, TRST 2017 - 2021

Line Item	Delivery Days Required after Notice of Award	Quantity	Unit of Issue	Unit Price	Extended Total Price
1	45	2,500	EA	\$ _____	\$ _____
2	75	2,500	EA	\$ _____	\$ _____
3	105	2,500	EA	\$ _____	\$ _____
4	135	2,500	EA	\$ _____	\$ _____
5	165	2,500	EA	\$ _____	\$ _____
6	195	2,500	EA	\$ _____	\$ _____
7	225	2,500	EA	\$ _____	\$ _____
8	255	2,500	EA	\$ _____	\$ _____
9	285	2,500	EA	\$ _____	\$ _____
10	315	2,500	EA	\$ _____	\$ _____
11	345	2,500	EA	\$ _____	\$ _____
12	365	2,500	EA	\$ _____	\$ _____
TOTAL PRICE – OPTION YEAR 4					\$ _____

SOLICITATION, OFFER AND AWARD (CONTINUATION SHEET)

PRICE SCHEDULE

GRAND TOTAL

Description: Direct Fixation Rail Fasteners, TRST 2017 - 2021

CONTRACT TERM	EXTENDED TOTALS
BASE YEAR	\$ _____
OPTION YEAR 1	\$ _____
OPTION YEAR 2	\$ _____
OPTION YEAR 3	\$ _____
OPTION YEAR 4	\$ _____
GRAND TOTAL – (BASE YEAR & OPTION YEARS 1 - 4)	\$ _____

 Authorized Signature

 Company Name

 Date

ACKNOWLEDGMENT OF AMENDMENTS

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.

Authorized Signature

Company Name

Date

DIRECTIONS FOR SUBMITTING BID

Read and comply with the Solicitation Instructions.

1. Solicitation, Award and Offer Form – Under Bidder, complete those blocks including signature & date.
2. Bid Schedules – Shall be completed, signed and submitted with the Solicitation, Award and Offer Form.
3. Pre - Award Evaluation Data AND the Compliance Matrix (Ref: Technical Specifications) - complete and return with Solicitation, Award and Offer Form.
4. Appendix B (DBE) – 10% required. Attached certifications and data must be completed and returned with Solicitation, Award and Offer Form.
5. Representations and Certifications – sign and return with Solicitation, Award and Offer Form.
6. Certificate of Insurance & Insurance Policy – complete and return with Solicitation, Award and Offer Form. (see Chapter VII)
7. Envelopes containing bids and related required documents must be sealed, marked and addressed as follows:

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
INVITATION FOR BID NUMBER: FQ16119/LP
OFFICE OF PROCUREMENT
600 FIFTH STREET, RM 301-A
WASHINGTON, DC 20001

BIDS SHALL BE TIMELY MAILED OR HAND DELIVERED TO REACH WMATA BEFORE 2:00 P.M. (LOCAL TIME) ON DAY OF BID OPENING. BIDS HAND CARRIED BETWEEN 1:00 P.M. AND 1:55 P.M. (EST) SHOULD BE PRESENTED TO THE CONTRACT ADMINISTRATOR, MS. LYDIA PEPPER.

BIDS ARRIVED AFTER THE SET DATE & TIME WILL NOT BE ACCEPTED AND WILL BE RETURNED UNOPENED.

SOLICITATION INSTRUCTIONS

INVITATION FOR BID
SOLICITATION INSTRUCTIONS

1. INTRODUCTION

- a. The Authority seeks to award a Contract For Direct Fixation Rail Fasteners. To that end, the Authority is issuing this Invitation For Bid (“IFB”) to solicit Bids from qualified firms and individuals who can satisfy the requirements of the accompanying Contract Documents.
- b. As this is a low bid solicitation, award of a Contract hereunder shall be to the lowest priced, responsible Bidder whose Bid is responsive to, and meets all requirements of the Solicitation.
- c. The Authority contemplates award of a Firm Fixed Price Contract.

2. GOODS TO BE FURNISHED/SERVICES TO BE PERFORMED

Bidders are advised that:

- a. If “Services” are to be performed pursuant to this Solicitation, they must be provided in all respects as specified in the accompanying Contract Documents and include the services to be furnished, together with any labor, material or other work necessary for satisfactory performance.
- b. If “Supplies” are to be provided pursuant to this Solicitation, they must be in all respects as specified in the Contract Documents and include the items to be furnished, together with any labor, service or other work necessary for satisfactory performance.
- c. Unless otherwise specified, all goods and materials furnished to the Authority must be new and unused.

3. COMMUNICATIONS WITH THE AUTHORITY

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

Lydia Pepper, telephone (202)962-2128, and e-mail lpepper@wmata.com.

A violation of this provision, deemed willful by the Authority, may result in a determination that a Bidder is not responsible, and thus ineligible for award, for purposes of this solicitation.

4. EXPLANATIONS TO BIDDERS

- a. Any explanation or clarification desired by a Bidder regarding the meaning or interpretation of this Invitation for Bid, Terms and Conditions, Specifications, Drawings, and/or other documents relating to this Solicitation 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. Absent extraordinary circumstances, all such inquiries should be transmitted in a time frame such as to ensure their receipt by the Contracting Officer at least ten (10) days prior to the date specified for the opening of Bids.
- b. Any information furnished by the Authority to a prospective Bidder relating to this solicitation will be provided promptly in writing to all prospective Bidders as an Amendment to this Solicitation pursuant to paragraph 6 below if, in the judgment of the Authority, the information is necessary to the preparation and/or submittal of Bids or lack of such information would be otherwise prejudicial to other prospective Bidders.
- c. Oral explanations, representations or instructions of any kind relating to the subject matter of this Solicitation and given at any time before the award of the Contract by any employee, officer or agent of the Authority will not be binding upon the Authority; nor does the Authority assume responsibility for the accuracy of any such communication.
- d. The failure of a prospective Bidder to request an explanation or clarification as provided herein will preclude the Bidder from thereafter claiming any ambiguity, inconsistency or error which should have been discovered by a reasonably prudent Bidder.

5. PRE-BID MEETING – N/A

6. AMENDMENTS TO IFB

- a. The Authority reserves the right to revise or amend the terms of this IFB, the proposed contract Terms and Conditions, the scope of work and/or drawings prior to the date set for the opening of bids. Such revisions and amendments, if any, will be announced by Amendment(s) to this Invitation for Bid. Written copies of such Amendment(s) as may be issued will be made available to all prospective Bidders.
- b. If, in the judgment of the Authority, any such Amendment(s) would require significant changes in quantities and/or bid price, 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.

7. ACKNOWLEDGMENT OF AMENDMENTS

Bidders are required to acknowledge receipt of all Amendments to this Invitation on the Amendment Acknowledgement Form prior to opening of Bids. Failure to acknowledge all Amendments may cause the Bid to be considered not responsive to the Solicitation, which would require rejection of the Bid.

8. PREPARATION OF BIDS

- a. Bids shall be submitted on the Price Schedule 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.
- b. Bidders shall furnish all information required by this IFB and, in so doing, are expected to examine fully the IFB Documents. Failure to do so will be at the risk of the Bidder.
- c. Discounts for prompt payment will not be considered in the evaluation of bids. However, any offered discount will be included within the award of the Contract and will be taken by the Authority if payment is made within the discount period referenced in the Bid.
- d. The Price Schedule may provide for submittal of a price or prices for one or more items which may be unit prices, lump sum bids, alternate prices, or a combination thereof. The Price Schedule expressly requires that the Bidder bid on all items. Failure to do so will render the bid non-responsive.
- e. All Bid prices for the Work shall be deemed to include the cost of all work, labor and materials required by the Contract Documents, including without limitation, delivery/transportation charges, insurance, container charges or any other expenses incidental to the Work, as well as expenses associated with compliance with federal, state or local laws or regulatory requirements. All Bid prices are deemed to be F.O.B. delivery point.
- f. Unless specifically called for in the Price Schedule, alternate bids will not be considered.

9. SUBMITTAL OF BIDS

- a. Bids shall be enclosed in sealed envelopes and addressed to the office specified in the solicitation.
- b. The face of the envelope should show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the Bidder. A failure to do so may result in a premature opening of, or a failure to open, such bid, for which occurrences the Authority shall assume no responsibility.
- c. Facsimile Bids will not be considered.
- d. All Bids will remain sealed until the date and time specified for the opening of Bids.

10. RESPONSIVE BIDS

- a. Bidders are advised that a Bid which is at variance or non-compliant with any provision of this Solicitation, including a qualified or conditional Bid, may be rejected as non-responsive.
- b. The Authority may reject a Bid as non-responsive if, in the judgment of the Authority, the prices bid are materially unbalanced. A Bid is materially unbalanced when it is based on prices that are significantly understated for one or more elements of work and significantly overstated for other element(s) of work.
- c. Notwithstanding anything to the contrary contained herein, the Authority reserves the right to waive minor errors or omissions with respect to a Bid and to deem such Bid responsive.

11. LATE BIDS AND MODIFICATIONS OR WITHDRAWALS PRIOR TO BID OPENING

- a. Any Bid 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. or Canadian mail not later than the fifth Day before the date specified for receipt of Bids (e.g., a Bid submitted in response to a solicitation requiring receipt of Bids by the 20th of the month must have been mailed by the 15th);
 - (2) Was sent by first class mail and it is determined by the Authority that the late receipt was due solely to mishandling by the Authority after its timely delivery on Authority premises;
 - (3) Was sent by U.S. Postal Service Express Mail Next Day Service not later than 5:00 p.m. at the place of mailing at least two business days prior to the date specified for receipt of Bids. The term "business days" excludes weekends and U.S. federal holidays; or
 - (4) Is the only Bid received.
- b. Any modification or withdrawal of a Bid is subject to the same conditions as set forth in subparagraphs (a)(1), (2), and (3) above.
- c. The only acceptable evidence to establish the time of receipt by the Authority is the time/date stamp of that event on the bid wrapper or other documentary evidence of receipt maintained by the Authority.
- d. Notwithstanding sub-paragraph "a" above, a late modification of any otherwise successful Bid that makes its terms more favorable to the Authority will be considered at any time it is received and may be accepted.
- e. Bids may be withdrawn by written notice received by the Authority before the opening of Bids. Bids may be withdrawn in person by a Bidder, or an authorized representative of the Bidder if the representative's identity is established to the

satisfaction of the Authority and the representative signs a receipt for the return of the Bid, before the opening of Bids. The attempted withdrawal of a Bid, proffered or received subsequent to the Bid opening and during the Acceptance Period set forth in paragraph 12, will not be honored and will be without effect.

12. BID ACCEPTANCE PERIOD AND BIDDER'S DEFAULT

- a. The Acceptance Period for this solicitation is ninety (90) calendar days.
- b. By submission of its Bid, the Bidder agrees that its Bid shall be irrevocable and shall remain available to WMATA for purposes of awarding a contract pursuant to this Solicitation for not less than the Acceptance Period. The Bidder's failure or refusal to execute and/or furnish such contract documents as may be required in the Solicitation or otherwise accept and/or proceed to execute a Contract from WMATA in accordance with its Bid during the Acceptance Period shall constitute a Bidder's Default.
- c. In the event of a Bidder's Default, the Bidder shall be liable to WMATA for all associated damages and costs, including without limitation, WMATA's "cost to cover", i.e. the difference between the Bidder's bid price and the price ultimately paid by WMATA for the work encompassed in this Solicitation, whether through award of a contract to another Bidder pursuant to this Solicitation or otherwise.

13. BID GUARANTEE – N/A

14. BID MISTAKE

- a. A Bidder who seeks to withdraw its Bid subsequent to Bid opening due to a claimed mistake or error in preparation shall notify the Authority in writing immediately upon realizing the mistake and in no event later than 3 business days following Bid opening, setting forth the details of, and explanation for, the claimed mistake. The Authority shall evaluate the claimed mistake and determine whether the Bidder will be permitted to withdraw its Bid.
- b. In the event of an apparent discrepancy between any unit price and its associated extended price, the unit price will be presumed to be correct. The Authority may proceed to award a Contract to an otherwise low Bidder based upon utilization of the unit price, subject to the additional terms of this paragraph.
- c. A Bidder claiming a mistake shall, if so requested by the Contracting Officer, appear before one or more designated representative(s) of the Authority to provide testimony and/or documentation, which may include the Bidder's computation sheets and calculations, to assist in the Authority's determination.
- d. Nothing contained herein shall be deemed to preclude the Authority from allowing a Bidder to cure a deficiency in an otherwise responsive Bid where the Authority determines that such deficiency is in the nature of a minor informality or irregularity.

15. REPRESENTATIONS, CERTIFICATIONS, AND ACKNOWLEDGMENTS

The Bidder shall check or complete all applicable boxes or blocks, and provide all requested information, on the attached "Representations and Certifications" form. Bidders are reminded of the obligation to fully and faithfully complete the accompanying "Representations and Certifications" form, as applicable, which must be submitted with the Bid. **Failure to do so may result in the Bid being rejected as non-responsive.**

16. LAWS AND REGULATIONS

Bidders are responsible for fully informing themselves with respect to the requirements for, and to comply with, any and all applicable State of Maryland, Commonwealth of Virginia, District of Columbia, and federal laws and regulations governing the services to be provided under this Contract. Further, the Bidder to which this Contract is awarded shall be responsible to obtain, at its own cost and expense, any and all licenses/permits required to transact business in any political jurisdictions to be serviced.

17. ROYALTY INFORMATION

- a. When the response to this solicitation contains costs or charges for royalties totaling more than \$250, the following information shall be furnished with the Bid on each separate item of royalty or license fee:
- (1) Name and address of licensor;
 - (2) Date of license agreement;
 - (3) Patent numbers, patent application serial numbers or other basis on which the royalty is payable;
 - (4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
 - (5) Percentage or dollar rate of royalty per unit;
 - (6) Unit price or Contract item;
 - (7) Number of units; and
 - (8) Total dollar amount of royalties.
- b. In addition, if specifically requested by the Contracting Officer prior to execution of the Contract, a copy of any current license agreement and identification of applicable claims of specific patents shall be furnished.

18. REQUIREMENT FOR COST DATA FOR CONTRACT AWARD

The Authority may require the apparent low Bidder to submit cost data in sufficient detail to permit analysis of the cost elements which comprise the bid prices. In such instances, the apparent low bid may, at the discretion of the Authority, be subject to audit.

19. PRE-AWARD INFORMATION/BIDDER RESPONSIBILITY

- a. In order to be eligible for award, the low Bidder will be required to demonstrate its ability to perform services contained in the solicitation, in a timely manner, to the complete satisfaction of the Authority. Failure on the part of the low bidder to so demonstrate that it maintains the requisite integrity, overall technical capability and financial resources to perform the Contract in a satisfactory and timely manner may result in a rejection of the low Bidder as not responsible. In such event, the second lowest Bidder will be required to demonstrate its responsibility, a process which will continue until a Bidder successfully demonstrates that it is responsible for purposes of this Solicitation.
- b. To assist in the Authority's evaluation of its responsibility for purposes of award of a Contract hereunder, the apparent lowest responsive Bidder shall complete, sign and furnish the following:
 - (1) A completed and signed Pre-Award Evaluation Data form (copy attached), completed Compliance Matrix and the required financial statements;
 - (2) The Disadvantaged Business Enterprise data as set forth in Appendix B.

20. PRE-AWARD MEETING

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

21. SITE VISIT/INSPECTION OF BIDDER'S FACILITIES

Bidders must provide and maintain sufficient facilities that will allow them to adequately perform contract functions as specified herein. WMATA may make site visits prior to contract award to examine the Bidder's facilities. This will include sampling observation, testing procedures, review plant inspection methods, quality control procedures, equipment and examine test results of current and previous tests and also to verify that necessary equipment, supplies, etc. are readily available.

22. BASIS FOR AWARD

- a. Award(s) of a contract hereunder will be made to the Bidder(s) (i) whose Bid is judged to be responsive to the terms of the solicitation and based solely upon the price as identified in the Price Schedule and (ii) who demonstrates to the satisfaction of the Authority that it is responsible for purposes of award of this Contract.
- b. Unless otherwise expressly specified in the Price Schedule the Authority may make multiple awards as a result of this solicitation.
- c. Notwithstanding the foregoing or any other provision in the Contract Documents, the Authority reserves the right to reject all bids and cancel this Solicitation at any time prior to award.

23. CONTRACT AWARD

A written award notice mailed or otherwise furnished to the successful Bidder within the Acceptance Period shall result in a binding contract without further action by either party.

24. EQUAL EMPLOYMENT OPPORTUNITY

In order to be eligible for award of a contract pursuant to this solicitation, the apparent low bidder will be required to comply with all applicable Equal Employment Opportunity laws and regulations.

25. DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS

Attached as part of this solicitation are documents outlining the requirements for the Disadvantaged Business Enterprise (DBE) Program: The DBE requirement goal for this contract is ten (**10%**) unless a good faith waiver is requested and approved.

- a. If the Bid is over \$100,000, and for the Bidder to be considered responsible, the following documents (see Appendix B) shall be completed and submitted with the Bid:

Schedule of DBE Participation

Letter of Intent to Perform as Subcontractor/Joint Venture

(If applicable)

DBE Unavailability Certification

(where applicable)

Written request for waiver when DBE participation is less than stated percent

DBE Monthly Status Report, after award, to the COTR and a final report at contract completion if DBE participation is applicable.

- b. If Small Business Enterprise (SBE) set-aside, the provisions of Appendix B-1 are applicable. Appendix B-1 forms must be completed by each bidder to insure that the bid is acceptable.

The provisions of Appendix B (if attached) do not become applicable and forms do not have to be completed, unless the Bid is \$100,000 or more. If the Bid is \$100,000 or more and any portion of the written requirement is omitted, then the Bid may be found to be unacceptable and subsequently rejected. Appendix B forms and/or waivers must be completed with great care by each bidder to insure that the bid is acceptable.

26. OPPORTUNITY FOR DISADVANTAGED BUSINESS ENTERPRISES TO BID

It is the policy of the Authority (WMATA), the Federal Transit Administration (FTA) and the U.S. Department of Transportation (US DOT) that Disadvantaged Business Enterprises (DBE's) shall have an equal opportunity to receive and participate in performing WMATA contracts and federally assisted contracts, including contracts and subcontracts at any tier.

27. NOTICE OF PROTEST POLICY

- a. WMATA policy and procedure for the administrative resolution of protests is set forth in Chapter 17 of the Procurement Policy Manual (PPM). A copy of the PPM is available at www.wmata.com.
- b. With respect to federally funded contracts, FTA Circular 4220.1F, Chapter VII-1, addresses Bid Protests. In general, FTA will only review protests submitted by an interested party regarding the alleged failure of the grantee to have a written protest procedure or to follow such procedures and may exercise discretionary jurisdiction over appeals important to its overall transportation program.

28. 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. The Authority's tax exempt numbers are as follows: District of Columbia -- 5611-0082187-001; Maryland -- 30072210; Virginia -- 5280-0067
- d. 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).

29. ENGLISH LANGUAGE AND UNITED STATES CURRENCY

With respect to both this Solicitation and the resultant Contract:

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

30. BRAND NAME OR EQUAL – N/A

31. PERFORMANCE AND PAYMENT BONDS – N/A

REPRESENTATIONS AND 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 (RC-101, MAY 07)

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

2. AFFILIATION AND IDENTIFYING DATA (RC-102, MAY 07)

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

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

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

Name of Parent Company

Main Office Address (including ZIP Code)

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

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

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

3. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (RC-103, MAY 07)

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

(a) 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; which prohibits discrimination on the basis of race, color, creed, national origin, sex, age; and

(b) It has, has not, filed all required compliance reports; and

(c) Representations indicating submittal of required compliance reports signed by proposed subcontractors will be obtained prior to subcontract awards.

4. DISADVANTAGED BUSINESS ENTERPRISE (RC-104, MAY 07)

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

- (a) It is, is not, a disadvantaged business enterprise.

"Disadvantaged Business Enterprise" means a for-profit small business concern that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged individuals or, in the case of a corporation, in which 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 Individuals" is defined in Appendix B, Section 4, paragraph I; and

- (b) It is, is not, currently certified by WMATA as a disadvantaged business enterprise.

- (c) It is, is not, a small business enterprise.

"Small Business Enterprise" means a profit for small business concern that is at least 51% owned by one or more individual(s) who are economically disadvantaged. "Economically Disadvantaged Individual" is defined in Appendix B-1, Section 3, Definitions.

5. AFFIRMATIVE ACTION COMPLIANCE (RC-105, MAY 07)

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

- (a) It has a workforce of _____ employees.

- (b) 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 CFR Parts 60-1 and 60-2), or

- (c) It has not previously had contracts subject to the written affirmative action program requirements of the rules and regulations of the Secretary of Labor.

CERTIFICATIONS

6. COVENANT AGAINST GRATUITIES (RC-106, MAY 07)

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

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

7. CONTINGENT FEE (RC-107, MAY 07)

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

- (a) It has, has not, employed or retained any company or persons (other than a full-time, bona fide employee working solely for the offeror) to solicit or secure this contract, and

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

8. CLEAN AIR AND WATER CERTIFICATION (RC-108, MAY 07)

This certification is applicable if the contract will be federally assisted and the offer exceeds \$100,000, or the Contracting Officer believes that orders under an indefinite contract in any year will exceed \$100,000 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 Water Act (33 U.S.C. 1319(c)) and is listed by the U.S. Environmental Protection Agency (EPA) as a violating facility, and the acquisition is not otherwise exempt:

- (a) Any facility to be utilized in the performance of this proposed contract [] is, or [] is not listed on the EPA list of Violating Facilities;
- (b) 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 which it proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and
- (c) Offeror will include a certification substantially the same as this certification, including this paragraph, in every non-exempt subcontract.

9. DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION (RC-109, MAY 07)

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

- (a) 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.
 - (1) In accordance with the provisions of Appendix A to 49 Code of Federal Regulations (CFR) Part 29, the offeror certifies to the best of its knowledge and belief that it and its principals:
 - (i) are not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
 - (ii) have not, within a three-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;
 - (iii) 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
 - (iv) have not, within a three-year period preceding this offer, had one or more public transactions (Federal, State, or local) terminated for cause or default.
 - (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.
- (b) 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 the prime contract.
 - (1) In accordance with the provisions of Appendix B to 49 Code of Federal Regulations (CFR) Part 29, 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.
 - (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 bids.

- (c) The Certification required by subparagraph (b), above, shall be included in all applicable subcontracts and a copy kept on file by the prime contractor. The prime contractor shall be required to furnish copies of certifications to the Contracting Officer upon the Contracting Officer's request.

10. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION (RC-110, MAY 07)

- (a) By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:
 - (1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or with any other competitor, as to any matter relating to such prices;
 - (2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not be knowingly disclosed by the offeror prior to the opening of bids (in the case of a sealed bid solicitation) or prior to award (in the case of a negotiated procurement), directly or indirectly, to any other offeror or to any competitor; and
 - (3) No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.
- (b) Each person signing this offer certifies that:
 - (1) He or she is the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or
 - (2) He or she is not the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein, but that he/she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated; and will not participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify.

11. CERTIFICATION OF NONSEGREGATED FACILITIES (RC-111, MAY 07)

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

- (a) By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:
 - (1) 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.
 - (2) The offeror agrees that a breach of this certification is a violation of the Equal Opportunity Clause in the contract.
 - (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 which 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.
 - (4) It further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will:
 - (i) Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;

- (ii) Retain such certifications in its files; and
- (iii) 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 NONSEGREGATED FACILITIES**

A Certification of Nonsegregated Facilities must be submitted prior to award of a subcontract exceeding \$10,000 which 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).

12. NONDISCRIMINATION ASSURANCE (RC-112, MAY 07)

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

13. CERTIFICATION OF RESTRICTIONS ON LOBBYING (RC-113, MAY 07)

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

- (a) By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that to the best of his or her knowledge or belief:
 - (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 a federal 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.
 - (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."
 - (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers and that all subrecipients shall certify and disclose accordingly.
- (b) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. 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. BUY AMERICA ACT CERTIFICATION (RC-114, MAY 07)

The Buy America requirements apply to federally assisted construction contracts, and goods or rolling stock contracts valued at more than \$100,000.

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

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

(1) **Certification requirement for procurement of steel, iron, or manufactured products:**

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

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

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

The bidder or 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.

(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 bidder or 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. Part 661.11.

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

The bidder or 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.

15. CERTIFICATION OF NON-DELINQUENT TAXES (RC-116, OCTOBER 2008)

This certification is applicable to federally assisted contracts.

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

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

(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 collection due process hearing.

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

(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.

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

(i) Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the FAR;

(ii) Retain such certifications in its files; and

- (iii) 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 NON-DELINQUENT TAXES

16. DISCLOSURES OF INTERESTS OF WMATA BOARD MEMBERS (RC-117, May 2013)

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

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

- (a) No WMATA **Board Member, Household Member or Business Associate** has a financial interest in this firm, in a **Financial Transaction** with the Authority to which this firm is a party or prospective party, or in an **Actual or Prospective Business Relationship with the Authority** to which this firm is a party.
- (b) The following WMATA **Board Member(s), Household Member(s) or Business Associate(s)** has a financial interest in this firm, in a **Financial Transaction** with the Authority to which this firm is a party or prospective party, or in an **Actual or Prospective Business Relationship with the Authority** to which this firm is a party, Include in "Nature of Interest" below a description of the financial interest and (1) for ownership interests, the value of the interest, the name and address of the firm in which the interest is held, and the total equity or equivalent interest of the firm; and (2) for income, the amount of all income received by the **Board Member, Household Member or Business Associate** in the current and preceding fiscal year for services provided, and the name and address of the firm from which the income was received.

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

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

A Certification of Non-Delinquent Taxes must be submitted prior to award of a subcontract exceeding \$100,000 which 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).

SIGNATURE BLOCK FOR ALL REPRESENTATIONS AND CERTIFICATIONS

Name of Offeror: _____

Name and Title of Authorized Representative: _____

_____	_____	_____
Title	Print and Sign Name	Date

(RC-116, OCTOBER 08)

PRE-AWARD EVALUATION DATA
PROJECT DESCRIPTION: DIRECT FIXATION RAIL FASTENERS

1. Name of Firm: _____

2. 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 ONE** - Attach a list of current contracts, which demonstrate the firm's proficiency, each with contract amount, name of contracting party, type of work and percentage of completion.
8. **SCHEDULE TWO** - Attach a list of similar contracts, each with contract amount, name of contracting party, and character or type of work for similar contracts completed in the last two (2) years.
9. **SCHEDULE THREE** - In the last two (2) years, has the firm ever been denied an award where it was the low bidder? If the answer is YES, attach the full particulars regarding each occurrence.
10. **SCHEDULE FOUR** - Has the firm ever failed to complete any contract, other than current, on which it was the low bidder? If the answer is YES, attach the full particulars regarding each occurrence.

11. Financial resources available as working capital for the Contract:
 - a. Cash on hand: \$ _____
 - b. Source of credit: _____
12. **SCHEDULE FIVE** - Attach financial statements and letters from banks regarding credit as required by the Pre-Award Information article.
13. What percentage of the work (contract amount) do you intend performing with your own personnel? _____%
14. **SCHEDULE SIX** - Attach 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.
15. If the Contractor or subcontractor is a joint venture, submit PRE-AWARD EVALUATION DATA form for each member of the joint venture.

***The information is confidential and will not be divulged to any unauthorized personnel.
The undersigned certifies to the accuracy of all information.***

COMPANY: _____
SIGNATURE: _____
TITLE: _____
DATED: _____
LOCATION: _____

**COMPLIANCE MATRIX
 REFERENCE TECHNICAL SPECIFICATIONS (PART III – SECTION 2)
 DIRECT FIXATION RAIL FASTENERS**

The Bidder shall complete and submit the Compliance Matrix with the PRE-AWARD EVALUATION DATA bid documents. The Bidder shall check the 'C' Compliant, 'NC' Not Compliant, or 'NA' Not Applicable box for each section or sub-section listed. If a box is checked 'NC' or 'NA', then the Bidder must provide comments as to why the functional or technical requirement cannot be met (or is not applicable) and propose alternatives, if any, which are equivalent or better for WMATA's consideration.

Must be completed or bid will be determined as non-responsive.

Section No.	C	NC	NA	COMMENTS
1.01.A				
3.01.A				
3.01.B				
3.01.C				
3.02.A				
3.02.B				
3.02.C				
3.02.D				
3.02.E				
3.02.F				
3.02.G				
3.03.A				
3.03.B				
3.03.C				
3.03.D				
3.03.E				
3.04.A				
3.04.B				
3.04.C				
3.04.D				
3.04.E				
3.04.F				
3.04.G				
3.04.H				
3.04.I				
3.04.J				
3.04.K				
3.05.A				

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT IFB NO.: FQ16119/LP

3.05.B				
3.05.C				
3.05.D				
4.01.A				
4.02.A				
4.02.B				
4.02.C				
4.02.D				
4.02.E				
4.02.F				
4.03.A				
4.03.B				
4.03.C				
4.04.A				
4.04.B				
4.04.C				
4.04.D				
4.04.E				
4.04.F				
4.05.A				
4.05.B				
4.05.C				
4.05.D				
4.05.E				
4.05.F				
4.05.G				
4.05.H				
4.06				
4.07.A				
4.07.B				
4.07.C				
4.07.D				
4.07.E				
4.07.F				
5.01.A				
5.01.B				
5.01.C				
6.01.A				
6.01.B				
7.0				

Signature

Date

TERMS AND CONDITIONS

CHAPTER I – GENERAL PROVISIONS

1. AGREEMENT

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

2. ARRANGEMENT OF CONTRACTUAL PROVISIONS

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

3. ORDER OF PRECEDENCE

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

4. REQUIREMENTS CONTRACT – N/A

5. AUDIT, AVAILABILITY, AND INSPECTION OF RECORDS

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

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

6. AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR

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

7. CONTRACTING OFFICERS TECHNICAL REPRESENTATIVE (COTR)

- (a) The work will be conducted under the general direction of the Contracting Officer. Authority will be delegated to the Contracting Officer's Technical Representative (COTR) to take the following actions:
 - 1. Act as the principal point of contact with the contractor.
 - 2. Approve in writing the contractor's progress schedule and submittals when required.

3. Inspect the work for compliance with the contract.
4. Review and approve invoices and payment estimates. Forward invoices and receipts to accounting. Bring to the attention of the Contracting Officer any significant discrepancies, or disputes concerning contractor invoices or payments.
5. Coordinate correspondence with the Contract Administrator if its importance significantly impacts the contractual terms and obligations.
6. Evaluate the contractor's technical letters and proposals for the Contracting Officer.
7. Advise the Contracting Officer of potential problems that may affect contract performance.
8. Advise the Contracting Officer whenever the COTR has reason to believe that the contractual not-to-exceed amount will be exceeded.
9. Prepare the Authority estimate for Proposed Contract Modifications. Participate in negotiations of modifications with PRMT staff.
10. Receive from the Contractor, monthly, if applicable, DBE/SBLPP status reports and forward them to the DBE/SBE Office, or Office of Equal Employment Opportunity (OEEO) when appropriate.
11. Receive from the Contractor the Certified Payroll Reports and prepare a log sheet indicating the following: (1) name of the Contractor and Subcontractor; (2) the contract number; (3) the certified payroll number (number for the payroll for the project starting with the number 1); (4) the time frame of the payroll period (i.e. 1/21/11-2/3/11); (5) the Statement of Compliance date (first page of the report); and (6) the date the report was received by WMATA.
12. Maintain a comprehensive file record of documents and correspondence concerning contract activities and actions.
13. Provide the Contract Administrator with a written notification after all supplies/services have been received with a statement that the COTR is not aware of any open issues that would preclude closeout of the contract and that the contract is ready for closeout. Return the file, containing all records, correspondence, etc., to the Contract Administrator.
14. At the close out of the contract, execute a vendor evaluation, which contains a detailed performance evaluation of the contractor. Note that if there are one or more categories in which the contractor is deemed unsatisfactory, these evaluations must be provided to the contractor for comment.
15. Provide the Contract Administrator with a written request and a requisition to exercise option(s), if any, a minimum of Ninety (90) days prior to the time established in the contract for exercise of the option. If applicable, all request to exercise contract options shall include a completed vendor evaluation, outlining vendor's satisfactory performance.
16. **Submit monthly reports to assigned Contracting Officer and Contract Administrator.** Reports shall be timely and accurate.

17. **Review Section 18-21 of the PPM** to ensure that you have a good understanding of your delegated duties.

- (b) **As the COTR you are expressly excluded from performing or being responsible for the following:**
 1. Making commitments or promises to contractors relating to award of contracts;
 2. Writing contract requirements around the product or capacity of one source;
 3. Soliciting proposals;
 4. Modifying the stated terms of the Contract;
 5. Issuing instructions to contractors to start or stop work, outside stated contractual obligations;
 6. Approving items of cost not specifically authorized by the Contract;
 7. Directing changes outside of stated contractual obligations;
 8. Executing supplemental agreements;
 9. Rendering a decision on any dispute on any question of fact under the Disputes provision of the Contract;
 10. Taking any action with respect to termination, except to notify the Contracting Officer;
 11. Authorizing delivery or disposition of WMATA-Owned and furnished property not specifically authorized by the contract;
 12. Giving guidance to Contractors, either orally or in writing, which might be interpreted as a change in the scope or terms of the contract;
 13. Discussing procurement plans or any other advance information that might provide preferential treatment to one firm over another when a solicitation is issued for a competitive procurement;
 14. Authorizing contractors to modify DBE/SBE sub-contract agreements without approval of CO.
 15. Delegation of authority as a COTR to another individual. Delegation can only be authorized by the appointing contracting officer, the contracting officer's successor, or a higher level of authority with delegation authority.

CHAPTER II – TIME/DELAYS/LIQUIDATED DAMAGES

1. PERIOD OF PERFORMANCE

The period of performance is one (1) base year commencing on the date of award. There are four (4) – one (1) year options to be exercised at the sole discretion of the Contracting Officer.

1a. OPTION QUANTITIES

- (a) The Authority has the unilateral right to extend the contract by exercising up to four (4), one (1) year Option Years (as applicable) subject to all terms and conditions herein.
- (b) The Authority may exercise the option(s) (if any) by written notice to the Contractor prior to commencement of the option period; provided, that the Authority shall give the contractor a preliminary notice of its intent to extend at least thirty (30) days before the contract expires. The preliminary notice does not commit the Authority to an extension.

2. LIQUIDATED DAMAGES FOR DELAY – N/A

3. EXTENSIONS OF TIME/FORCE MAJEURE

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

- (d) The Contracting Officer may rescind or shorten any extension previously granted, if the Contracting Officer subsequently determines that any information provided by the Contractor in support of a request for an extension of time was erroneous; provided that such accurate information, if known, would have resulted in a denial of the request for an excusable delay. Notwithstanding the foregoing, the Contracting Officer will not rescind or shorten any extension previously granted if the Contractor acted in reliance upon the granting of such extension and if, in the judgment of the Contracting Officer, such extension was based on information which, although later found to have been erroneous, was submitted in good faith by the Contractor.
- (e) The request for an extension of time pursuant to paragraph (a) shall be made within ten (10) days after the Contractor knows or should know any cause for which it may claim an excusable delay and shall provide any actual or potential basis for an extension of time, identifying such cause and describing, as fully as then practicable, the nature and projected duration of the delay and its effect on the completion of that part of the Work identified in the request. Within thirty (30) days of its receipt of all such information, the Authority shall advise the Contractor of its decision on such requested extension; except that, where it is not reasonably practicable for the Authority to render such decision in the thirty (30) day period, it shall, prior to the expiration of such period, advise the Contractor that it will require additional time and the approximate date upon which it expects to render such decision.
- (f) In no event shall a delay in progress or performance of the Work occasioned solely by a Force Majeure event or the acts or omissions of any party outside the control of the Contractor be the basis for a Termination for Default pursuant to Article titled TERMINATION FOR DEFAULT; except that in no event shall a subcontractor at any tier be deemed a party outside the control of the Contractor for purposes hereof.

4. AUTHORITY DELAY OF WORK

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

- (b) An adjustment pursuant to paragraph (a) shall not be allowed:
 - (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the applicable act or omission claimed; and
 - (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption and in no event later than 30 days after such termination. Such claim shall be accompanied by appropriate documentation, specifically identifying and supporting the nature and extent of the claimed impact upon the cost and/or time required for performance; except that, in any instance in which it is not reasonably practical for the Contractor to fully determine or project such impact within such 30 day period, the claim shall be accompanied by such supporting documentation as is then reasonably available to the Contractor as well as a statement of the anticipated time frame in which the Contractor will provide the additional materials. The Contracting Officer shall maintain the right throughout the process to request the preparation and/or submission of such additional materials as he or she shall reasonably require in consideration of the claim and shall be under no obligation to conclude his or her consideration of the claim prior to receipt and review of all relevant materials. Any adjustment to the contract price pursuant to this Article must be agreed upon or otherwise determined prior to Final Payment

5. NOTICE TO THE AUTHORITY OF LABOR DISPUTES

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

CHAPTER III – ACCEPTANCE/INSPECTIONS/DEFICIENCIES

1. INSPECTION OF SERVICES

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

2. INSPECTION OF SUPPLIES

- (a) The Contractor shall provide and maintain an inspection system acceptable to the Authority covering supplies under this Contract and shall tender to the Authority for Acceptance only supplies that have been inspected in accordance with the inspection system and found by the Contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing the nature and result of all inspections. These records shall be made available to the Authority during the term of the Contract and thereafter in accordance with the provisions of the AUDIT AND INSPECTION OF RECORDS article of the Contract. The Authority may perform reviews and evaluations as reasonably necessary to ascertain compliance with this Article. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of its obligations under the Contract.
- (b) The Authority has the right to inspect and test all supplies called for by the Contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The Authority shall perform inspections and tests in a manner that will not unduly delay the work. The Authority assumes no contractual obligation to perform any inspection and/or test nor shall the Authority's failure to perform any inspection or test relieve the Contractor of any obligation under the Contract.
- (c) If the Authority performs inspection(s) or test(s) on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional cost, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (d) When Supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor any additional associated costs. The Contracting Officer may also charge the Contractor for any additional costs of inspection or test when prior rejection makes re-inspection or retest necessary.

3. ACCEPTANCE OF SUPPLIES

- (a) The Authority shall accept or reject tendered supplies as promptly as practicable after delivery, unless otherwise provided in the Contract. In no event shall a failure of the Authority to inspect and/or accept or reject the supplies relieve the Contractor from responsibility, nor impose liability upon the Authority, for nonconforming supplies.
- (b) Acceptance by the Authority shall be deemed conclusive, except for latent defects, fraud, and willful misconduct or as otherwise provided in the Contract. In such instances, the Authority, in addition to any other rights and remedies provided by law, or under other provisions of this Contract, shall have the right:
 - (1) To direct the Contractor, at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or, if so determined by the Contracting Officer, at the Contractor's facility, and in accordance with a reasonable delivery schedule as may be agreed upon between the parties; provided, that the Contracting Officer may effectuate an

adjustment reducing the contract price, if the Contractor fails to meet such delivery schedule; or

- (2) Within a reasonable time after receipt by the Contractor of notice of the defects or nonconformance, effectuate an appropriate price adjustment, reducing the contract price, as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the associated costs of transportation.

4. NEW MATERIAL [SUPPLIES]

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

5. CORRECTION OF DEFICIENCIES & WARRANTY

- (a) Notwithstanding anything to the contrary otherwise set forth in this Contract, all workmanship, parts and materials furnished for all the Work shall be unconditionally warranted against failures or defects for a period of one (1) year after the item supplied is accepted, or placed in service, by the Authority, whichever is earlier. The Contractor shall accept the Authority's records with respect to the date the item was placed in service.
- (b) In the event that any Work covered by the warranty provisions fails during the warranty period, the Contractor shall repair or replace the work within three (3) days without cost or expense to the Authority.
- (c) The warranty will not apply to the extent that such failure is caused by user abuse.
- (d) Should the Contractor shall fail to repair or replace any part or do any Work in accordance with the terms of the warranty, or if immediate replacement or Work is necessary to maintain operation of the item supplied, the Authority shall have the right to cause such replacement to be made, utilizing its own forces and/or those of third parties as the Authority shall reasonably deem appropriate, such work being at the expense of the Contractor.
- (e) Each piece of equipment, component or part thereof that is replaced, repaired, adjusted or serviced in any manner under the terms of warranty by the Contractor during the warranty period shall be reported to the Contracting Officer on forms supplied by the Authority. Each report shall indicate in detail all repairs, adjustments and servicing to each and every component, unit or parts thereof.

- (f) Any warranty or retrofit work shall be accomplished with minimum disruption to Authority operations and its maintenance and service facilities. The Authority shall at its sole discretion determine the availability of facilities for warranty or retrofit work.
- (g) The Contractor shall make available adequate service facilities, including spare parts, for all the items supplied. Trained technical service personnel shall be available to the Authority sufficient to meet the Contractor's warranty obligations.
 - (1) The Contractor shall provide field service representatives who are competent and fully qualified in the maintenance and operation of the supplied items. These field service representatives shall assist the Authority in overcoming any difficulties in the operation or maintenance of the items supplied. They shall further serve as on-site representatives of the Contractor for any component failure claims or warranty claims against the Contract.
 - (2) During the warranty period, a field service representative shall be available within 24 hours.
- (h) The rights of the Authority set forth in this Article shall be in addition to those set forth elsewhere in this Contract or otherwise at law or equity.

6. FIRST ARTICLE INSPECTION – N/A

7. F.O.B. DESTINATION

- (a) Unless otherwise specified, the Contractor shall furnish all supplies to be delivered under this Contract "f.o.b. destination". As used herein, "f.o.b. destination" means:
 - (1) Free of expense to WMATA on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and
 - (2) Supplies shall be delivered to the destination consignee's warehouse unloading platform, or receiving dock, at the expense of the Contractor. WMATA shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of WMATA acting in its contractual capacity. If the Contractor uses a rail carrier or freight forwarder for less than carload shipments, the Contractor shall assure that the carrier will furnish tailgate delivery, if transfer to truck is required to complete delivery to consignee.
- (b) The Contractor shall:
 - (1) Pack and mark the shipment to comply with contract specification;
 - (2) In the absence of specifications, prepare the shipment in conformance with carrier requirements;
 - (3) Prepare and distribute commercial bills of lading;
 - (4) Deliver the shipment in good order and condition to the point of delivery specified in the contract;

- (5) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the Contract;
- (6) Furnish a delivery schedule and designate the mode of delivering carrier; and
- (7) Pay and bear all charges to the specified point of delivery.

8. QUALITY ASSURANCE/QUALITY CONTROL

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

24. PACKAGING AND HANDING INSTRUCTIONS

Rail Fastener bodies shall be packed in waterproof and weatherproof containers banded on pallets for forklift handling. Rail clips and rail anchor assemblies shall be packed in separate water proof and weatherproof containers, banded on pallets for forklift handling. Clearly mark each container with identification of the item contained, shipping date, number of pieces, destination, and gross weight.

CHAPTER IV—CHANGES/ PRICING ADJUSTMENTS

1. CHANGE ORDERS

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

accordance with this Article or otherwise, which the Contractor believes or asserts may reasonably result in either an increase or decrease in the Contract price or the time required for performance of any part of the Work and shall take action with respect thereto as directed by the Contracting Officer. The Contractor's failure to provide such notification shall constitute a waiver of its right to seek an adjustment in the Contract price or time required for such performance.

- (g) Except to the extent, if any, otherwise expressly set forth in this Contract, in no event shall the Contractor be entitled to payment for change orders, additional or extra supplies or services or other modification to any requirement or term of the Contract unless such has been authorized in writing by the Contracting Officer.

2. PRICING OF ADJUSTMENTS

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

3. ACCOUNTING AND RECORD KEEPING FOR ADJUSTMENTS

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

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

- (d) Access to Records. As a condition to the Authority's obligation to consider any claim for a potential price adjustment under any provision of this Contract, the Contractor shall grant the Authority access to review and ascertain the validity of the accounting records being maintained for segregation of costs, including base cost records, and to audit any such costs as are deemed appropriate by the Contracting Officer.
- (e) Limitation on Pricing Adjustment. In the event the Contractor or any subcontractor fails to generate, maintain, or make available any records required under the Contract, and in addition to any and all additional rights to which the Authority may thereupon be entitled, the Contracting Officer shall determine whether such failure is willful, deliberate or otherwise precipitated by bad faith on the part of the Contractor, in which event the Contractor shall not be entitled to any price adjustment for the Work in question. Where the Contracting Officer determines that the failure was not the result of the Contractor's bad faith, the Contractor Officer shall determine the reasonable direct cost of the work for which records are not available, and add a single mark-up for indirect expenses not to exceed ten percent (10%) of the direct costs based on:
 - (1) An audit of any records of the Contractor or subcontractor made available to the Authority; and/or
 - (2) An Authority estimate as adopted or modified by the Contracting Officer.
- (f) In no event shall the Contractor and/or subcontractor be allowed any profit on claimed work for which records are not made available in accordance with its obligations under this Article and otherwise in the Contract.
- (g) Flow-down clause. The Contractor shall ensure the inclusion of all the provisions of this Article in all subcontracts issued under this Contract, modified as necessary, for proper identification of the contracting parties and the Contracting

CHAPTER V – INVOICES/PAYMENTS/ DEDUCTIONS

1. BILLING AND PAYMENT

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

WMATA-Accounts Payable
PO Box 1910
Beltsville, MD 20704-1910
- (c) Invoices shall contain the vendor name, a unique invoice number for each shipment or service, invoice date, payment terms, total invoice amount, remit to address, Purchase Order Number, freight terms, description of each item being invoiced, quantity, unit item cost, extended cost by item, total freight/handling costs, and contact name and email address. Final invoices must clearly be marked "FINAL" and cite the amount of the contract, amount previously paid, and the balance due totals.
- (d) The Authority shall remit payment, generally within 30 days of its receipt of an invoice satisfying the requirements of paragraphs (b) and (c), at the prices stipulated in the Contract for Supplies delivered and accepted or Services rendered and accepted, less any applicable deductions.

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

With respect to any modification, change order, or otherwise, of this Contract which involves aggregate increases and/or decreases in costs plus applicable profit in excess of \$100,000, in the event that the Contracting Officer ultimately determines that any price, including profit or fee, previously negotiated in connection with any such modification was based upon cost or

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

3. SUBCONTRACTOR PAYMENTS

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

4. GARNISHMENT OF PAYMENTS

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

CHAPTER VI – CONTRACT TERMINATION/STOP WORK ORDERS/DISPUTES

1. STOP WORK ORDERS

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part of the Work for a period of up to 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a STOP WORK ORDER (“SWO”) issued under this Article. Upon receipt of the SWO, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the SWO during the period of work stoppage. Within a period of 90 days after an SWO is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either:
 - (1) Cancel the SWO; or
 - (2) Terminate the work covered by the SWO as provided in the TERMINATION FOR DEFAULT or TERMINATION FOR CONVENIENCE articles of this Contract, as appropriate.

- (b) If a SWO is cancelled or its initial period or any extension thereof expires, the Contractor shall resume work. An equitable adjustment shall be made in the delivery schedule or Contract price, or both, and the Contract modified shall be in writing accordingly, if, in the judgment of the Contracting Officer or as otherwise determined:
 - (1) The SWO results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and
 - (2) The Contractor submits a written claim for such adjustment within 30 days after the end of the period of work stoppage; provided that, at the sole discretion of the Contracting Officer, the Authority may elect to consider and act upon any such claim submitted at any time before Final Payment under this Contract.

- (c) If an SWO is not cancelled and the work covered by the Contract is terminated for the convenience of the Authority, the Contracting Officer shall allow reasonable costs, if any, resulting from the SWO in arriving at the termination settlement pursuant to the provisions of the TERMINATION FOR CONVEINENCE article of the Contract.

- (d) If an SWO is not cancelled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order; except that, if the Contracting Officer determines that the SWO was precipitated by, or arose from, a material breach of any term or condition of this Contract on the part of the Contractor, such costs shall not be allowed and the rights and obligations of the parties shall be subject in all respects to the Termination for Default provisions of this Contract.

2. TERMINATION FOR DEFAULT

- (a) The Contractor shall be in default if it commits a breach of any of its obligations under the Contract deemed material by the Contracting Officer. Without limiting the generality of the foregoing and in addition to those instances specifically referred to in the Contract, the Contractor shall be in default in the following circumstances:
 - (i) It fails to begin, or abandons, the Work of the Contract in accordance with the contractual requirements;
 - (ii) 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;
 - (iii) It fails to progress the Work in a manner deemed unreasonable or unnecessary by the Contracting Officer or so as to endanger performance of the Contract; or
 - (iv) In the view of the Contracting Officer, the Contractor is willfully violating any of the provisions or obligations of the Contract or is not executing such provisions or obligations reasonably and in good faith.

- (b) In the event of a material breach by the Contractor pursuant to paragraph (a), the Contracting Officer is authorized to direct a written notice to the Contractor, specifying the nature of the breach and providing that, if the Contractor fails to cure such failure(s) within ten days (or such additional time as authorized by the Contracting Officer), the Authority shall proceed to terminate the Contract, in whole or designated part, for default in accordance with the provisions hereof (a "Notice to Cure"). Should the Contractor fail to cure the breach to the satisfaction of the Contracting Officer within the ten day period, or such additional period as may be designated in the Notice to Cure, the Authority may thereupon, immediately upon conclusion of such period or at any reasonable time thereafter, terminate the Contract, in whole or part, by written notice to the Contractor.

- (c) Upon receipt of a notice of default, the Contractor shall immediately cease performance of the Work so terminated. The Authority shall thereupon have the right to take any action necessary to complete the Work, including performing the Work itself, or contracting with another party to do so. In the event the Work is completed directly by the Authority or by a third party, the Contractor shall be liable for the additional costs and expenses necessary to complete the Work, including, without limitation, labor, materials, plant expenses, tools, equipment, supplies and property. The costs and expenses so charged may be deducted by the Authority and paid out of any monies otherwise payable to the Contractor. Nothing contained herein shall be deemed to relieve the Contractor of its continuing obligation to perform any portion of the Contract which has not been terminated.

- (d) The Authority may, in its sole discretion, waive a default by the Contractor, but such waiver and/or failure by the Authority to take action in respect to any default shall not be deemed a waiver of any subsequent default.

- (e) Upon any termination for default, the Authority may require the Contractor to transfer title and deliver to the Authority, as directed by the Contracting Officer of (1) any

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

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

3. TERMINATION FOR CONVENIENCE

- (a) The Authority may terminate performance of Work under this Contract in whole, or, in part, if the Contracting Officer determines that a termination is in the Authority's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of the termination and the effective date.
- (b) Upon receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall immediately proceed as follows:
 - (1) Stop work as specified in the Notice of Termination;
 - (2) Complete performance of the work not terminated;
 - (3) Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the remaining portion of the Contract;

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

total amount to be paid the Contractor pursuant to this Article exceed the total contract price as reduced by (1) payments previously made and (2) the contract price of the remaining work not terminated.

- (f) If the parties fail to agree on the whole amount to be paid because of the termination, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed upon under paragraph (e):
- (1) The contract price for completed Supplies or Services accepted by the Authority (or sold or acquired under paragraph (b)(9)) not previously paid for, adjusted for any saving of freight and other charges.
 - (2) The total of:
 - (i) The costs incurred prior to termination in the performance of the Work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any costs attributable to items compensated or to be paid for under subparagraph (f)(1);
 - (ii) The cost of settling and paying termination costs under terminated subcontracts that are properly chargeable to the terminated portion of the contract, if not excluded in subparagraph (f)(2)(i); and
 - (iii) A sum, representing profit on the items described in subparagraph (f)(2)(i) determined by the Contracting Officer pursuant to Section 49.202 of the Federal Acquisition Regulation, in effect on the date of this Contract, to be fair and reasonable. However if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the Contracting Officer shall allow no profit under this sub-paragraph and shall reduce the settlement to reflect the projected rate of loss.
 - (3) The reasonable indirect costs for the work terminated, including:
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (g) Except for normal spoilage, and except to the extent that the Authority expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f), the fair value, as determined by the Contracting Officer, of property that is unavailable or damaged so as to become undeliverable to the Authority or to a third party.

- (h) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this Article.
- (i) The Contractor shall have the right of appeal, under the DISPUTES Article, from any determination made by the Contracting Officer under paragraphs (d) or (f), except that a failure on the part of the Contractor to submit the termination settlement proposal within the time provided in paragraph (d), or timely request an extension thereof, shall constitute a waiver of its right to appeal the determination of the Contracting Officer pursuant to the Disputes Article or any otherwise applicable contractual, legal or equitable remedy.
- (j) In determining any sum due the Contractor under this Article, there shall be deducted:
 - (1) All unliquidated advances or other payments to the Contractor under the terminated portion of the Contract;
 - (2) The value, as determined or reasonably projected by the Contracting Officer, of any claim that the Authority has against the Contractor under this Contract, including any third-party claims as to which the Contracting Officer is not satisfied that sufficient insurance coverage is in place; and
 - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other items procured by the Contractor or sold under the provisions of this Article and not recovered by or credited to the Authority.
- (k) If the termination is partial and the Contractor asserts that the partial termination has rendered enforcement of the remainder of the Contract at the remaining Contract price inequitable, the Contractor may file a proposal with the Contracting Officer for an adjustment of the price(s) of the continued portion of the Contract, which proposal shall be submitted within 90 days from the effective date of termination, unless extended in writing by the Contracting Officer, and shall be accompanied by appropriate supporting documentation of the claimed inequity.
- (l) The Contractor's responsibilities and obligations under this Article shall apply and remain in full force and effect notwithstanding the pendency of any dispute or other delay relating to determination of the appropriate price adjustment or any other issue arising from the termination for convenience.
- (m) Unless otherwise provided in this Contract or by statute, the Contractor and all subcontractors whose work is encompassed in the termination settlement shall maintain all records and documents relating to the terminated portion of this Contract for three (3) years after final settlement. This includes all books and other evidence bearing on the costs and expenses of the Contractor under this Contract. The Contractor shall make these records and documents available to the Authority, its governing jurisdictions and any other federal, state, or local entities providing funding for this Contract, and to the Comptroller General of the United States, or the agents or representatives of any of them, at the Contractor's office, at all reasonable times, without any direct charge.

4. ASSIGNMENT

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

5. DISPUTES

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

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

CHAPTER VII – INDEMNIFICATION/INSURANCE/RISK OF LOSS

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. 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:

a. 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 Sub-contractors of every tier. Contractor, at its sole peril, may amend the insurance for its Sub-contractors, but doing so does not relieve Contractor from its respective liability to WMATA.
- 9) Compliance with these Minimum Insurance Requirements does not relieve Contractor from its respective liability to WMATA, even if that liability exceeds the minimum insurance requirements.

b. Workers' Compensation and Employer's Liability

Required Minimum Limits of Coverage:

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

Required Minimum Coverage(s):

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

c. Commercial General Liability

Required Minimum Limits of Coverage:

\$2,000,000	Each Occurrence Limit
\$4,000,000	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.

d. Business Auto Liability

Required Minimum Limits of Coverage:

\$2,000,000	Combined Single Limit
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Required Minimum Coverage(s):

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

e. Professional Liability Insurance

Contractor, any Sub-contractor 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 \$2,000,000, 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.

f. Additional Insured(s)

Contractor and Sub-contractors 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 Sub-contractors of every tier, including excess liability policy(s), with the exception of Workers' Compensation and Professional Liability.

- 1) Coverage provided to any Additional Insured shall be primary and non-contributory to any other insurance available to the Additional Insured, including coverage afforded to 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.
- 4) The coverage provided by the additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured Form CG 20 10 11 85 or CG 20 26 11 85 as determined by WMATA.

g. Waiver of Subrogation

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

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

h. Certificate of Insurance (COI)

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

The cert holder box should read:

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

Additionally;

- 1) Proposed material modifications to insurance required under this Section must be received by WMATA at least 30 days prior to the effective date of the proposed modifications to such insurance.
- 2) 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.

3. TITLE AND RISK OF LOSS

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

CHAPTER VIII – INTELLECTUAL PROPERTY RIGHTS

1. PATENT INDEMNITY

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

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

2. WITHHOLD/SET-OFF

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

PRODUCTS: 90% UPON DELIVERY/10% (BALANCE) FINAL ACCEPTANCE

3. RIGHTS IN TECHNICAL DATA- GENERAL – N/A

4. RIGHTS IN TECHNICAL DATA – UNLIMITED

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

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

- (c) The Authority shall have the right to use, duplicate, or disclose technical data other than that defined in paragraph a. in whole or in part, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be
 - (1) Released or disclosed in whole or in part outside the Authority,
 - (2) Used in whole or in part by the Authority for manufacture, or
 - (3) Used by a party other than the Authority except for: (i) emergency repair or overhaul, (ii) where the item or process concerned is not otherwise reasonably available to the Authority to enable timely performance of the work, or (iii) administration of this contract or the inspection or verification of the product produced under this contract where the third party has a written contract with the Authority to perform these efforts. In all cases described in this subsection, the release or disclosure outside of the Authority shall be subject to a written prohibition against further use, release or disclosure by the party receiving the technical data.

- (d) Technical data provided in accordance with the provisions of paragraph c. shall be identified by a legend which suitably recites the aforesaid limitation. Nothing herein shall impair the right of the Authority to use similar or identical data acquired from other sources.

- (e) Where any item is purchased as a separate line item in the contract, that purchase includes all integral parts of that item, including any computer software, source codes, algorithms, processes, formulae, and flow charts. As such, the Authority has full rights

to use, duplicate or disclose any or all parts of the item, including computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so. Should disclosure of the computer software be required only under this paragraph, then the Contracting Officer may waive the provisions of this paragraph if he certifies in writing that the item is commercially available from multiple sources and the product from any of those sources will be fully compatible with existing Authority property.

- (f) Material covered by copyright:
 - (1) The Contractor agrees to and does hereby grant to the Authority, and to its officers, agents and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Authority purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all (i) technical data and (ii) computer software covered by subsection (b) (5) now or hereafter covered by copyright.
 - (2) No such copyrighted matter shall be included in (i) technical data or (ii) computer software covered by subsection (b) (5) furnished hereunder without the written permission of the copyright owner for the Authority to use such copyrighted matter in the manner above described.
 - (3) The Contractor shall report to the Authority (or higher-tier contractor) promptly and in reasonable written detail each notice or claim of copyright infringement received by the Contractor with respect to any (i) technical data or (ii) computer software covered by subsection (b)(5) provided to the Authority.
- (g) Relation to patents: Nothing contained in this Article shall imply a license to the Authority under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Authority under any patent.
- (h) Any dispute under this Article shall be subject to the DISPUTES article of this Contract.
- (i) Notwithstanding any other payment provision in this Contract, the Contracting Officer may retain from payment up to 10 percent of the contract price until final delivery and acceptance of the technical data defined in this Article and as required to be furnished by the bid schedule or the contract specification.

5. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT SUPPLIES

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

CHAPTER IX – ADDITIONAL COVENANTS/LEGAL REQUIREMENTS

1. NONDISCRIMINATION ASSURANCE

- (a) Nondiscrimination Assurance: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the American with Disabilities Act of 1990, 42 U.S.C. §12132, federal transit law at 49 U.S.C. §5332, the contractor, sub-recipient, or subcontractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, disability, sexual preference. In addition, the contractor, sub-recipient, or subcontractor agrees to comply with applicable federal implementing regulations and other implementing 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) 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 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.
- (d) Failure by the contractor, sub-recipient, or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Authority deems appropriate.

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

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

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

3. WALSH-HEALEY PUBLIC CONTRACTS ACT

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

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

4. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS – N/A

5. CONVICT LABOR

- (a) Except as provided in paragraph (b) , the Contractor shall not employ in the performance of this Contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam or the U.S. Virgin Islands.
- (b) The Contractor is not prohibited from employing persons:
 - (1) On parole or probation to work at paid employment during the term of their sentence;
 - (2) Who have been pardoned or who have served their terms; or
 - (3) Confined for violation of the laws of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—
 - (i) The worker is paid or is in an approved work or training program on a voluntary basis;
 - (ii) Representatives of local union central bodies or similar labor union organizations have been consulted;
 - (iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts or services;
 - (iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
 - (v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

6. COVENANT AGAINST CONTINGENT FEES

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

7. SEAT BELT USE POLICY

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

8. SENSITIVE SECURITY INFORMATION

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

9. LAWS AND REGULATIONS

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

10. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

- (a) The Contractor agrees to submit a Material Safety Data Sheet (Department of Labor Form OSHA-20), as prescribed in Federal Standard No. 313B, for all hazardous material five days before delivery of the material, whether or not listed in Appendix A of the Standard. This obligation applies to all materials delivered under this Contract which involve exposure to hazardous materials or items containing these materials.
- (b) "Hazardous material," as used in this Article, is as defined in Federal Standard No. 313B, in effect on the date of this contract.
- (c) Neither the requirements of this Article nor any act or failure to act by the Authority shall relieve the Contractor of any responsibility or liability for the safety of Authority, Contractor, or subcontractor personnel or property.

- (d) Nothing contained in this Article shall relieve the Contractor from complying with applicable Federal, state, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (e) The Authority's rights in data furnished under this Contract with respect to hazardous material are as follows:
 - (1) To use, duplicate and disclose any data to which this Article is applicable. The purposes of this right are to (i) apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous material (ii) obtain medical treatment for those affected by the material; and (iii) have others use, duplicate, and disclose the data for the Authority for these purposes.
 - (2) To use, duplicate, and disclose data furnished under this Article, in accordance with subparagraph (e)(1) above, in precedence over any other provision of this Contract providing for rights in data.
 - (3) That the Authority is not precluded from using similar or identical data acquired from other sources.
 - (4) That the data shall not be duplicated, disclosed, or released outside the Authority, in whole or in part for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this Article applies -

"This is furnished under Authority Contract No. _____ and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of This legend shall be marked on any reproduction of this data." (End of legend)
 - (5) That the Contractor shall not place the above legend or any other restrictive legend on any data which (i) the Contractor or any subcontractor previously delivered to the Authority without limitations; or (ii) should be delivered without limitations under the conditions specified in the Article entitled Rights in Technical Data.
- (f) The Contractor shall insert this Article, including this paragraph, with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase designations or purchase orders) under this Contract involving hazardous material.

11. LIVING WAGE

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

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

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

12. METRIC SYSTEM

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

required to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms.

13. WHISTLEBLOWER PROTECTION

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

- (4) refused to obey an order that would violate law; or
 - (5) refused to work or authorize work when a hazardous safety or security condition presents an imminent danger of death or serious injury, there was no reasonable alternative to refusal, there was not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, notified the Contactor or subcontractor of the condition and of the intent not to perform or authorize work.

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

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

- (f) The Contractor shall notify the Authority of any instance, related to this Contract, of a report under sub-paragraph (e)(1) or refusal under sub-paragraphs (e)(2), (3) or (5).

- (g) The enforcement, filing and investigation of complaints, and remedies under this section shall be governed by the NTSSA, applicable federal regulations and federal

law.

- (h) This Article shall be interpreted in accordance with the NTSSA. If any provision is found to be in conflict with the NTSSA, the NTSSA shall govern.
- (i) The Contractor shall include, or shall cause to be included, the substance of this Article, including this paragraph, in its subcontracts at all tiers.

14. DRUG AND ALCOHOL TESTING

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

15. EMPLOYMENT RESTRICTION WARRANTY

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

16. GRATUITIES

- (a) In connection with performance of work required under this Contract, or any changes or modifications relative thereto, the giving of or offering to give gratuities (in the form of entertainment, gifts or otherwise) by the Contractor, or any agent, representative or other person deemed to be acting on behalf of the Contractor, or any supplier or subcontractor furnishing material to or performing work under this Contractor, or any agent, representative or other person deemed to be acting on behalf of such supplier or subcontractor, to any Director, Officer or employee of the Authority; or to any Director, Officer, employee or agent of any of the Authority's agents, consultants, representatives or other persons deemed to be acting for or on behalf of the Authority with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract is expressly forbidden. The terms of this GRATUITIES Article shall be strictly construed and enforced in the event of violations hereof.

- (b) Reported instances of the giving or offering to give gratuities within the context of this GRATUITIES Article will be investigated by the Board of Directors or its duly authorized representative. A preliminary investigation will be made to determine whether there is probable cause to suspect that a violation of this Article has been committed. If such probable cause is found to exist, the Board of Directors, or its duly authorized representative, shall formally notify the suspected donor corporation or individual in writing of the particulars of the event; and provide such donor the opportunity to be heard on the matter. The aims of the investigations and hearing shall be to ensure due process and to preserve the best interests and rights of all parties by the full and fair disclosure of all relevant and material information. Accordingly, the Board of Directors, or its duly authorized representative, shall require production of all pertinent documents and records, and sworn testimony from witnesses. During the pendency of any investigation or hearing treating with a violation of this GRATUITIES Article, the Board of Directors, or its duly authorized representative may exercise its power granted by the Washington Metropolitan Area Transit Authority Compact, Public Law 774, 80 Stat. 1324, Article V, General Powers, Subparagraph (k), by issuing subpoenas to compel the attendance of necessary witnesses, and to compel production of papers, records, accounts, ledgers and documents. The subpoenas shall be enforceable by order of an appropriate United States District Court. If, after notice and hearing, or notice of the opportunity to be heard, the Board of Directors, or its duly authorized representative, finds that a violation of this GRATUITIES Article has been committed, the Authority shall have the right to:
 - (1) Require that the individual(s) giving or offering the gratuity be removed from further participation on any Authority projects (be terminated);
 - (2) Deny the Contractor any G & A (general and administrative) mark-ups for all changes and/or modifications found to be tainted by the giving of or offering to give gratuities;
 - (3) Preclude the Contractor from bidding on, receiving or participating as joint venturer, subcontractor or otherwise in any Authority project for a period of five (5) years;

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

17. OFFICIALS NOT TO BENEFIT

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

18. ORGANIZATIONAL CONFLICT OF INTEREST

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

specification for work that is to be procured competitively. It may also arise when a contractor or one of its affiliates would have an economic interest in the outcome of a contract or project. Conflicts of interest may be either real or apparent.

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

of the Authority in their relationship with the Contractor, any conflicts of interest or favoritism and/or the appearance thereof and shall avoid any conduct which might result in a Director, Officer, or employee failing to adhere to the Standards of Conduct adopted by the Authority's Board of Directors.

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

19. CONTRACTOR PERSONNEL – N/A

20. FALSE STATEMENTS, CLAIMS OR SUBMISSIONS

- (a) The Contractor acknowledges its responsibility to undertaken its obligations under this publicly-funded contract with full integrity and, to that end, to take all reasonable steps to ensure that statements, claims and submissions made pursuant to the Contract are provided in good faith and with a reasonable belief as to their truthfulness, accuracy and completeness.
- (b) In the event that it is finally determined that any statement, claim, submission, or certification made by or on behalf of the Contractor pursuant to a material element of the Contract was knowingly false, fictitious or fraudulent, the Authority shall be entitled to recover from the Contractor an amount equal to not more than three times the monetary value of the benefit derived or sought to be derived by the Contractor through its false statement, claim or submission .For purposes hereof, an element of the Contract shall be deemed material if it impacted or could reasonably have been intended to impact the disposition of any claim, Dispute, proposed or implemented Change Order, proposed pricing or schedule adjustment of any nature, or other substantive issue directly affecting the rights of the parties under the Contract.
- (c) Where the Authority believes that there exist reasonable grounds to conclude that the Contractor has engaged in one or more violations of paragraph (b), it shall so notify the Contractor in writing, describing the nature of the potential violation(s). The Contractor shall thereupon have 30 days following its receipt of such notification to provide its written response. The Authority shall be authorized to initiate suit in a court of competent jurisdiction, asserting the Contractor's violation(s) of paragraph (b) of this Article and the Authority's consequent entitlement to monetary relief. Claims relating to an alleged violation of this Article shall be subject exclusively to judicial adjudication and shall not be subject to the Disputes Article of this Contract or other administrative disposition.
- (d) The rights of the Authority set forth in this Article are in addition to any such additional contractual, legal or equitable rights which may arise upon the Contractor's submission of a knowingly false claim or statement, including without limitation the Authority's right to terminate the Contract for default. Nor shall the provisions of this Article serve in any respect to limit, waive or modify any liability, civil or criminal, of the Contractor or any of its officers, agents or employees which such conduct may precipitate.

CHAPTER X – MISCELLANEOUS ADDITIONAL PROVISIONS

1. FEDERAL, STATE, AND LOCAL TAXES

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

2. FEDERAL/LOCAL/STATE SALES TAX

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

entitled to a reduction in the Contract Price reflecting such amount and a refund of monies paid related to such taxes, plus applicable interest.

3. PUBLIC COMMUNICATION

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

4. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

(a) This Contract shall be deemed to be executed in the District of Columbia, regardless of the domicile of the Contractor and shall be governed by and construed in accordance with the laws of the District of Columbia except to the extent, if any, superseded by federal law.

(b) The parties agree that any and all claims asserted by or against the Authority arising hereunder or related hereto shall be heard and determined either at the ASBCA or in the courts of the United States located in the District of Columbia, the state of Maryland or the Commonwealth of Virginia or in the courts of the District of Columbia, state of Maryland or Commonwealth of Virginia which maintain jurisdiction over such claims and in which venue properly resides.

5. SEVERABILITY

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

6. SURVIVAL

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

7. ALL NECESSARY FEDERAL PROVISIONS DEEMED INCLUDED

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

CHAPTER XI – FEDERAL PROVISIONS

1. NOTIFICATION OF FEDERAL PARTICIPATION

This project is being funded in whole or part with Federal funds.

2. ACCESS TO THIRD PARTY CONTRACT RECORDS

- (a) The Contractor agrees to provide the Authority, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 CFR. 633.17 to provide the FTA Administrator or his authorized representatives including any 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, which 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 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 the 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 CFR 18.39(i)(11).

3. RIGHTS IN DATA AND COPYRIGHTS — FTA

- (a) The term "subject data" used in this Article 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.
- (b) The following restrictions apply to all subject data first produced in the performance of this contract:
 - (1) Except for its or WMATA's own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of the U.S. Government, until such time as the Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to Agreements with academic institutions;

- (2) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. 19.36, the Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, the following subject data for Federal Government purposes:
- (i) Any subject data developed under this contract whether or not a copyright has been obtained; and
 - (ii) Any rights of copyright to which the contractor purchases ownership with Federal assistance.
- (c) When the Federal Transit Administration (FTA) provides financial assistance for a planning, research, development, or a demonstration project, it is FTA's general intention to increase mass transportation knowledge, rather than limit the benefits of the Project to participants in the Project. Therefore, unless FTA determines otherwise, the Contractor agrees that, in addition to the rights set forth in subsection (b)(2) of this clause, FTA may make available to any FTA recipient, sub-recipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the subject data derived under this contract or a copy of the subject data first produced under this contract. If this contract is not completed for any reason whatsoever, all data developed under this contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Government may direct.
- (d) Unless prohibited by state law, the Contractor agrees to indemnify, save, and hold harmless WMATA and the Government, their 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 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 this Contract. The Contractor shall not be required to indemnify WMATA and the Government for any such liability arising out of the wrongful acts of employees or agents of WMATA and the Government.
- (e) Nothing contained in this section on rights in data shall imply a license to WMATA or the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to WMATA or the Government under any patent.
- (f) The requirements of paragraphs (b) and (c), do not apply to material furnished by the Authority to the Contractor and incorporated in the work carried out under the contract provided that the Contractor identifies the incorporated material at the time of delivery of the work.
- (g) Any dispute arising under this Article shall be subject to the Disputes article of this Contract.
- (h) Notwithstanding any other payment provision in this contract, the Contracting Officer may retain from payments due and owing the Contractor up to 10 percent (10 %) of the contract price until final delivery and acceptance of the subject data defined in this Article and as required to be furnished by the bid schedule or the contract specification.

4. BUY AMERICA ACT

The contractor agrees to 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, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

5. CHARTER BUS REQUIREMENTS – N/A

6. SCHOOL BUS REQUIREMENTS – N/A

7. BUS TESTING – N/A

8. CARGO PREFERENCE

The Contractor agrees:

- (a) 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;
- (b) To furnish within 20 working 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 (a) above to WMATA (through the Contractor in the case of a subcontractor's bills-of-lading) and to the Office of Cargo Preference, Maritime Administration (MAR-590), 400 Seventh Street SW, Washington, DC 20590;
- (c) 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 liner.

9. 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) Flow-down requirement. 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.

10. 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) Flow-down requirement. 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.

11. RECYCLED PRODUCTS

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.

12. ENERGY CONSERVATION

- (a) The Contractor agrees to comply with mandatory standards and policies relating to the energy efficiency which are contained in the applicable state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- (b) Flow-down requirement: The Contractor agrees to include the requirements of this clause in all subcontracts under this contract.

13. 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 Agreement (Form FTA MA (14) dated October 1, 2007) 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) Flow-down requirement. The Contractor agrees to include this Article in each subcontract financed in whole or in part with Federal Assistance provided by FTA. It is further agreed that the Article shall not be modified, except to identify the subcontractor who will be subject to its provisions.

14. FLY AMERICA REQUIREMENTS

- (a) 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 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 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.
- (b) Flow-down requirement. The Contractor agrees to include the requirements of this Article in all subcontracts that may involve international air transportation.

15. PAYMENT DEDUCTIONS - NONCOMPLIANCE WITH DBE REQUIREMENTS

- (a) For federally funded contracts that exceed \$100,000 and to which the Disadvantage Business Enterprise (DBE) Requirements (Appendix B) apply, the failure to perform in accordance with requirements of Appendix B may result in a partial or full suspension of payment, including progress payments, if applicable.
- (b) If the Contractor is found to be in noncompliance with the DBE requirements of Appendix B, the progress of the work shall also be deemed to be unsatisfactory, and an amount equal to the DBE participation in the Contract shall be retained from payment (or progress payments, if any) made to the Contractor.
- (c) If the contract value is over \$100,000, the prime contractor will be responsible for submitting a monthly report of the status of its DBE subcontractors as outlined in Appendix B to the Contracting Officer.
- (d) If the Contractor fails to submit the required monthly DBE reports, the Contracting Officer may suspend payment (or progress payments) until such time as the monthly reports are submitted and accepted by the Authority.

16. GOVERNMENT-WIDE DEBARMENT OR 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, 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 49 C.F.R. 29, Subpart C, throughout the term of this Contract.
- (b) Flow-down requirement. The Contractor agrees to include this requirement in all subcontracts at all tiers under this Contract.

17. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

- (a) The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (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 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 Contract. 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) Flow-down requirement. 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.

18. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

- (a) The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this 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.
- (b) Flow-down requirement. 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.

19. FALSE STATEMENTS OR CLAIMS CIVIL AND CRIMINAL FRAUD

- (a) 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 Project. Upon execution of the underlying contract, the Contractor certifies and 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 work 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 the Federal Government deems appropriate.
- (b) 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.

- (c) Flow-down requirement. 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.

20. RECOVERED MATERIALS

- (a) 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.
- (b) Flow-down requirement. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA.

21. LOBBYING

- (a) The Contractor is bound by its certification contained in its offer 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) Flow-down requirement. The Contractor agrees to include these requirements in all subcontracts at all tiers under this Contract.

22. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS

The Contractor agrees to:

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

23. 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:

- (a) 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. 552 (a). 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.
- (b) The Contractor also agrees to include these requirements in each subcontract involving the administration of any system of records on behalf of the federal government financed in whole or in part with federal assistance provided by the FTA.

24. AMERICANS WITH DISABILITIES ACT ACCESSIBILITY – FTA

- 1. I.3.1 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 they contract to provide public transportation services.
- 2. I.3.2 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 Specifications for Transportation Vehicles,” 36 C.F.R. Part 1192 and 49 C.F.R. Part 38.

CHAPTER XII-WMATA POLICIES

1. SAFETY REQUIREMENTS

- (a) The Contractor shall be responsible for ensuring compliance with the most stringent provisions of the applicable statutes and regulations of the District of Columbia, State of Maryland, Commonwealth of Virginia or political subdivision in which the work is being performed, as well as the METRO Construction Safety Methods Manual (1984 et. seq.) issued by the Authority, and the Department of Labor OSHA standards pertaining to the safe performance of the work. In the absence of a specific Construction Industry Standard, the Contractor would be required to comply with either an established OSHA General Industry Standard, National Institute for Occupational Safety and Health (NIOSH) guidelines, American Conference of Governmental Industrial Hygienists (ACGIH) guidelines, American National Standards Institute (ANSI) guidelines, the WMATA System Safety Program Plan, the WMATA Construction Safety Methods Manual, or the Metrorail Safety Rules and Procedures Handbook. For contracts in which work is performed on, or interfaces with the Metrorail System, the Contractor shall also comply with the publication titled Metrorail Safety Rules and Procedures Handbook. Further, the Contractor shall ensure that all methods of performing the work do not involve danger to the personnel employed thereon, the public and private property, whether or not these methods are cited or indicated in the Contract documents. Should charges of violation of any of the above be issued to the Contractor in the course of the work, a copy of each charge shall be immediately forwarded to the Authority Representative.

- (b) The contractor shall employ and assign full time to the work a Safety Superintendent. The Safety Superintendent shall have specialized training and experience in construction safety supervision and have a working knowledge of all OSHA regulations. He shall have the ability to develop and conduct safety training courses. He shall be familiar with industrial hygiene equipment and testing as required for the protection of all employees. The Safety Superintendent shall be employed exclusively for the purpose of supervising the safety of persons on or about the work and the property affected thereby. The Safety Superintendent shall also be responsible for providing first aid at the site and must have a current Red Cross First Aid Certificate. If, at any time, the work site is without the services of an approved Safety Superintendent for a period of 15 calendar days or more, the work may be closed down at the discretion of the Contracting Officer. The Safety Superintendent must be acceptable to the Contracting Officer and his performance will be reviewed by the Contracting Officer on a continuing basis. If the Safety Superintendent's effectiveness is below standard, the Contractor shall provide immediate replacement at the Contracting Officer's direction. Once employed, the Safety Superintendent shall not be changed without permission of the Contracting Officer.

- (c) The contractor shall provide, at the site of the work, a first aid kit which shall be fully equipped to meet the needs of the anticipated work force.

- (d) The contractor shall follow all appropriate RAIL Operational Rules, OAPs, SOPs and General and Special Orders while on the operational railroad and all Start-Up Rules and Manager's Notices when in a declared start-up area.

2. PRE-EMPLOYMENT CRIMINAL BACKGROUND CHECK REQUIREMENT

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

3. WORKPLACE VIOLENCE/ZERO TOLERANCE

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



MID-ATLANTIC PURCHASING TEAM RIDER CLAUSE

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

Extension to Other Jurisdictions

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

Inclusion of Governmental & Nonprofit Participants (Optional Clause)

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

Notification and Reporting

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

Contract Agreement

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

Mid-Atlantic Purchasing Team:

- | | | |
|---|--|---|
| <input type="checkbox"/> Alexandria Public Schools | <input type="checkbox"/> Herndon, Virginia | <input type="checkbox"/> Prince William County Service Authority |
| <input type="checkbox"/> Alexandria Sanitation Authority | <input type="checkbox"/> Leesburg, Virginia | <input type="checkbox"/> Rockville, Maryland |
| <input type="checkbox"/> Arlington County, Virginia | <input type="checkbox"/> Loudoun County, Virginia | <input type="checkbox"/> Spotsylvania County |
| <input type="checkbox"/> Arlington County Public Schools | <input type="checkbox"/> Loudoun County Public Schools | <input type="checkbox"/> Spotsylvania County Government & Schools |
| <input type="checkbox"/> Bladensburg, Maryland | <input type="checkbox"/> Loudoun County Water Authority | <input type="checkbox"/> Stafford County, Virginia |
| <input type="checkbox"/> Bowie, Maryland | <input type="checkbox"/> Manassas, Virginia | <input type="checkbox"/> Takoma Park, Maryland |
| <input type="checkbox"/> BRPC | <input type="checkbox"/> City of Manassas Public Schools | <input type="checkbox"/> Upper Occoquan Service Authority |
| <input type="checkbox"/> Charles County Public Schools | <input type="checkbox"/> Manassas Park, Virginia | <input type="checkbox"/> Vienna, Virginia |
| <input type="checkbox"/> City of Fredericksburg | <input type="checkbox"/> Maryland-National Capital Park & Planning Comm. | <input type="checkbox"/> Washington Metropolitan Area Transit Authority |
| <input type="checkbox"/> College Park, Maryland | <input type="checkbox"/> Maryland Department of Transportation | <input type="checkbox"/> Washington Suburban Sanitary Commission |
| <input type="checkbox"/> District of Columbia Government | <input type="checkbox"/> Metropolitan Washington Airports Authority | <input type="checkbox"/> Winchester, Virginia |
| <input type="checkbox"/> District of Columbia Public Schools | <input type="checkbox"/> Metropolitan Washington Council of Governments | <input type="checkbox"/> Winchester Public Schools |
| <input type="checkbox"/> District of Columbia Water & Sewer Auth. | <input type="checkbox"/> Montgomery College | |
| <input type="checkbox"/> Fairfax, Virginia | <input type="checkbox"/> Montgomery County, Maryland | |
| <input type="checkbox"/> Fairfax County, Virginia | <input type="checkbox"/> Montgomery County Public Schools | |
| <input type="checkbox"/> Fairfax County Water Authority | <input type="checkbox"/> Northern Virginia Community College | |
| <input type="checkbox"/> Falls Church, Virginia | <input type="checkbox"/> Prince George's Community College | |
| <input type="checkbox"/> Fauquier County Schools & Government | <input type="checkbox"/> Prince George's County, Maryland | |
| <input type="checkbox"/> Frederick, Maryland | <input type="checkbox"/> Prince George's Public Schools | |
| <input type="checkbox"/> Frederick County, Maryland | <input type="checkbox"/> Prince William County, Virginia | |
| <input type="checkbox"/> Gaithersburg, Maryland | <input type="checkbox"/> Prince William County Public Schools | |
| <input type="checkbox"/> Greenbelt, Maryland | | |

PART III
TECHNICAL SPECIFICATIONS

TECHNICAL SPECIFICATIONS

TABLE OF CONTENTS

- 1.0 Scope
- 2.0 Applicable Documents
- 3.0 Technical Specifications
- 4.0 Inspection, Testing and Acceptance
- 5.0 Warranty
- 6.0 Delivery Schedule
- 7.0 Technical Drawings/Testing Acceptance Criteria

TECHNICAL SPECIFICATION

1.01 SECTION INCLUDES

Contractor shall provide all labor, materials, equipment for the manufacture, testing, fabrication and delivery of direct fixation rail fasteners for installation in underground box structures, aerial structures and at-grade slabs. Specification and supply of these fasteners includes direct fixation fastener bodies, serrated adjustment washers, and Pandrol "E" clips.

2.0 APPLICABLE DOCUMENTS

2.01 REFERENCES

- A. American Institute of Steel Construction
 - 1. AISC ASD Manual of Steel Construction
- B. American Society for Testing and Materials (ASTM)
 - 1. ASTM A36/A36M Standard Specification for Carbon Structural Steel
 - 2. ASTM A148/A148M Standard Specification for Steel Castings, High Strength, for Structural Purposes
 - 3. ASTM A449 Standard Specification for Hex Cap Screws, Bolts and Studs, Steel, Heat Treated, 120/105/90 KSI Minimum Tensile Strength, General Use
 - 4. ASTM A536 Standard Specifications for Ductile Iron Castings
 - 5. ASTM A615 Standard Specifications for Deformed and Plain Billet Steel Bars for Concrete Reinforcement
 - 6. ASTM A668 Standard Specification for Steel Forgings, Carbon and Alloy, for General Industrial Use
 - 7. ASTM B117 Standard Test Method for Salt Spray (Fog) Testing
 - 8. ASTM C31 Standard Practice for Making and Curing Concrete Test Specimens
 - 9. ASTM C39 Standard Test Method for Compressive Strength of Cylindrical Concrete Test Specimens
 - 10. ASTM C172 Standard Practice for Sampling Freshly Mixed Concrete
 - 11. ASTM D256 Standard Test Methods for Determining the Izod Pendulum Impact Resistance of Plastics
 - 12. ASTM D257 Standard Test Methods for DC Resistance or Conductance of Insulating Materials
 - 13. ASTM D395 Standard Test Methods for Rubber Property –Compression Set
 - 14. ASTM D412 Standard Test Methods for Vulcanized Rubber and Thermoplastic Elastomers—Tension
 - 15. ASTM D429 Standard Test Methods for Rubber Property – Adhesion to Rigid Substrates
 - 16. ASTM D471 Standard Test Method for Rubber Property – Effect of Liquids

17. ASTM D570 Standard Test Method for Water Absorption of Plastics
 18. ASTM D573 Standard Test Method for Rubber – Deterioration in an Air Oven
 19. ASTM D624 Standard Test Method for Tear Strength of Conventional Vulcanized Rubber and Thermoplastic Elastomers
 20. ASTM D638 Standard Test Method for Tensile Properties of Plastics
 21. ASTM D648 Standard Test Method for Deflection Temperature of Plastics Under Flexural Load in the Edgewise Position
 22. ASTM D695 Standard Test Method for Compressive Properties of Rigid Plastics
 23. ASTM D746 Standard Test Method for Brittleness Temperature of Plastics and Elastomers by Impact
 24. ASTM D785 Standard Test Method for Rockwell Hardness of Plastics and Electrical Insulating Materials
 25. ASTM D1149 Standard Test Methods for Rubber Deterioration-Cracking in an Ozone Controlled Environment
 26. ASTM D1248 Standard Specification for Polyethylene Plastics Molding and Extrusion Materials for Wire and Cable
 27. ASTM D1505 Standard Test Method for Density of Plastics by the Density-Gradient Technique
 28. ASTM D1525 Standard Test Method for Vicat Softening Temperature of Plastics
 29. ASTM D1693 Standard Test Method for Environmental Stress-Cracking of Ethylene Plastics
 30. ASTM D2240 Standard Test Method for Rubber Property – Durometer Hardness
 31. ASTM E23 Standard Test Methods for Notched Bar Impact Testing of Metallic Materials
 32. ASTM G101 Standard Guide for Estimating the Atmospheric Corrosion Resistance of Low-Alloy Steels
- C. Rubber Manufacturers Association (RMA) Handbook
- D. Society of Automotive Engineers (SAE)
- E. National Research Council of the National Institute of Standards and Technology (NIST):
1. NIST Publication Calibration Standards
- F. SSPC: The Society for Protective Coatings (formerly Steel Structures Painting Council):
1. SSPC Vis 1 Guide to Pictorial Surface Preparation Standards for Painting Steel Surfaces

3.0 TECHNICAL SPECIFICATIONS

3.01 CONTRACTOR TO PROVIDE

- A. All materials, supplies, supervision, personnel and equipment required for this procurement, shall be the responsibility of the Contractor. Each unit will comprise of one direct fixation fastener body, two serrated adjustment washers, and two left-hand Pandrol "E" Clips. Anchor bolt assemblies are not included in this procurement.
- B. The work specified in this section consists of manufacture, testing, shop assembly, inspection, packaging, and shipping of direct fixation rail fasteners/hardware.
- C. Furnish direct fixation fasteners/hardware as per attached drawings.

3.02 SUBMITTALS

- A. Design
 - 1. Contractor shall submit Shop Drawings, data, and test results no less than (14) calendar days before the first shipment of fasteners, including design calculations, which are required by the Specifications or are necessary to adequately perform the work. Shop Drawings are to be complete and detailed.
 - 2. Contractor's submittals shall be checked, coordinated, and approved by the contractor before they are submitted for the approval of the WMATA Track Engineer. Submittals lacking Contractor's approval may be returned to the Contractor for resubmission.
 - 3. Approval of the submittals shall occur within (7) calendar days upon receipt by WMATA to allow sufficient time for review. Acceptance will be conveyed via e-mail to the Contractor on the first business day after the 7-day review period.
- B. Quality Control Program Plans
 - 1. Quality assurance/control plan as specified herein.
 - 2. Test program plan as specified herein.
- C. Qualifications Test Results

Previous qualification test reports are acceptable subject to sub-contractor demonstrating to Contractor the fastener and test procedures are identical to and in compliance with the requirements specified herein. Submit the following:

 - 1. Qualification Test Reports and certifications for review and approval prior to commencing fastener manufacture.
 - a. Certification of the elastomer samples used in the qualification testing.
 - b. Elastomer qualification test results for each test specified herein.
 - c. Fastener body metal qualification test results for each test specified herein.
 - 2. Submit qualification test results within (7) calendar days after completion of testing. Submit elastomer certification with the elastomer qualification test results.
 - 3. Testing laboratory data describing location and qualification

4. Test Procedure describing test equipment, instrumentation, calibration process and certificates, test procedures, and test result report and formats.
- D. Narrative description of manufacturing process describing sources of all components, material descriptions, elastomer compounding and molding process.
- E. Installation Instructions: Drawings with narrative describing fastener installation procedure with particular attention to lateral adjustment, shims, bolt torque and rail clip installation
- F. Production Test Results
 1. Submit the following for review and approval prior to shipping each fastener production lot.
 - a. Certification of the elastomer samples used in the production testing of each production lot as detailed herein.
 - b. Elastomer production test results for each test specified herein.
 - c. Fastener production test results for each test specified herein.
- G. Delivery: Submit the method and materials of packaging for shipment and storage no later than fourteen (14) calendar days prior to the initial shipment.

3.03 QUALITY ASSURANCE

- A. Develop and maintain a quality assurance program regulating methods, procedures, and processes to ensure compliance with standards of quality required by the Contract Documents.
 1. Include in the Quality Assurance Program an Inspection and Testing Plan (ITP), subject to review by WMATA. Submit the detailed ITP within fourteen (14) calendar days after Notice of Award and include therein the following information for each identified inspection and test:
 - a. List of inspections and tests to be performed.
 - b. Identify the Specification paragraph containing the inspection or test requirements.
 - c. Identify who is responsible for each test: Contractor or sub-supplier.
 - d. Schedule of inspections and tests.
 - e. Identification of independent test laboratories if any are to be used.
 - f. Identify the characteristics to be inspected, examined and tested at each activity point.
 - g. Specify inspection and test procedures and acceptance criteria to be used.
 - h. Identify inspection checklists and test reports.
 - i. Identify hold points as described herein below.
 2. Do not commence any inspection or test until the ITP has been reviewed and approved by WMATA. During the life of the Contract, update the ITP to reflect any changes in the inspection or test requirements.
 3. Implementation of Quality Assurance Program:

- a. Provide adequate staff and resources to perform all quality activities and to ensure Contract compliance, whether the Work is performed at the Contractor's own facility, provided by a sub-supplier, or on location at the project.
 - b. Supplier Control: Perform source inspections and audits at major supplier's facilities to assess compliance with the requirements of the Quality Assurance Plan and the Contract Documents.
 - c. Control of Measuring and Testing Equipment:
 - 1) Describe in the Quality Assurance Plan the methods for ensuring that equipment used for measuring and testing is calibrated as applicable to provide accurate test and inspection results. At intervals established to ensure continued validity, verify or calibrated measuring and testing devices against certified national standards that are traceable to National Institute of Standards and Technology (NIST).
 - 2) Establish methods to ensure proper handling, storage, and care of measuring and test equipment to maintain the required accuracy of such equipment. Material and test equipment that is considered out-of- calibration or that has been subjected to possible damage shall be identified as non-conforming and shall be removed from service, replaced, or repaired according to the manufacturer's instructions. Review all inspections or tests accepted by the use of the nonconforming measuring and test equipment since its last valid calibration date, to ensure acceptability.
 - 3) Ensure that all measuring and testing equipment selected for measurements, tests, or calibration is of the proper range, type, and is controlled, adjusted, and maintained at specified intervals identified in the Quality Assurance Plan or before use to assure conformance to the established requirements or predetermined accuracy.
- B. All work undertaken by the Contractor before approval of his quality assurance program will be at the Contractor's risk. The Project Manager will monitor the Contractor's methods, procedures, and processes for compliance with the approved program.
- C. Keep complete records of all inspection work by the Contractor available to the Project Manager during the performance of the Contract; and to such other agencies and for longer periods as may be specified elsewhere in the Contract.
- D. Final Approval for Manufacturing of Each Type of Fastener
1. Upon WMATA approval of Section 3.02, Items A through G, the Contractor shall submit to WMATA the following:
 - a. Six (6) copies of the final approved shop drawings of the fastener with all comments and modifications required to pass the qualification testing
 - b. Six (6) copies of the certified statements describing the chemical composition of elastomer and metal components of the rail fastener
 - c. Six (6) copies of the certified laboratory report of the results of all qualification tests specified herein showing compliance with all

acceptance criteria specified

2. Alteration of Fasteners – After approval of the rail fastener by WMATA as ready for manufacturing, no change in the design or manufacturing process shall be made without written approval by WMATA. WMATA may require the testing, certification, and approval of any altered rail fastener at no additional cost to WMATA. All manufacturing of rail fasteners which have not been approved by WMATA shall be at the Contractor's risk
- E. WMATA, or its representatives, reserve the right to visit the producers facility during usual business hours unscheduled to:
1. Observe sampling and testing procedures.
 2. Obtain samples of the prepared material being produced and shipped.
 3. Review plant inspection methods, quality control procedures, equipment and examine test results of current and previous tests.

3.04 DESIGN REQUIREMENTS

- A. Furnish direct fixation rail fasteners designed to meet or exceed the requirements of these Specifications.
- B. Provide fasteners of a design in continuous daily service for at least five (5) years with a proven record of successful performance.
- C. The direct fixation rail fasteners shall have the following primary functions:
 1. Support the running rail and secure it to the concrete trackbed using the minimum number of parts possible.
 2. Provide vertical, lateral and longitudinal stability, and provide for vertical and lateral adjustments.
 3. Provide a specific longitudinal restraint.
 4. Provide electric insulation for the rail, thus isolating it from the concrete trackbed.
 5. Isolate vibrations and attenuate noise generated by the moving wheel of the vehicles on the rails.
- D. Type of Fastener and Components
 1. Furnish fasteners with one-piece body designed for use on 115 RE (5-1/2-inch base width) Rail section.
 2. The body of the fastener is a metal base element and a metal top element with an elastomeric pad bonded between them. Bonding shall occur during the vulcanization process.
 3. The design feature shall be integrally cast into the top plate component at a minimum height of 9/32 inches from the top of the rail seat and shall extend across the entire width of the fastener body in the direction longitudinally to the running rail on both field and gauge sides.
 4. Furnish standard rail fasteners having a spring rate of between 94,000 pounds per inch and 120,000 pounds per inch for vertical loads between 4,500 pounds

and 12,000 pounds

5. Furnish standard rail fasteners having a longitudinal restraint of between 1,600 pounds and 3,000 pounds
 6. Furnish rail fasteners that bond the elastomeric component of the rail fastener on its bottom surface to a base plate not less than 1/4-inch thick and bond the elastomeric component of the rail fastener's top surface to a plate.
 7. The rail fasteners shall be manufactured to accommodate rail hold down spring clips, specifically Pandrol "E" Clip non-threaded components.
 8. Except as required to meet other requirements specified herein, elastomer surfaces shall be smooth with a finish and appearance equal to or better than an F-3 designation in accordance with the RMA Handbook.
 9. Furnish rail fasteners comprised of as few components as is economically and technically feasible for ease of assembly, disassembly, and maintenance.
 10. Furnish rail fasteners designed to permit installation and replacement of the entire assembly or its components by one person using standard, conventional hand tools.
 11. The bottom of the base element shall be free of elastomer except that minimal flashing will be acceptable providing it does not interfere with retention of proper anchor bolt tension.
- E. Properties in Installed Position
1. The base of the fastener is parallel to the rail seat so as to provide no cant to the rail. The slope tolerance is plus and minus 0.37%. The rail seat area is flat having maximum convexity and concavity of less than 0.001 inch per inch when measured from a straight edge.
 2. Do not furnish fasteners having projections into leveling pads or plinth concrete.
 3. Bonding of the rail fastener to the plinth concrete or leveling pads will not be permitted.
 4. The underside of the rail fastener body shall be a flat, continuous plane with no projections below the top of the grout pad.
- F. Dampening of Forces
1. Furnish rail fasteners designed to provide damping of lateral and vertical forces transferred to anchor bolts.
 2. Furnish fastener plates having full bearing on the elastomer in all positions of lateral adjustment and having a means of preventing displacement of the elastomer under operating conditions.
 3. Furnish rail fasteners with stability in directions not solely dependent upon the strength of bonding of the elastomer to metal.
- G. Anchorage Assemblies (Supplied by WMATA; For Contractor Design Reference Only)
1. For retrofit construction, the fastener body anchorage assembly shall provide for two fully threaded studs, each 7/8 inch in diameter, for securing the fastener to the epoxy grout pad and concrete track bed. As shown in **Exhibit 05657-A** the anchorage assembly bolts shall be located in the upper right-hand quadrant and low left-hand quadrant of the rail fastener as referenced along the centerline of

rail. The rail fastener shall also be designed to be capable of being anchored by placement over existing 7/8-inch threaded stud bolts in lieu of the anchor bolts and female anchor inserts.

2. For new concrete plinth construction, the fastener body anchorage assembly shall be comprised of two epoxy coated female type anchorage inserts for embedment into the concrete plinth and two anchor bolts for securing the fastener to the concrete plinth. .
3. The fastener body anchorage design shall not pass through the top plate and shall anchor thru the bottom plate only.
4. The adjustment washers shall be designed so that they can be used for either the anchor bolts or the threaded studs.
5. Female Inserts with Anchor Bolts (New Construction):
 - a. The fastener includes anchor bolts, 7/8 inch in diameter, for securing the fastener to the concrete trackbed under a tension of 30,000 pounds per anchor bolt.
 - b. The anchor bolts will be threaded into female threaded inserts set in the concrete trackbed.
 - c. Anchor bolts, including washers, and threaded inserts shall be considered parts of the fastener.
 - d. The fastener is also capable of being anchored by placement over 7/8 - inch threaded studs.
 - e. The anchor bolts engage not less than one inch and not more than one and one -half inches of the threaded insert in the installed position.
 - f. Other than the standard protective coating as applied by the bolt and insert manufacturers, no oil, sealant or other compound shall be applied to the threads.
 - g. Calculate the minimum bolt insertion length into the insert to provide anchorage strength
 - h. Submit drawings, at a minimum scale of 1:1, that demonstrates that the proposed anchor bolt and insert combination will accommodate the full range of vertical adjustment specified in this Section. Illustrate in these drawings the length of anchor bolt insertion into the insert under both the maximum and minimum shim conditions. Decrease bolt insertion length by an additional 1/16 inch under the maximum shimming condition, to allow for cases where the top of insert is recessed 1/16 inch below the top of concrete.
6. Fully Threaded Anchor Studs (Retrofits):
 - a. Fully threaded anchor studs shall be 7/8 - inch diameter and 11 inches long for retrofitting direct fixation trackwork anchor installations and shall conform to ASTM A449 except that chemical requirements shall conform to ASTM A325 for Type 3 bolts, with the chromium, nickel, and copper elements in such combination to achieve maximum corrosion resistance consonant with strength and hardness requirement. (See **Exhibit 05657-D**)

- H. Restraint Properties and Rail Release
1. Indicate the restraint properties of the rail fastener in both longitudinal directions and in both lateral directions.
 2. Furnish rail fasteners providing a positive means of preventing more than a total of 1/8-inch total lateral movement of the rail base relative to the fastener on each side of the rail base in the event of failure or loosening of one or both rail hold-down spring clip elements.
 3. Furnish rail fasteners permitting the release of the rail hold-down spring clip elements so that the rail may be removed by lifting it vertically until it is completely free of the fastener without disturbing the horizontal or vertical alignment of the fastener body.
 4. The rail hold down assembly device shall not be dependent on elastomeric components in torsion
 5. Longitudinal and lateral restraint properties of the rail fastener shall be identical in both directions.
 6. The stability of the rail fastener in the lateral direction shall not be dependent solely upon the strength of the bond of the elastomer to metal.
- I. Dimensional and Shape Requirements
1. Furnish fasteners that are generally rectangular in shape.
 - a. Include keying, peg and socket, or turned up plate edges in the bottom plate and top plate so that loss of elastomer bond does not result in complete loss of the fastener's ability to hold track line and gauge.
 2. Height:
 - a. The overall distance between the base of the rail fastener and the base of the rail with the rail fastener in the installed position shall be 1-1/2 inches (desired) with 1-3/8" minimum and 1-3/4" maximum distances.
 - b. No portion of the completely assembled rail fastener, including the rail clips and anchor bolts, shall extend any higher than 3-1/2 inches measured vertically from the base of the rail centerline.
 3. Length and Width:
 - a. When completely assembled, the overall dimension of the rail fastener, including the elastomer, shall stay within a design envelope of 10 inch maximum in width measured parallel to the rail and 18 inch maximum in length measured normal to the rail.
- J. Adjustment Requirements
1. Lateral Adjustment
 - a. The rail fastener body shall provide a means of 1 inch total lateral adjustment having a range of plus or minus 1/2 inch via a serrated mechanism at each anchor location. Serration shall be vertical, a minimum of 5/32 inches high and integrally cast into the bottom plate. The bottom of the vertical serration shall be raised a minimum of 1/8 inches above the top of the bottom plate. Together with a serrated adjustment washer, the system shall allow adjustment in either lateral direction in increments of 1/8 inch. Friction alone as a means of adjustment will not be permitted.

The serration shall have not less than three interlocking serrations engaged in any position of lateral adjustment. The adjustment feature shall be integral with the rail anchorage assemblies.

- b. Friction shall not be used as a means for adjustment or for preventing lateral movement.
 - c. If lateral adjustment employs serrations on any component, each serrated interface shall have at least three engaged serrations. There shall be a minimum of three linear inches of serration engagement per fastener. Serrations shall be machined or cast to a minimum depth of 1/16 inch. Cap plates, if used, shall cover the opening to any ground potential in every position of adjustment and form a reasonable seal to prevent the intrusion of dirt, metallic particles, and other material.
 - d. Each rail fastener shall be furnished with all components required for all specified increments of lateral adjustment. Components of the rail fastener shall not be replaced or added to the basic configuration in order to laterally adjust the rail.
 - e. Recesses in the rail fastener shall be free draining in all positions of lateral adjustment up to a maximum actual super elevation of 4-1/2 inches.
2. Vertical Adjustment
- a. Vertical rail adjustment capability shall be a maximum of 9/16 inch in 1/16 inch increments, provided by shims.
 - b. All requirements of these Specifications shall be satisfied for all increments of fastener adjustment.

K. Electrical Isolation

- 1. The rail fastener body shall provide an electrical leakage distance of not less than 1-1/8 inch measured from the grounded portion of the fastener to the charged portion by the most direct path that does not pass through an insulating material. The minimum distance of separation between any point of the top plate to the bottom plate shall be 2 inch and shall contain a full and complete section of elastomer material. The entire top and side surfaces of the metal plates of the fastener body shall contain a minimum coating of 1/16 inch, exclusive of the serrated area of the fastener body anchorage location.
- 2. Meet the insulation requirements within the body of the fastener. Separate or detachable insulating components such as rail base pads or spring clip insulators are not allowed.
- 3. No surface cut-outs, gaps, edge voids, or edge cut-outs are allowed that could permit an accumulation of dirt, metallic particles, or other materials.

3.05 COMPONENT MATERIAL REQUIREMENTS (ALL DIRECT FIXATION FASTENERS TYPES)

A. Metal Plate Components:

- 1. Metal Components:
 - a. Both the metal top plates and bottom plates shall be one-piece ductile iron. The minimum thickness of the top plate shall be 1/2-inch and for the bottom plate 3/8 inch.

- b. The ductile iron castings shall be minimum Grade 65-45-12 in accordance with ASTM A536, "Standard Specifications for Ductile Iron Castings". The chemical composition shall meet the acceptable level per SAE J434, "Automotive Ductile Iron Castings". The Brinell hardness when tested in accordance with ASTM E10, "Standard Test Method for Brinell Hardness of Metallic Materials", shall be within 156-217 BH range per SAE J434.

B. Elastomer:

- 1. The minimum thickness of the elastomer between the top plate and the bottom plate parallel to the rail seat shall be 1/2 inch.
- 2. The elastomer shall be neoprene or natural rubber or a blend of neoprene and natural rubber. Fabricate the elastomer using a minimum of 51 percent natural rubber.
- 3. Provide a natural rubber design based on a Durometer Shore A measurement of 70 plus or minus 10, as measured in accordance with ASTM D2240 Test Method for Rubber Property – Durometer Hardness.
- 4. Anchor bolts shall not pre-compress the elastomer in their installed position.

C. Rail Hold Down Assembly:

Rail clip shall be a resilient spring clip type such as the Pandrol e-2056 (left handed) and as specified herein. Spring-wedge type rail clips will not be permitted. Rail clip shoulder shall be cast as integral part of the metal top plate. Welding of the rail clip shoulder to the top plate will not be permitted.

- 1. Materials - Rail clips shall be forged from alloy steel bars and heat treated to achieve the minimum spring action holding power as specified herein.
- 2. Minimum Design Criteria:
 - a. Clips must be one piece, threadless and detachable.
 - b. There shall be two clips to each complete rail fastener assembly.
 - c. Holding force shall be generated by spring action.
 - d. Surface hardness of clips shall be between 44 and 48 HRC.
 - e. The range of vertical hold down force (toe load) per clip shall be between 2,100 and 3,000 lbs. with a total force range of 4,200 to 6,000 lbs. per rail seat.
 - f. The minimum static longitudinal slip per complete rail fastener assembly, with two clips shall be 3,000 lbs.
 - g. Field installation and removal of clips shall be accomplished by one man using standard track tools or by commercially available equipment.
 - h. Clip shall be proven design and produced by an ISO 9000 certified manufacturer with a minimum of ten years documented in-track experience in the United States.

D. Anchor Bolts (Supplied by WMATA; For Design Reference Only)

- 1. Anchor bolts shall be 7/8 inch diameter, heavy hex head structural bolts per ASTM A325, Type 3, with thread length per ASTM A449. Provide certification that bolts meet requirements of ASTM A325, Type 3.
- 2. Washer, hardened weathering steel, ASTM F436, 2" O.D., 0.94" I.D. and 1/8"

- thick, two per fastener body
3. Furnish 7/8-inch diameter anchor bolts of sufficient length to provide an acceptable length of insert thread engagement with 9/16 inch of vertical shims under the rail fastener.
 4. All threaded elements in the fastener shall include a positive means of preventing the loosening of the element due to in-service vibrations.
 5. Threaded element installation data shall include, but not be limited to, the bolt torque range in foot-pounds.
 - a. The torque range shall provide the minimum tension as specified by the AISC ASD Manual of Steel Construction.
 6. Coat all bolts with a water resistant coating as thread protection against rusting prior to installation.

4.0 INSPECTION, TESTING, AND ACCEPTANCE

4.01 SOURCE QUALITY CONTROL

A. Fastener Qualification Tests

1. General
 - a. The qualification tests specified herein shall be performed by an independent testing facility approved by the WMATA Engineer and shall be a member of the American Council of Independent Laboratories. Qualification testing may be performed at any test facility, including such facilities at the Contractor's plant, provided they meet the approval of the WMATA Engineer and satisfy the requirements of the American Council of Independent Laboratories "Manual of Practice, Quality Control System" - Requirements for Testing and Inspection Laboratory. Testing equipment shall be in good repair, of adequate capacity and shall be accurately calibrated. Copies of calibration certificates shall be submitted to the WMATA Engineer. The WMATA Engineer shall be notified not less than (7) calendar days in advance of dates scheduled for quality control tests. All testing shall be performed at no additional cost to WMATA and is to be performed post-award and prior to manufacture of production quantities. Previously approved and supplied product design meeting the requirements of this specification shall be exempt from the Qualification Testing. Production testing as specified shall be performed.
 - b. From a lot of not less than twenty (20) standard direct fixation rail fasteners, sixteen (16) will be selected at random by the WMATA Engineer. If additional fasteners are necessary to meet these test requirements they shall be furnished at no additional cost to WMATA.
 - c. Prior to testing, the Contractor shall submit shop drawings detailing the rail fastener components and a detailed description of the steps required for its complete installation as well as the replacement of individual components. Upon approval by the WMATA Engineer of the shop drawings and installation description, rail fasteners shall be fabricated for testing.
 - d. Before beginning any tests, a detailed description of all tests shall be

submitted to the WMATA Engineer for approval. The description shall completely detail the test procedure and shall include drawings showing the relationship of the fastener and all significant components of the testing equipment, including the test block and anchor bolts.

- e. Each of the fasteners selected for testing shall be carefully measured and examined to determine the compliance with these specifications and the approved shop drawings. Upon satisfactory completion of this examination eight fasteners will be retained by WMATA and the remaining eight fasteners shall be returned to the Vendor for execution of the Qualification Performance Tests by an independent laboratory.
 - f. Should any fastener assembly fail a test, perform the entire sequence of test on the eight new fastener assemblies. Should a fastener assembly from a sample lot fail a test, the entire lot is rejected and the Vendor is to provide a new random sample lot to the WMATA Engineer, from which a sample of eight fasteners will be returned to the Vendor for testing by the independent laboratory. If the design of the fastener must be modified to pass any test, shop drawings of the new design shall be submitted to and approved by the WMATA Engineer before retesting is continued. Manufacture at least ten fastener assemblies of the new design and perform all tests on the new fastener design. Continue the revision, approval and test cycle until the fastener assemblies are accepted. Fourteen (14) calendar days will be allotted for redesign, approval, and testing commencement. WMATA reserves the right to terminate the contract for default should the Contractor fail to develop an approved fastener within a reasonable amount of time after award so as to prevent their capability of complying with the delivery schedule.
2. Elastomer Qualification Testing
- a. Each test listed below shall be performed on two specimens.
 - b. The specimens used for the test shall be certified by the Contractor to have been taken from the production size batch used for making the fastener and to have cured in a manner equivalent to the cure used for the fastener.
 - c. Prior to the testing, all elastomer specimens shall be conditioned for not less than two days at 23 degree C plus or minus 2 degree C and 50% plus or minus 5% relative humidity
 - d. Tests performed on specimens are:
 - 1.) Hardness Test - The Durometer A hardness shall be between 45 and 55 as measured in accordance with ASTM D2240, "Indentation Hardness of Rubber and Plastics by Means of a Durometer".
 - 2.) Tensile Strength and Ultimate Elongation Test - When tested in accordance with ASTM D412, "Tension Testing of Vulcanized Rubber", the tensile strength shall be 2,350 psi or greater and the ultimate elongation shall be 400 percent or greater.
 - 3.) Compression Test - The elastomer shall be tested for 22 hours in accordance with ASTM D395, Method B to determine the percent

- of compression set. The test shall be conducted at 70 degree C. And the set shall not exceed 25 percent.
- 4.) Accelerated Aging of Rubber Test - In accordance with ASTM D573, "Accelerated Aging of Vulcanized Rubber", the test sample shall be aged for 70 hours at 70 degrees. The percentage of decrease of tensile strength shall not exceed 25 percent; the percentage of decrease of ultimate elongation shall not exceed 25 percent; and the change in hardness, measured on the Durometer A scale, shall not exceed 10 points.
 - 5.) Resistance to Ozone Cracking Test - Test specimens shall be prepared in accordance with Procedure A of ASTM D518, "Resistance to Surface Cracking of Stretched Rubber Components". The test specimens shall be tested in accordance with ASTM D1149, "Accelerated Ozone Cracking of Vulcanized Rubber", at a temperature of 40 degree C and at an ozone partial pressure of 50 mPa. The elastomer shall not exhibit any cracking when examined in accordance with ASTM D1149 at the end of a 100-hour exposure.
 - 6.) Compression Set at Low Temperature Test - When tested at minus 10 degree C for 70 hours in accordance with ASTM D1229, "Low Temperature Compression Set of Vulcanized Elastomers", the compression set at 30 minutes after release (t@30 reading) shall not exceed 37 percent
 - 7.) Oil Absorption Test –
 - a.) One test shall be conducted with IRM 903 (No. 3) oil at 23 degree C for 70 hours. The volume change for the No. 3 oil shall not exceed 100 percent for natural rubber.
 - b.) A second test using a different sample shall be conducted with IRM 903 (No. 1) oil at 23 degree C for 70 hours in accordance with ASTM D471, "Change in Properties of Elastomeric Vulcanizates Resulting from Immersion in Liquids", to determine the volume change of the elastomer. The volume change for the No. 1 oil shall not exceed minus 10 percent or plus 20 percent for natural rubber.
 - 8.) Adhesion to Metal Test - This test shall be performed on specimens of elastomer which are to be bonded in the finished fastener in accordance with ASTM D429, Method A, "Adhesion of Vulcanized Rubber to Metal", the failure must be entirely Type R (eg. Elastomer tears before bond fails). The metal substrate, preparation, adhesive and bonding process shall be the same as that used for the manufacture of the direct fixation rail fastener.
 - 9.) Resistance to Tearing Test - When tested in accordance with ASTM D624, "Standard Test Method for Rubber Property - Tear Resistance", the resistance to tearing shall be not less than 100 pounds per inch.
 - 10.) Flame Spread and Smoke Generation Test - The elastomer shall be tested in accordance with ASTM E162, "Standard Test Method for Surface Flammability of Materials Using a Radiant Heat Energy

Source”, to determine the Flame Spread Index.

The elastomer shall be tested in accordance with NFPA No. 258-1982, Smoke Generated by Solid Materials Test, in both the flaming and non-flaming modes to determine the Smoke Generation Specific Optical Index, Ds. The elastomer shall not exhibit any flaming drippings when tested. No acceptance criteria are specified for the Flame Spread Index, Ls and the Smoke Generation Specific Optical Index, Ds. These indices shall be reported to WMATA for information only.

- 11.) Electrical Resistivity Test – Tests shall be performed on an elastomer specimen and a fully assembled fastener.

Apply 500 V dc. to the elastomer specimen for three minutes. The elastomer shall be tested and measured in accordance with ASTM D257 "Standard Test Method for D-C Resistance or Conductance of Insulating Materials", to determine the resistivity of the elastomer. Next, immerse the specimen in potable water for 70 hours at 70°C. Immediately after removal from the water immersion, without drying and with no portion of the specimen less than 35°C, test it for electrical resistance and impedance. For testing under wet conditions, immerse elastomer in potable water with a resistivity of 1,000 to 1,500 ohm-cm. Adjust resistivity of potable water if required by addition of sodium chloride. The minimum volume resistivity under dry condition shall be 10^{12} -ohm-cm and 10^{11} _ ohm-cm under wet condition

Refer to Section 3.03.B for Electrical Resistivity Tests on a fully assembled Fastener

- 12.) Water Absorption Test - The elastomer shall be tested in accordance with ASTM 0570, "Standard Test Method for Water Absorption of Plastics", to determine the change in weight of elastomer due to absorption of water. Immerse specimens in distilled water for 24 hours at a temperature of 23 degree C prior to testing. The elastomer shall have a maximum increase in weight of 1.0 percent.

- 13.) Rheology (Cure and Strength Indicator) Test-

- a.) Test the elastomer in accordance with ASTM 02084.
- b.) During qualification testing a cure curve shall be developed based on the rheology test results for approval by the Contractor. Specification limits shall be established at several points along the curve for approval by the Contractor.
- c.) During production testing the cure curves shall be compared to the qualification test cure curve. The production test curve shall be within the specification limits.

- 14.) Specific Gravity Test -
 - a.) Test the elastomer in accordance with ASTM 0297.
 - b.) During the qualification testing the specific gravity of the elastomer shall be determined. During the production testing the specific gravity shall be plus or minus 0.02 of the specific gravity determined during the qualification testing.

3. Fastener Body Metal Testing
 - a. Prepare three Charpy impact test specimens in accordance with ASTM E23, "Standard Method for Notched Bar Impact Testing of Metallic Materials", from the same metal used for the top and bottom plates of the fastener body. Each metal sample shall have met the minimum impact requirements and be approved by the WMATA Engineer before fastener assembly qualification testing proceeds.
 - b. Conduct a Charpy impact test on each specimen at a temperature of 21 degree C in accordance with ASTM E23. The fracture energy shall be greater than three foot-pounds. The test report shall include all the information required by ASTM E23. The fracture energy shall be greater than 3 foot-pounds for irons and 15 foot-pounds for steel.
 - c. High Frequency Resonance Test
 - 1.) Suspend the top plate with a nylon, hemp, polyethylene or cotton rope, or an elastomer band of sufficient strength to support the top plate without failure. Mount an accelerometer of mass not greater than 0.05 kg at the center of the rail seat area, with an axis of sensitivity normal to the rail seat. The accelerometer signal shall be appropriately conditioned with a charge amplifier or voltage preamplifier and analyzed with a minimum 400 line spectrum analyzer, while striking an end of the top plate with a hammer in a direction normal to the rail seat plane.
 - 2.) The frequencies of the top plate's modes of vibration, identified by maxima in the spectrum of the response of the top plate to hammer impacts, shall be greater than 600 Hz.
 - b. Corrosion Process: Reference Section 3.04.E
 - c. Heat Aging Process: Reference Section 3.04.F

4. Fastener Assembly Testing
 - a. Perform the following rail fastener testing at no additional cost to WMATA using the test procedures as prescribed herein.
 - 1) Static Tests (**Exhibit 05657-E**):
 - a) Loads, as described in the tests, are per fastener and shall be doubled during performance of each test.
 - b) Vertical Load Test: Perform testing in accordance with Section 3.02.A herein.

- c) Lateral Load Test: Perform testing in accordance with Section 3.02.C herein.
 - d) Vertical Uplift Test: Perform testing in accordance with Section 3.02.B herein.
 - e) Longitudinal Restraint Test: Perform testing in accordance with Section 3.02.E herein.
 - f) Lateral Restraint Test: Perform testing in accordance with Section 3.02.D herein.
- 2) Electric Tests: Perform all tests on single fasteners.
- a) Voltage Withstand Test: Perform testing in accordance with Section 3.03.A herein.
 - b) Electrical Resistance and Impedance Tests: Perform testing in accordance with Section 3.03.B herein.
 - c) Electrical Impedance Test: Perform testing in accordance with Section 3.03.C
- 3) Life Cycle Tests (Dynamic): Use a separate fastener for each test.
- a) Dynamic to Static Stiffness Ratio Test: Perform testing in accordance with Section 3.04.D herein.
 - b) Loads, as described in the tests, are per fastener and shall be doubled during performance of each test.
 - c) Vertical and Lateral Repeated Load Test: Perform testing in accordance with Section 3.04.A herein.
 - d) Repeated Load Test with One Anchor Bolt: Perform testing in accordance with Section 3.04.B
 - e) Uplift Repeated Load Test: Perform testing in accordance with Section 3.04.C
 - f) Push-Pull Test: Perform testing in accordance with Section 3.04.D
 - g) Corrosion Process: See Section 3.04 E
 - h) Heat Aging Process: See Section 3.04 F
- b. Temperature
- Before commencing, and during all tests, the fastener shall be stabilized at an ambient temperature of 22 degrees C, plus or minus 5 degrees C unless otherwise specified
- c. Testing Plan
- 1) Tests specified herein shall be performed in accordance with the approved test plan.
 - 2) The Vendor shall notify the WMATA Engineer fourteen days in advance of the commencement of testing including preparation of the test equipment for testing.

- 3) Testing shall be performed in the presence of the WMATA Engineer unless otherwise approved in writing by the WMATA Engineer.
- d. Test Set-Up and Preparation
- 1) Except as otherwise specific herein, each test shall be performed on two completely assembled rail fasteners at 30-inch center to center spacing, with a section of 115RE rail not less than 42 inches long. The rail loading and measuring points shall be as specified for each test and as shown on **Exhibit 05657-C**.
 - 2) The fastener shall be assembled as shown in the approved shop drawings and installation description, and all threaded elements shall be tensioned as specified. The test fasteners shall be mounted on a concrete test block and anchored with 7/8 inch diameter ASTM A325, "Standard Specifications for Structural Bolts, Steel, Heat Treated, 120/105 ksi Minimum Tensile Strength", threaded stud bolts to simulate field installation. The anchorage shall not fail under loadings imposed by any test specified below.
 - 3) Except for specific tests noted herein, eight fasteners complete with the modified rail section as shown in **Exhibit 05657-A** and of length as determined shall be used
 - 4) Before assembly, the fasteners shall be clean and dry.
 - 5) The fasteners shall be spaced one inch apart
 - 6) The fasteners shall be mounted and anchored on a test block and the spring clips shall be positioned to hold the rail section.
 - 7) The anchor bolts shall be torqued to 300 foot-pounds.
 - 8) All reactions to load shall be through the fasteners to the test block.
 - 9) The test block shall be of reinforced concrete with female threaded inserts cast or set on it to receive the 7/8-inch fastener anchor bolts. The top surface of the test block shall be a flat plane with a wood float finish and with the face of the inserts set parallel to the surface with a tolerance of plus zero above and minus 1/32-inch below the surface.
 - a) Concrete: The shall have a minimum 28 day strength of 4,000 pounds per square inch as determined from standard test specimens taken in accordance with ASTM C31 and ASTM C172 and cured and tested in accordance with ASTM C39.
 - b) The reinforcing steel shall be epoxy coated Grade 60 per ASTM A615, "Standard Specifications for Deformed and Plain Billet Steel Bars for Concrete Reinforcement" and shall be placed as shown in **Exhibit 05657-D**.

- c) Inserts:
 - i. Two pairs of threaded stud bolts shall be drilled and epoxied into the concrete test block.
 - ii. The stud bolts shall project 3-1/2 inches out from the top surface of the concrete.
 - iii. The stud bolts shall be positioned as they would be in track for two fasteners 30 inches apart measured parallel to the rail.
 - iv. The holes for the dowels shall be 1-1/8 to 1-3/4 inch diameter and 5-1/2 inches deep.
 - v. The epoxy to be used shall provide a minimum unrestrained pullout strength of 20,000 pounds. As an alternate, the stud bolts may be replaced with 7/8 inch anchor bolts and female inserts epoxy grouted into the concrete block.
 - vi. Inserts shall be of corrosion resistant steel threaded to 1-1/2 inch depth to receive ASTM A325 7/8-inch bolts and shall meet 40,000-pound bolt load.
 - vii. Washer face bearing of the insert against the fastener shall be equal to the bearing area of an A563 heavy nut for 7/8-inch bolt.
 - viii. Length and anchorage configuration shall withstand 12,000 pounds unrestrained pullout and resist 250 foot-pounds torque without yielding.
 - ix. Inserts shall be coated with an epoxy resin insulating coating, 100-percent dry powder epoxy resins, Scotch Kote Brand Protective Resins No. 203, Minnesota Mining and Manufacturing Company; Corvel Epoxy ECB-1363A, Polymer Corporation; or equal.

- e. Instrumentation
 - 1) Instrumentation for all required deflection and rotation measurements shall be designed so as to measure each rail motion parameter relative to the test block.
 - 2) Each instrument shall be designed to measure the motion intended with minimum effects on the data from other motions.

- f. Test Sequence:
 - 1) Eight (8) complete rail fastener assemblies are required to conduct the tests. Assemble and mount two fasteners on each concrete block designated as A, B, C, and D. The set of fasteners shall be subjected to the following tests as specified above.
 - 2) Fasteners A shall undergo the Vertical and Lateral Repeated Load Test and then undergo the Repeated Load Test with One Anchor Bolt. Fasteners A shall then again undergo each Static Test without replacement of any component. For the Longitudinal Restraint Test, the fasteners shall not be disassembled from the rail after the Repeated Load Test with One Anchor Bolt, nor shall the rail hold down assemblies be re-torqued.

- 3) Fastener B shall be subjected to Dynamic to Static Stiffness Ratio Test, then undergo Heat Aging Process, and then retested through each of the Static Tests without replacement of any component followed by another Dynamic to Static Stiffness Ratio Test.
- 4) Fasteners C shall undergo Heat Aging Process and then tested for Uplift Repeated Load Test followed by Corrosion Process. Fasteners C shall then be retested through each of the Static Tests without replacement of any component.
- 5) Fasteners D shall be tested as specified for the Push-Pull Test. Fasteners D shall then be retested through each of the tests for Static Tests, without replacement of any component. For the Longitudinal Restraint Test, the fasteners shall not be disassembled from the rail after the Push-Pull Test, nor shall the rail hold down assemblies be re-torqued.
- 6) The qualification testing sequence described above is graphically shown on **Exhibit 05657-E**
- 7) The sequence shall be performed without replacement of any fastener component.

g. Starting Tests and Procedures

- 1) After a test sequence is begun, it shall be completed.
- 2) In the event of failure of a test rig component, the WMATA Engineer shall determine if the failure was attributable to the fastener.
- 3) If the fastener did contribute to the failure, or if there is doubt, then, with the approval of the WMATA Engineer, the testing shall cease and the test report shall be submitted with all findings.
- 4) If the fastener did not contribute to the failure, the component shall be replaced and

h. Production Quality Control Testing

1. General

Following successful completion of the qualification tests, acceptance of the qualification test reports by the WMATA Engineer, and start of the fastener assembly manufacturing, Production type quality control sampling and testing shall be conducted and performed by an independent testing facility approved by the WMATA Engineer and shall be a member of the American Council of Independent Laboratories. Elastomer samples and fastener assemblies shall be selected from regular production and subjected to testing to ensure that high quality standards are maintained and that design requirements set forth in these specifications are met through the completion of the production process.

2. Production Elastomer Tests -

- a. Samples of elastomer from every mixed batch of material used in the manufacture of production fastener shall be tested to verify compliance of the elastomer batch mix with the following testing requirements:

- 1) Hardness Test
 - 2) Tensile Strength and Ultimate Elongation Test
 - 3) Specific gravity: and
 - 4) Cure Characteristic in accordance with ASTM D2084 or an equivalent industry accepted standard.
- b. Certificate of Compliance from the supplier of the elastomer shall be submitted to the Engineer guaranteeing compliance of the elastomer with requirements of these specifications.
3. Fastener Assembly Tests
- a. Production quality control testing of fasteners shall be performed on two (2) fasteners from the first 50 fasteners and on two (2) fasteners from each production lot. A production lot is defined as a quantity of manufactured and completed fasteners produced in a continuous run, but not to exceed 5,000 units. As requested, fasteners may be selected for testing by the WMATA Engineer. Permanently mark the fasteners used for production testing and meeting all test requirements as production test fasteners and deliver fasteners to WMATA. These fasteners shall be subjected to the following tests:
 - 1) Vertical Load Test
 - 2) Vertical Uplift Test
 - 3) Lateral Load Test
 - 4) Lateral Restraint Test
 - 5) Longitudinal Restraint Test
 - 6) Voltage Withstand Test
 - 7) Electrical Resistance Test
 - 8) Vertical and Lateral Repeated Load Test (500,000 cycles)
 - b. The configuration for testing and the acceptance criteria shall be as specified above, and the value obtained for the slope of the load-deflection curve in the Vertical load Test shall be within 20 percent of that obtained in the original compliance testing.
 - c. The quality control tests shall commence no later than fourteen days after fabrication of the fastener. Should any fastener fail to meet the test requirements, two additional fasteners from that same production lot shall be tested. In the event any of the two additional fasteners fail, 100 percent of the remainder of the lot shall be rejected or tested and only those successfully passing all tests shall be incorporated in the final delivered quantity.
 - d. In addition to the quality control tests and at the discretion of the WMATA Engineer, all components of the rail fasteners shall be subjected to full or partial testing for compliance with these specifications. The cost of all such additional testing required by the WMATA Engineer for any component that is proved to comply with these specifications will be at the expense of the WMATA. The cost of all such additional testing of any component that

- is proven not to comply with these specifications shall be at no expense to the WMATA.
- e. Production quality control testing may be performed at any test facility, including such facilities at the Vendor's plant, provided they meet the approval of the WMATA Engineer and satisfies the requirements of the American Council of Independent Laboratories "Manual of Practice, Quality Control System" - Requirements for Testing and Inspection Laboratory, and ASTM E320. Testing equipment shall be in good repair, of adequate capacity and shall be accurately calibrated. Copies of calibration certificates shall be submitted to the WMATA Engineer. The WMATA Engineer shall be notified not less than 14 days in advance of dates scheduled for quality control tests.
 - f. Two copies of the results of all tests shall be submitted to the WMATA Engineer within seven days after performance of the tests.
4. Acceptance - Final acceptance of production lots of direct fixation rail fasteners will be based upon the fastener and all its components complying with these specifications as determined by the WMATA Engineer, based on the results of the quality control tests and the certified statements submitted to the WMATA Engineer by the Vendor.

4.02 STATIC TESTS

A. Vertical Load Test

4.1.1.1 Procedures

- a. A vertical load increasing in increments of 2,000 pounds to a maximum load of 32,000 pounds shall be applied downward at the center of the rail head midway between the two fasteners and normal to the rail.
- b. The load shall be applied at the rate of not less than 200 pounds per minute nor more than 2000 pounds per minute.
- c. For each increment of load the vertical deflection of the rail head shall be measured to the nearest 0.001 inch and recorded.
- d. The load shall be removed and the final position of the rail head measured and recorded. The recorded values for vertical load vs. deflection shall be plotted on a graph as shown on **Exhibit 05657-F**.

4.1.1.2 Acceptance Criteria

- a. Calculate the fastener stiffness as the slope of a straight line determined by a linear least-squares regression of the load per fastener versus each deflection for load per fastener between 4,000 pounds and 12,000 pounds. The fastener stiffness shall be within 15 percent of 140,000 pounds per inch. The load versus displacement curve shall be within the limits identified in **Exhibit 05657-F**.
- b. The tangent to load-versus-deflection curve at each load between and including 4,000 pounds and 12,000 pounds per fastener shall be within 20 percent of the fastener stiffness determined above. For the purpose of calculation, the tangent to the load versus deflection curve at each deflection, X_n , and each load, P_n , are approximated as:

$$(P_{n+1} - P_{n-1}) / (X_{n+1} - X_{n-1})$$

Where P is the load at deflection X_n .

- c. Total deflection of the elastomer at the 15,000 pound load per fastener shall not exceed 25 percent of the uncompressed thickness. After removal of the maximum load, the fastener shall return to within 0.005 inch of its original position within one minute.
- d. At no time during the tests shall a fastener component exhibit any sign of failure by slippage, yielding, fracture, or bond failure.
- e. Values obtained when this test is repeated, after performance of other tests, shall be within 20 percent of the initial test values.

B. Vertical Uplift Test—

1. Procedures

- a. A vertical load shall be applied to the center of the rail head midway between the two fasteners and normal to the rail, alternating from a vertical downward load to a vertical upward load.
- b. The peak load per cycle shall be increased in increments of 200 pounds each cycle to 4,800 pounds.
- c. The loads and deflections shall be continually measured to the nearest 0.001 inch and simultaneously recorded on a load versus time graph and a deflection versus time graph respectively.
- d. The load shall be removed and the final position of the rail head measured and recorded. The reaction force to the uplift load shall be applied to the test block on which the fastener is mounted.

2. Acceptance Criteria

- a. The ratio of the deflection for the total uplift test load to the deflection for the total vertical downward test load shall be between plus 5 percent and plus 135 percent of the deflection for a 4,000 pound downward vertical load as determined from the Vertical Load Test.
- b. When the vertical load is continuously varied from vertical downward loads to uplift loads, there shall be no indication of backlash or free play at times when the load or the deflection changes direction.
- c. After removal of the maximum load, the rail shall immediately return to within 0.005 inch of its original position.
- d. At no time during the test shall any fastener component, including the anchorage to the test block, exhibit any sign of failure by slippage, yielding or fracture.

C. Lateral Load Test

1. Procedures

- a. While applying a vertical load of 27,000 pounds downward at the center of the rail head midway between the two fasteners and normal to the rail, a lateral load, increasing in increments of 1,000 pounds to a maximum load of 16,000 pounds, at a rate of 1,000 pounds per minute, shall be

applied horizontally to the rail head at a point 0.625 inch below the top of rail at the location of vertical load.

- b. For each load increment, the lateral deflection of the rail head at a point 0.625 inch below the top of rail shall be measured to the nearest 0.001 inch and recorded.
- c. The lateral load shall be removed and the final position of the rail head measured and recorded.
- d. The recorded values for lateral load vs. deflection shall be plotted on a graph similar to **Exhibit 05657-G**.

2. Acceptance Criteria

- a. The lateral load versus deflection curve for each fastener shall lie within the envelope shown on **Exhibit 05657-G**.
- b. The lateral deflection of the rail head for a lateral load of 4,000 pounds per fastener shall not exceed 0.150 inch.
- c. The average lateral deflection at maximum load shall not exceed 0.336 inch.
- d. After removal of the load, the difference between the original and final positions of the gauge line shall not exceed 0.062 inch. At no time during the test shall any fastener component exhibit any sign of failure by slippage, yielding or fracture.

D. Lateral Restraint Test

1. Procedures

- a. A lateral load increasing in increments of 1,000 pounds from zero pounds to 10,000 pounds shall be applied normal to the rail at the base of rail midway between the two fasteners.
- b. The lateral deflection of the rail shall be measured at the intersection of the centerline of the fastener and the gauge line of the rail to the nearest 0.001 inch and recorded after each increment of loading.

2. Acceptance Criteria

- a. At no time during the test shall any component of the fastener show signs of slippage, yielding, or fracture.
- b. The difference between the original and final positions of the gauge line shall not exceed 0.062 inch.
- c. The lateral deflection of the rail when fully loaded shall not exceed 0.125 inches from original gauge line of the rail.

E. Longitudinal Restraint Test

1. Procedures

- a. During the longitudinal restraint test, the rail ends shall be supported on a roller or other low friction supports, properly elevated to prevent the longitudinal load from binding the rail in the fastener.

- b. A load shall be applied longitudinally at the centerline of rail at the base of the rail increasing in increments of 500 pounds up to a total of 7,000 pounds or until the rail deflects 0.6 inch from the initial condition, whichever occur first.
 - c. The rate at which load is applied shall be approximately 1,000 pounds per minute. Each load increment shall be maintained constant at a minimum of 30 seconds or until the longitudinal deflection of the rail ceases before increasing the load to the next increment.
 - d. For each load the longitudinal deflection of the rail relative to the fastener shall be measured to the nearest 0.001 inch and recorded. The longitudinal load shall be removed at slippage of rail and the final position of the rail measured and recorded.
 - e. The recorded values for longitudinal load vs. deflection shall be plotted on a graph as shown on **Exhibit 05657-H**.
2. Acceptance Criteria
 - a. The longitudinal load vs. deflection curve, when plotted on **Exhibit 05657-H**, shall lie entirely within the shaded area.
 - b. The difference between the original and final positions of the rail shall not exceed 0.125 inch plus the slippage distance of the rail.
 - c. At no time during the test shall any fastener component exhibit any sign of failure by slippage, yielding, bond failures or fracture except that slippage which may occur between the rail clip and the rail.
- F. Dynamic to Static Stiffness Ratio Test
1. Procedures
 - a. Using the same assemblage as noted in the Vertical Load Test, Apply an oscillating downward load at the centerline of the rail head and the centerline of the fastener so as to produce a sinusoidal load alternating between 8,000 and 18,000 pounds at a rate of between 10 and 20 hertz.
 - b. Continuously record the load and deflection versus time on a high speed oscillograph or high speed digital recorder.
 - c. After a minimum of 1,000 cycles, determine the dynamic stiffness from the ratio of peak-to-trough force to peak-to-trough deflection from the recorded data.
 - d. Between five to ten minutes after completion of the dynamic stiffness measurement and removal of all load, apply a vertical load beginning at zero pounds and increasing in 2,000 pound increments to a maximum of 20,000 pounds, at a rate not less than 200 pounds per minute nor more than 2,000 pounds per minute, at the centerline of the fastener assembly.
 - e. For each increment of load between 2,000 and 20,000 pounds, record the vertical deflection of the rail head to the nearest 0.001 inch.
 - f. The static stiffness of the fastener shall be the difference in load divided by the difference in deflection between 8,000 and 18,000 pounds.

2. Acceptance Criteria
 - a. The dynamic stiffness shall not exceed 1.5 times the static stiffness.

4.03 ELECTRICAL TESTS

A. Voltage Withstand Test

1. Procedures
 - a. Prepare a fully assembled fastener and apply a DC potential of 15KV between the rail head and the metal base plate of the fastener body for one minute.
2. Acceptance Criteria
 - a. The elastomer shall withstand this test with no visible damage such as splits, cracks, pinholes or fractures, and no evidence of arcing, arc tracking, or other voltage breakdown.

B. Electrical Resistance Test

1. Procedures
 - a. Test a complete, fully assembled fastener for electrical resistance, using both the wet and dry conditions procedures as specified herein.
 - b. Before assembly, metal parts, anchoring devices, rail clips, elastomer surfaces, and all other ancillary parts associated with the fastener shall be clean and dry.
 - c. Assemble the fastener with a section of 115-pound RE rail, not less than 1 foot in length.
 - d. Mount a completely assembled fastener on 1/4 inch thick metallic ground plate sized to extend 2 inch beyond all edges of the fastener.
 - e. Use anchorage assemblies supplied, or similar to those for use in actual field installation, to mount the fastener to the ground plate.
 - f. Use the same number of bolts (or other device) that will be used to anchor the fastener in-service.
 - g. Verify that improper assembly and other causes do not make the parts that are in electrical contact exhibit excessive contact resistance; including, but not necessarily limited to, the following contact points:
 - 1) Rail-to-rail plate interface.
 - 2) Rail hold-down assembly (clip) and rail.
 - 3) Anchor bolts and bottom fastener plate (if present).
 - 4) Anchor bolts and ground plate.
 - h. Dry Resistance Test
 - 1) Procedures
 - a) 24 hours prior to testing, store the assembled fastener in a clean, dry environment with ambient temperature of 60F to 80F and 50 to 70 percent humidity.
 - b) Apply 100 volts DC between the rail head and the ground

- plate for three minutes.
 - c) Measure the applied voltage and the resulting current flow, or directly measure the resistance with an accuracy of plus or minus two percent.
 - 2) Acceptance Criteria
 - a) The minimum resistance for 100 volts DC is 20 megohms.
 - i. Wet Resistance Test
 - 1) Procedures
 - a) Perform this test on the same fastener that passed the Dry Resistance Test. Place the assembled fastener in a nonmetallic trough or suitable container.
 - b) Size the container such that there is a minimum of two inches between the sides and bottom of the fastener/ground plate assembly and sides and bottom of the container.
 - c) Pour water into the container to a level midway up to the rail web covering all surfaces of the fastener.
 - d) Maintain this level of immersion for 10 minutes. The water resistivity shall be 1,000 to 1,500 ohm-cm (use potable water and adjust resistivity by addition of sodium chloride).
 - e) Ambient temperature of fastener surfaces (prior to immersion), water, and air shall be 60 to 80 degrees Fahrenheit.
 - f) Relative humidity shall be 50 to 70 percent.
 - g) Drain water from container to a level 2 inch below the ground plate, and without drying or otherwise disturbing the fastener, apply 100 volts DC to the rail head and ground plate and calculate the resistance within 15 seconds. Repeat measurement and calculation every five minutes for the first hour and every ten minutes for the second hour.
 - 2) Acceptance Criteria
 - a) The minimum resistance for 100 volts DC is one megohms for the average of three consecutive readings within two hours after draining.
 - b) The difference between each of the three readings and the average reading shall not exceed 10 percent of the average reading.

C. Electrical Impedance Tests

1. Procedures
 - a. On a fully assembled fastener, apply a potential of 50 volts AC to the rail head for three minutes for each increment of measurement for frequencies from 20Hz to 10kHz, in increments of 20Hz up to 100 Hz, 200 Hz to 1,000 Hz, and 2,000 Hz up to 10kHz.
 - b. Measure the impedance after three minutes with an accuracy of plus or minus two percent and record for each frequency.
2. Acceptance Criteria
 - a. The minimum impedance for any frequency between 100 Hz through 10 kHz shall not be less than 9,500 ohms

4.04 LIFE CYCLE TESTS

A. Vertical and Lateral Repeated Load Test

1. Procedures
 - a. Loads shall be applied to the rail head in such a manner as to produce a vertical downward load of 28,000 pounds, and lateral loads midway between the two fasteners, 0.625 inch below top of rail, of 8,000 pounds to the gauge side of the rail head and 5,000 pounds to the field side of the rail head.
 - b. The application of the lateral loads shall be alternated, each combined with alternate application and release of the vertical load, a total of three million complete cycles. Application of the field side load and then the gauge side load with two applications of the vertical load constitutes one cycle.
 - c. The frequency shall be regulated to prevent the temperature of the components from exceeding 70 degree C. Re-torquing of threaded elements subsequent to the completion of 500,000 cycles of loading will not be permitted without the written approval of the WMATA Engineer.
2. Acceptance Criteria
 - a. The fastener shall withstand the three million cycles of load application with no evidence of failure by slippage, yielding, wear, grooving or fracture at any time during the test.

B. Repeated Load Test with One Anchor Bolt

1. Procedures
 - a. After completion of the Vertical and Lateral Repeated Load Test, the fastener shall be reassembled as specified using only the original components previously subjected to testing.
 - b. The Vertical and Lateral Repeated Load Test shall then be repeated with a minimum of 15,000 cycles with the gauge side anchor bolt loosened to a minimum of 1/4 inch gap.
2. Acceptance Criteria
 - a. The fastener and concrete block shall withstand the 15,000 cycles of loading with the gauge side anchor bolt loosened with no evidence of

failure by slippage, yielding or fracture.

C. Uplift Repeated Load Test

1. Procedures

- a. The rail fasteners, fully assembled as specified above, shall have loads applied to the rail head in such a manner as to produce alternating vertical downward load of 20,800 pounds and a vertical upward load of 4,800 pounds at the centerline of the rail and midway between the two fasteners normal to the rail.
- b. The application of the two vertical loads shall constitute one complete cycle and shall be applied for a minimum of 1.5 million cycles.
- c. The frequency shall be regulated to prevent the components' temperature from exceeding 70 degree C.
- d. Re-torquing threaded elements subsequent to completion of 500,000 cycles of loading will not be permitted.

2. Acceptance Criteria

- a. The fastener shall withstand 1.5 million complete cycles of load application with no evidence of failure.
- b. Upon visual inspection, no component of the fastener, shall exhibit any evidence of failure by yielding, slippage or fracture.
- c. The rail shall exhibit no evidence of wear or grooving that would contribute to a failure of the rail under operating conditions.

D. Push-Pull Test

1. Procedures

- a. During the Push-Pull Test, the rail ends shall be supported on rollers or other low friction supports, properly elevated to prevent the longitudinal load from binding the rail in the fasteners.
- b. A cycling longitudinal load shall be applied to the centroid of the rail at one end to deflect the rail plus and minus 3/4 inch about the initial position for a total of 50 cycles.
- c. Immediately afterward, a cycling load equal to 80% of the ultimate slippage loads as recorded in the longitudinal restraint test shall be applied for a total of 25,000 pushing and pulling cycles.
- d. Repositioning of the rail clips at any time will not be permitted.

2. Acceptance Criteria

- a. The fastener shall withstand 25,000 cycles of loading with no evidence of failure.
- b. Upon visual examination, no component of the fastener, shall exhibit any evidence of failure by yielding slippage or fracture, except that slippage may occur between rail clips and rail but not between rail clips and the fastener body.
- c. The rail shall exhibit no evidence of wear or grooving that would contribute to rail failure under operating conditions.

- d. For ZLR fasteners the 25,000 cycles of loading shall require a load of less than 300 lbs to cause the rail to slip thru the ZLR fastener.
- E. Corrosion Process
- a. Procedures: Expose the fastener body, without loose components, to a five percent solution in accordance with ASTM B117, "Standard Test Method for Salt Spray (Fog) Testing", for 500 hours.
 - b. Acceptance Criteria
 - 1) This is a conditioning process for the fasteners that will be further tested as indicated in **Exhibit 05657-E**
- F. Heat Aging Process
- a) Procedures: Fully assemble a fastener as specified above except the anchor bolts need not be installed and age the fastener in an air oven for a period of 166 hours at a temperature of 70 degree C using the aging methods specified in ASTM Designation D573, "Accelerated Aging of Vulcanized Rubber by the Oven Method".
 - b) Acceptance Criteria
 - a. This is a conditioning process for the fasteners that will be further tested as indicated in **Exhibit 05657-E**.

4.05 DIRECT FIXATION MOLDING REQUIREMENTS

- A. Vendor's name or trademark shall be molded into the elastomer.
- B. Each cavity in a mold shall have a cavity identification mark which is molded into the elastomer. If more than one mold is used, then each cavity in a mold shall have a mold identification mark which is molded into the elastomer.
- C. Each molding cycle which produces one or less fasteners from each cavity in a mold is a heat.
- D. Consecutive heats from a mold shall be numbered consecutively.
- E. The elastomer's production batch number and the heat number shall be marked on each fastener in a permanent manner. The marking shall be visible in the installed position.
- F. The location and method of marking of identification data shall be shown on a shop drawing.
- G. In an orderly manner, each mold/heat/cavity permutation shall be assigned a unique sequential part number and part numbers shall be assigned to lots.
- H. A tabulation of lot, part, batch, mold, heat and cavity shall be developed as part of the Quality Assurance Program.

4.06 MANUFACTURING TOLERANCES

Table 1 - Direct Fixation Fastener Manufacturing Tolerances	
DIMENSION	TOLERANCE
Length and width	Plus or minus 1/8 inch
Height	Plus or minus 1/32 inch
Squareness	All angles within plus or minus 1/32 inch
Centering of holes	Plus or minus 1/32 inch
Diameter of holes	Plus or minus 1/32 inch
Durometer Shore A	Plus or minus 5
Serration depth	Plus or minus 1/64 inch
Serration spacing	Plus or minus 1/64 inch

4.07 DELIVERY, HANDLING AND STORAGE

- A. Fasteners shall be packed and shipped in a manner that shall prevent a load on any fastener from exceeding 1,000 pounds.
- B. Fasteners shall not be stored by the Vendor in a wet location or where the ambient temperature will exceed 120 degree F.
- C. Fasteners shall be packaged on wood pallets and wrapped in minimum 6 MIL plastic to permit outdoor storage in a secured area. Rail hold-down assemblies, shoulders, bolts, nuts and other loose items shall be packaged by component type in secure shipping kegs or boxes and clearly identified. The method and materials of packaging shall be submitted for approval by the WMATA Engineer.
- D. The Vendor shall replace all fasteners damaged during packaging, pre-delivery storage and shipping without additional cost to the Authority.
- E. Fasteners shall be delivered FOB to Authority furnished storage sites as directed by the WMATA Engineer to the Washington Metropolitan area. Unloading and final storage will be by others. Provide the WMATA Engineer two week notice prior to any fastener delivery.
- F. Fasteners used in the production quality control testing shall be packed and labeled separately from the rest of their lot.

5.0 WARRANTY

5.01 MATERIALS AND WORKMANSHIP

- A. There shall be a one (1) year warranty on all materials and workmanship. See Chapter III, Article 5 – Warranty, for additional warranty provisions.

- B. WMATA will inspect the materials after delivery to determine that they are of proper quantity and they are in satisfactory condition on arrival. Final acceptance will be based upon the fastener and all components complying with the WMATA specifications, based on the results of the quality control tests and the certified statements submitted to WMATA by the Vendor.

- C. The Vendor shall replace or supply any fasteners/associated hardware that have been damaged or do not meet specification within (14) calendar days of rejection notice.

6.0 DELIVERY SCHEDULE

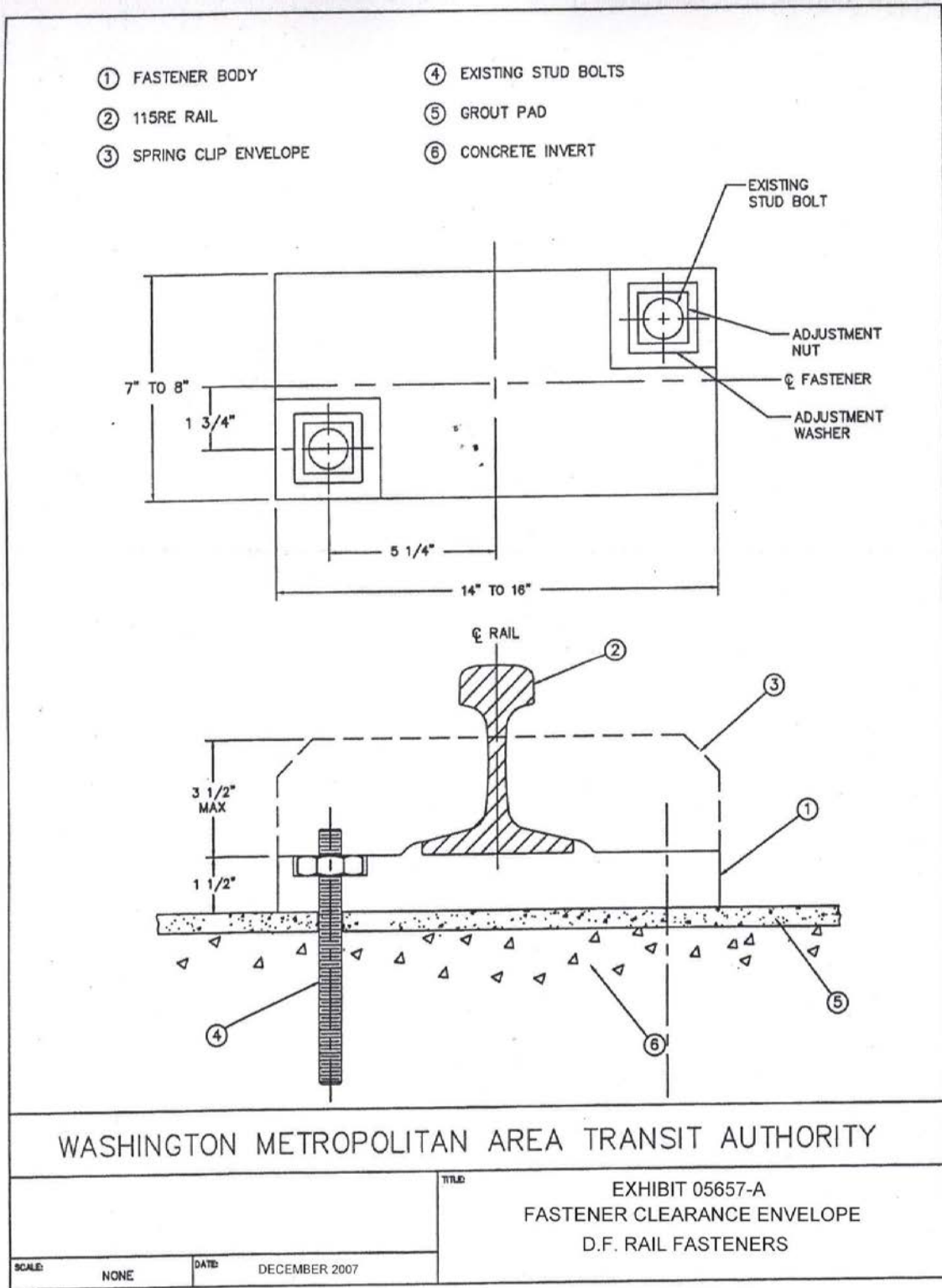
6.01 DELIVERY AND INSPECTION

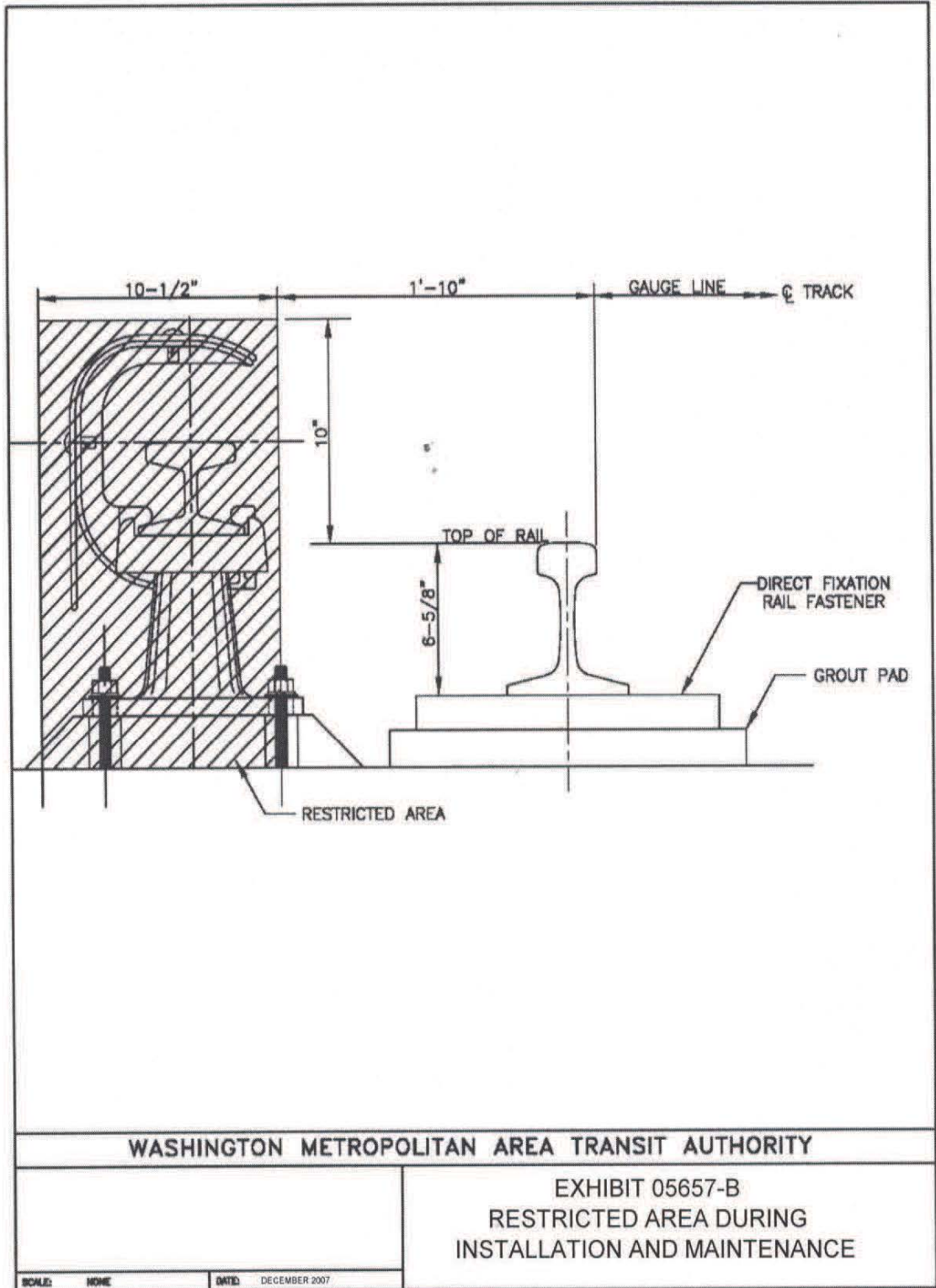
- A. Direct fixation fasteners shall be delivered to:
 - WMATA Auth Road Material Storage Facility
 - 4305 Auth Place
 - Suitland, MD 20746

Deliveries shall coincide with the dates indicated in the Price Schedule, and shall commence no later than (45) calendar days after NTP. Hours of delivery shall be between 7:00 a.m. and 2:00 p.m. Monday through Friday, exclusive of legal holidays in the Washington, DC area. The Vendor shall notify WMATA of material deliveries (48) hours in advance. The supplier shall contact Ms. Kimberly Hammond at (202) 253-4127 for instructions.

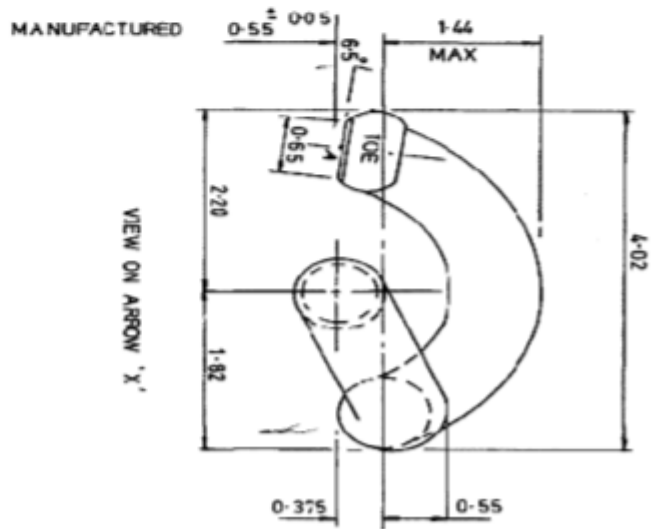
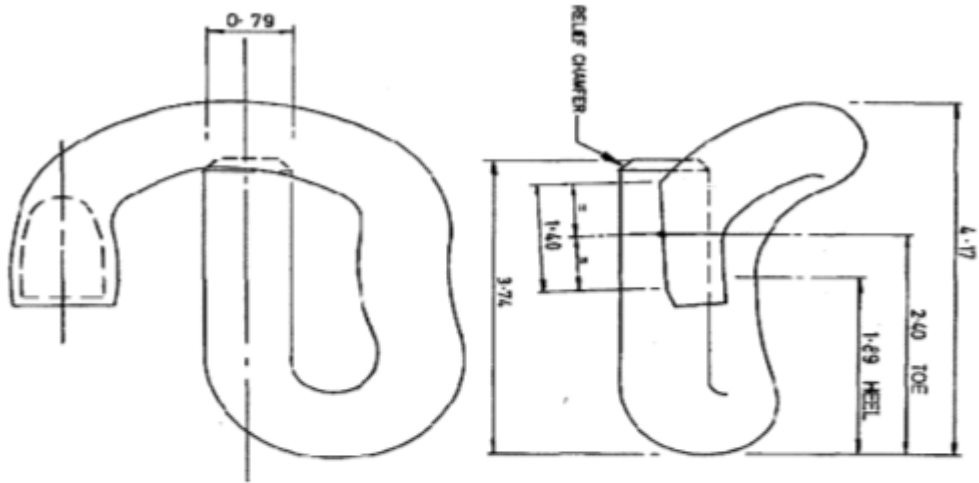
- B. The Vendor shall mark each container with identification of the item contained, supplier's name, shipping date, number of pieces, destination, and gross weight.

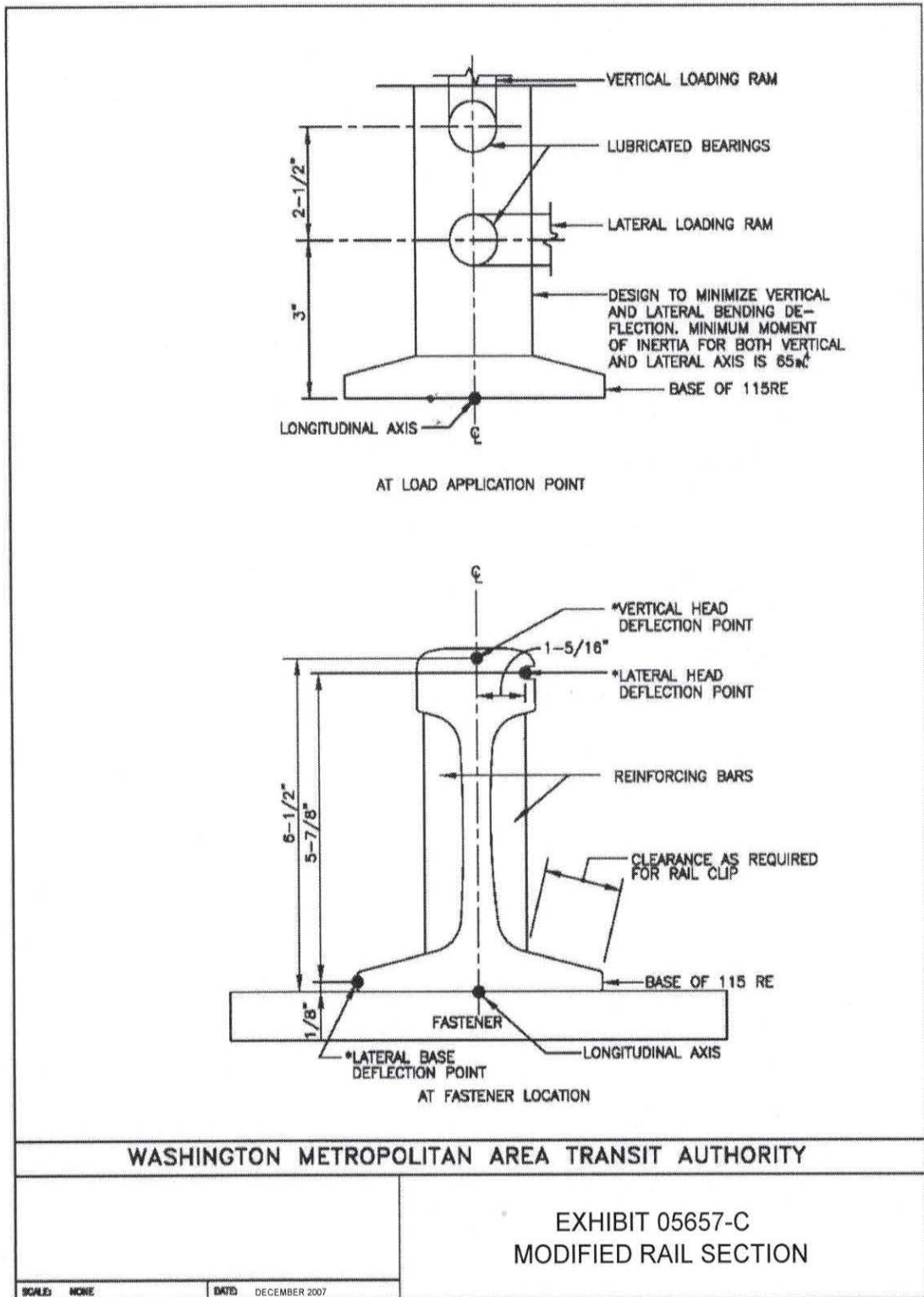
**TECHNICAL DRAWINGS
&
TESTING ACCEPTANCE CRITERIA**

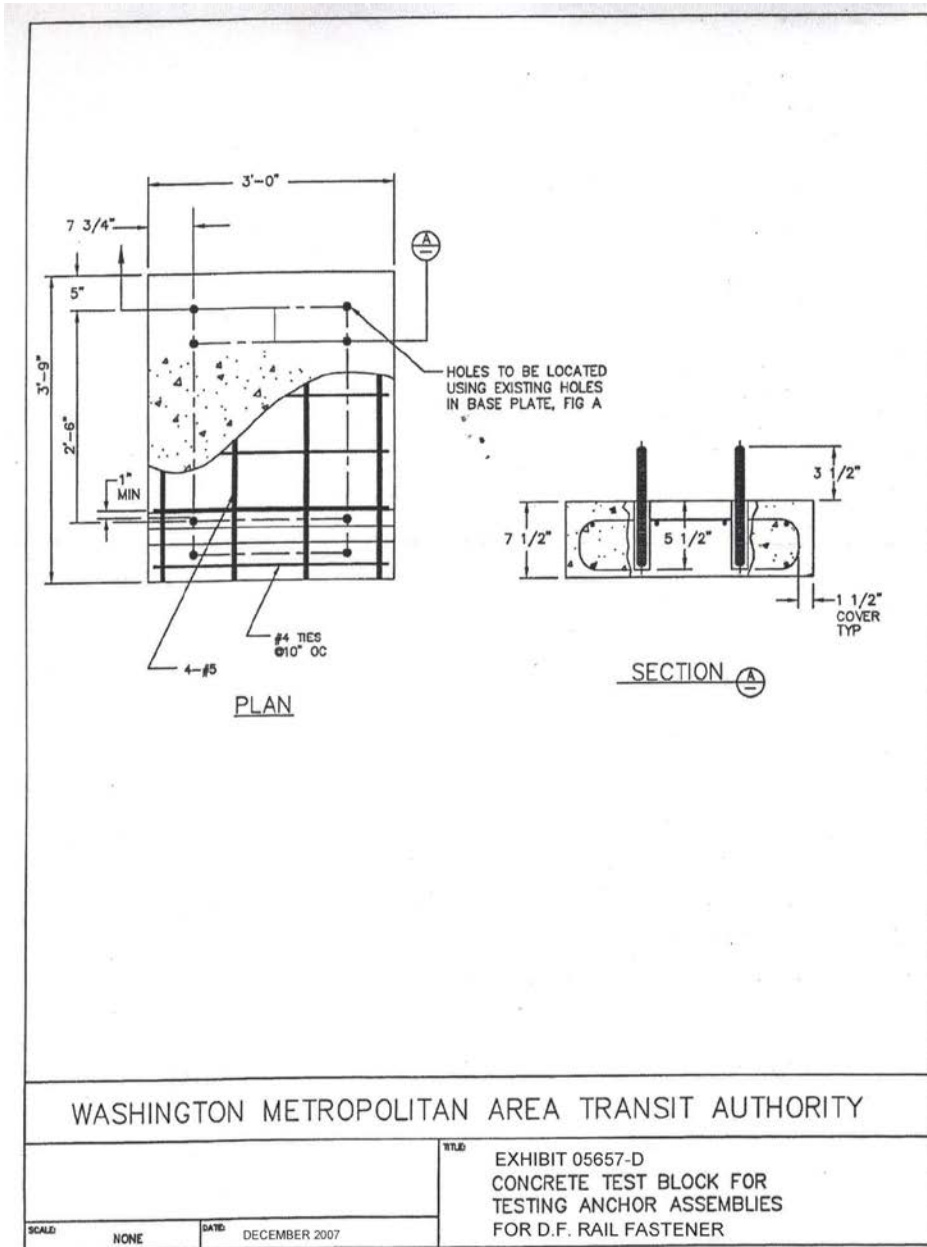


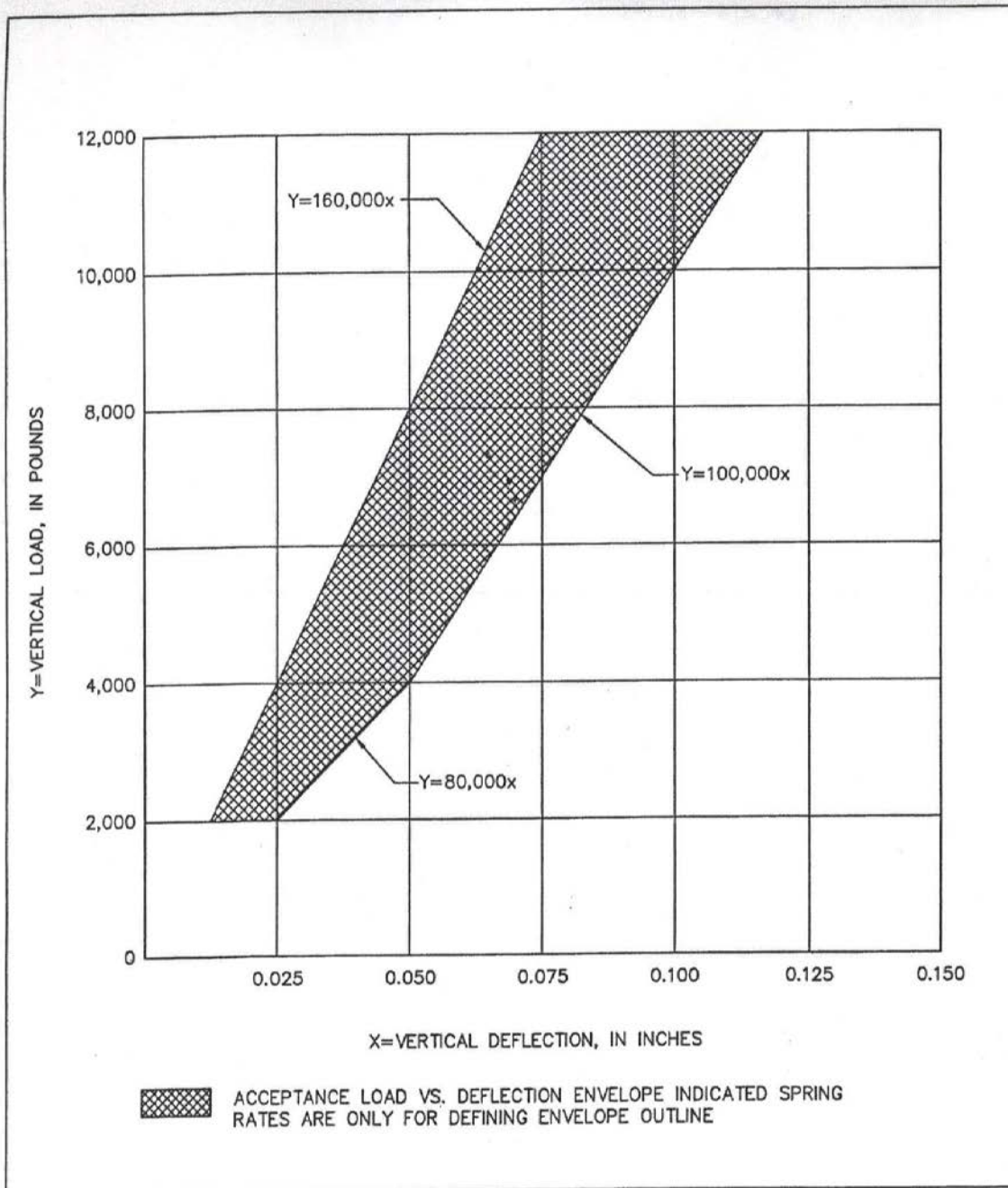


PANDROL LEFT-HAND "E" CLIP



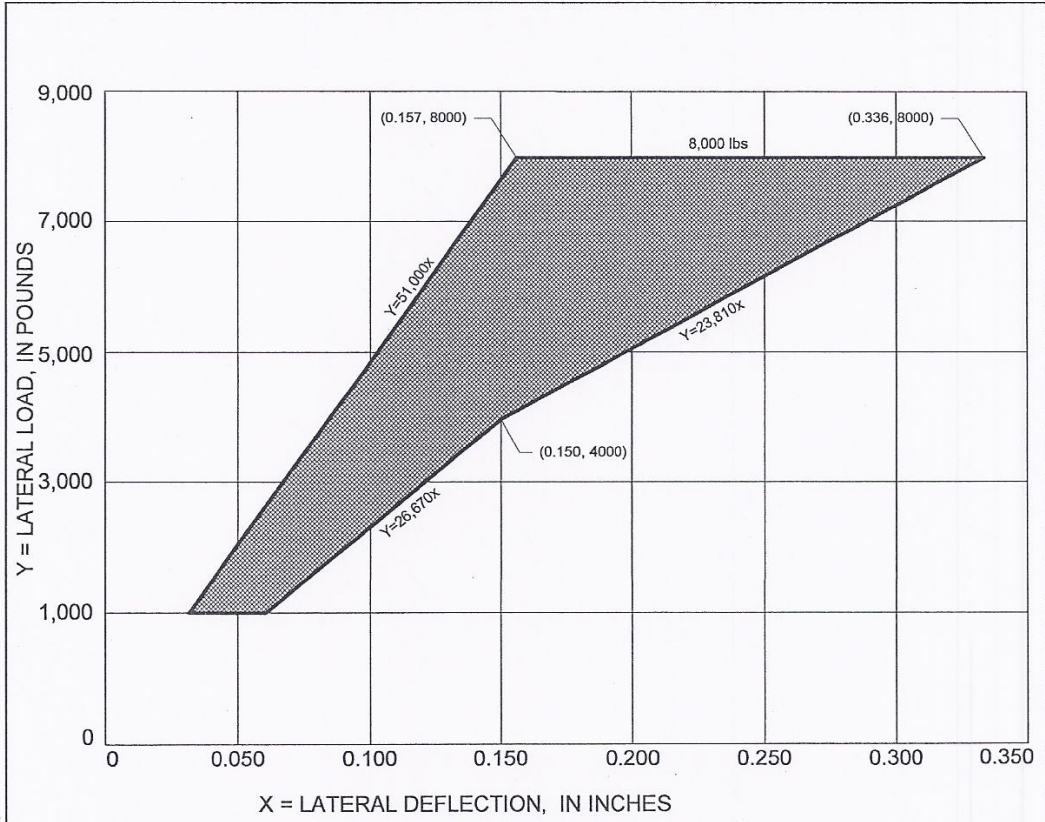







WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SCALE: NONE		DATE: DECEMBER 2007	TITLE: EXHIBIT 05657-F VERTICAL LOAD TEST ACCEPTANCE CRITERIA FOR FOR D.F. RAIL FASTENER



NOTES:

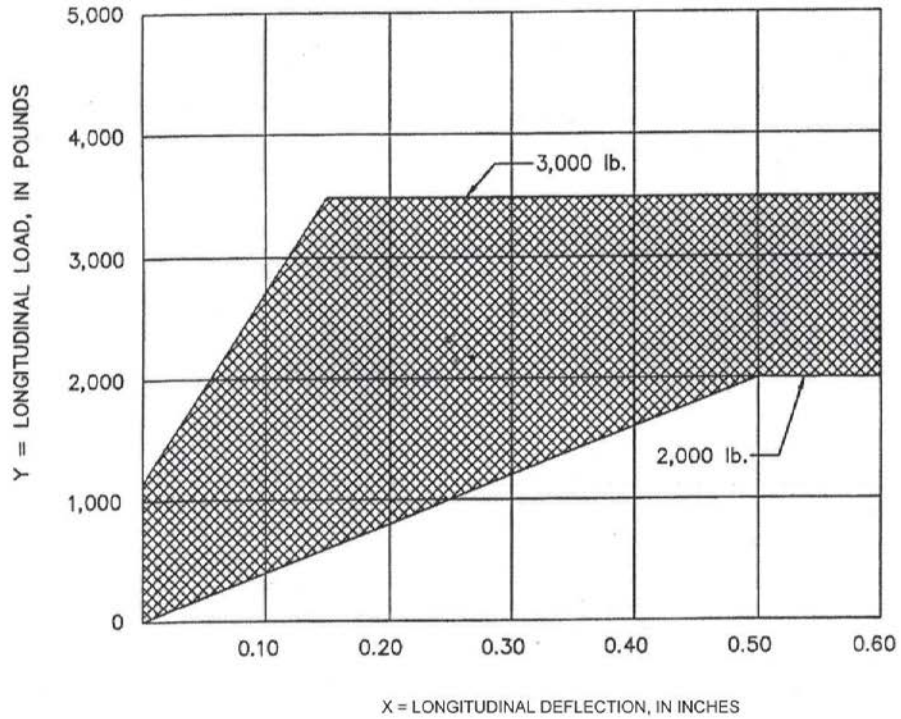
 ACCEPTANCE LOAD VS. DEFLECTION ENVELOPE. INDICATED SPRING RATES ARE ONLY FOR DEFINING ENVELOPE OUTLINE.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

EXHIBIT 05657-G
 LATERAL LOAD TEST
 ACCEPTANCE CRITERIA FOR
 DF RAIL FASTENERS

SCALE: NONE

DATE: OCTOBER 2010



NOTES:

 ACCEPTANCE LOAD VS. DEFLECTION ENVELOPE INDICATED SPRING RATES ARE ONLY FOR DEFINING ENVELOPE OUTLINE

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SCALE: NONE		DATE: DECEMBER 2007		TITLE:	
				EXHIBIT 05657-H LONGITUDINAL RESTRAINT TEST ACCEPTANCE CRITERIA FOR D.F. RAIL FASTENERS	

APPENDIX B

ATTACHMENT A

***NOTICE OF REQUIREMENTS
FOR
DISADVANTAGED BUSINESS ENTERPRISE (DBE)***

May 2015

~Applies only if bid price is \$500,000 or more for a construction contract or \$150,000 or more for a supply and service contract.

~APPENDIX B~

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

1. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENT:

- A. The DBE 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 award and administration of this U.S. Department of Transportation (US DOT) assisted contract.

2. POLICY:

- A. It is the policy of the Authority (WMATA), the Federal Transit Administration (FTA) and the US DOT that Disadvantaged Business Enterprises (DBEs) shall compete fairly to receive and participate in performing federally assisted contracts, including contracts and subcontracts at any tier. It is further the policy of the Authority, the FTA and the US DOT that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts. 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. CONTRACT GOAL:

- A. If the bidder is not a DBE, the bidder agrees that the DBE goal for this Contract shall be met by subcontractors or by joint ventures with DBEs. The goal set forth for this Contract is ten **10%** of the final Contract price, including amendment and modification. The amount of DBE participation will be determined by the dollar value of the work performed and/or supplies furnished by DBE firms as compared to the total value of all work performed and/or supplies furnished under this Contract. The Contractor shall have met this goal if the Contractor's DBE participation meets or exceeds this goal.
- B. In cases where work is added to the Contract by modification such that additional DBE participation is necessary to meet this goal, the Contractor shall increase the participation of one or more firms listed on the "Schedule of DBE Participation" or submit additional DBE certified firms to meet the goal. In cases where work is deleted from the Contract, the goal shall be applicable to the new Contract amount. The Contractor shall be permitted to meet the goal by revising its DBE participation, provided, however, that the revision shall not result in DBE participation that is less than the original goal.

4. DEFINITIONS:

- A. **Appendix B.** The Notice of Requirements for Disadvantaged Business Enterprise, which when attached to a solicitation, implements the DBE requirements of the Authority's DBE Program Plan in the award and administration of federally funded Authority contracts.

- B. **Certified DBE.** means a for-profit small business concern (a) that is at least 51 percent owned by one or more individuals who are both socially and 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 socially and economically disadvantaged individuals who own it; and (c) whose eligibility is evidenced by a current WMATA Certification letter, a D.C. Department of Transportation Certification letter, or a certification letter issued by the Metropolitan Washington Unified Certification Program (MWUCP).
- C. **Contractor.** One who participates, through a contract or subcontract (at any tier), in a US DOT assisted highway, transit or airport program.
- D. **DC DOT.** The District of Columbia Department of Transportation.
- F. **Good Faith Efforts.** Efforts to achieve a DBE goal or other requirements of the Authority's DBE Program Plan which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the goal program requirement.
- G. **Joint Venture.** An association of a DBE 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 DBE 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. **Pre-certification.** A requirement under 49 CFR §26.81(c) that all certifications by the MWUCP be made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.
- J. **Race-conscious.** A measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs.
- K. **Race-neutral.** A measure or program that is, or can be, used to assist all small businesses. For the purposes of the DBE program, race-neutral includes gender-neutrality.
- L. **Small Business Concern.** With respect to firms seeking to participate as DBE'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).
- M. **Socially and Economically Disadvantaged Individual.** Any individual who is a citizen (or other lawfully admitted permanent resident) of the United States and who the Authority finds to be a socially and economically disadvantaged individual on a case-by-case basis, and any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged.

- (1) Black Americans, which includes persons having origins in any of the Black racial groups of Africa;
 - (2) Hispanic Americans, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (3) Native Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (4) Asian-Pacific Americans, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the North Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - (5) Subcontinent Asian Americans, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (6) Women; and
 - (7) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- N. 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.
- O. Unified Certification Program (UCP). The program mandated by 49 CFR Part 26.81(a), which requires all U. S. DOT recipients of federal financial assistance to participate in a statewide certification program by March 2002.
- P. WMATA. Washington Metropolitan Area Transit Authority, the transit system (rail and bus) serving the metropolitan Washington area, including parts of Virginia and Maryland.

5. HOW DBE PARTICIPATION IS COUNTED TOWARDS THE CONTRACT GOAL:

DBE participation shall be counted towards meeting the DBE goal in accordance with the following:

- A. When a DBE participates in a contract, only the value of the work actually performed by the DBE is counted towards the DBE goal.
- (1) This amount includes the entire amount of that portion of a construction contract that is performed by the DBE's own forces. This amount includes the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

- (2) This amount includes the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the contract, towards the DBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (3) When a DBE subcontracts part of its work under the contract to another firm, the value of the subcontract work may be counted towards the DBE goal only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count towards the DBE goal.
- B. When a DBE performs as a participant in a joint venture, the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that a DBE performs with its own forces towards the DBE goal may be counted.
- C. Expenditures to a DBE contractor towards the DBE goal may be counted only if the DBE is performing a commercially useful function on that contract.
- (1) A DBE 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 DBE 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 a DBE 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 and the DBE credit claimed for its performance of the work, and other relevant factors.
 - (2) A DBE 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 DBE participation.
 - (3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or if the DBE 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 DBE is not performing a commercially useful function.
- D. The following factors will be used by the Authority in determining whether a DBE trucking company is performing a commercial useful function:
- (1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible for on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.

- (2) The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract.
 - (3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers, it employs.
 - (4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - (5) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
 - (6) The lease must indicate that the DBE 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 DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
- E. The following factors will be used to count expenditures with DBEs for materials or supplies towards the DBE goal:
- (1) If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies will be counted towards the DBE goal. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the contract.
 - (2) If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies will be counted towards the DBE goal. A regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if this person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.

- (3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials and supplies required on a job site, may be counted towards the DBE goal, provided the fees are reasonable and are not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves may not be counted towards the DBE goal.

- F. All DBE firms must be pre-certified. Participation by a firm that is not currently certified as a DBE by the Authority at the time of the due date for bids or offers on a contract, does not count towards the DBE goal. All DBE firms must be in compliance with 49 CFR, Part 26.

- G. The dollar value of work performed under the contract by a firm who has been decertified as a DBE by the MWUCP does not count towards the DBE goal.

- H. The participation of a DBE subcontractor does not count towards the Contractor's DBE goal until the amount being counted towards the goal has been paid to the DBE.

6. BID AND REQUIREMENTS (WITH THE BID):

The bidder shall submit the following with its bid. Any bidder who fails to complete and return this information with its bid shall be deemed to be not responsive and may be ineligible for contract award. Bidders that fail to meet the DBE goal above and fail to demonstrate "good faith efforts" to justify waiver of the DBE goal (see paragraph 6.C. below) shall be deemed to be not responsible and will be ineligible for Contract award.

- A. Completed "Schedule of DBE Participation" (Attachment B-1) sufficient to meet the above goal. If the bidder is a DBE firm and intends to satisfy the appropriate DBE requirement with its own firm, it must indicate in the Schedule the area of work and percentage it will perform to satisfy the goal. All bidders must attach current WMATA, DC DOT or MWUCP certification letters for each DBE listed on the Schedule.

- B. Executed "Letters of Intent to Perform as a Subcontractor/Joint Venture" (Attachment B-2). If the bidder is not a DBE or intends to satisfy the requirements through other DBE firms, then it must attach these letters from each certified DBE listed on the Schedule.

- C. Justification for grant of relief (Appendix B waiver of DBE goal). If in the submittal of its bid, the bidder fails to meet the DBE goal above, the bidder has the burden of furnishing sufficient documentation with its bid of its "good faith efforts" to justify a grant of relief (waiver) from the goal or portion of the goal. Such justification shall be in the form of a detailed report. The following is a list of actions which shall be considered as part of the bidder's good faith efforts to obtain DBE participation. This list is neither a mandatory checklist nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases:
 - (1) Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to

the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

- (2) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- (3) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- (4)
 - (a) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work. "DBE Unavailability Certifications" (Attachment B-3) shall be completed as appropriate.
 - (b) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as the contract goal into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- (5) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- (6) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- (7) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (8) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal

minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

7. BID REQUIREMENTS (APPARENT SUCCESSFUL BIDDER):

The bidder shall submit the following items within ten (10) calendar days after notification that they are the apparent successful bidder:

- A. A copy of a current WMATA, D.C. DOT or MWUCP certification letter(s) shall be attached to the DBE Schedule of Participation to evidence DBE pre-certification.
- B. DBE Manufacturer's Affidavit, if applicable, must be submitted in order to receive 100 percent of the allowable credit for expenditures to DBE manufacturers/suppliers (Attachment B-4). By submission of this Affidavit, the bidder certifies this it is satisfied that the manufacturer meets the requirements of 49 CFR Part 26.
- C. Schedule B Information for Determining Joint Venture Eligibility, if applicable (Attachment B-5, pgs. 1, 2, 3, 4). Submittal shall be signed by all parties, dated and notarized.
- D. Copy of Joint Venture Agreement, if applicable. Submittal shall be signed by all parties, dated and notarized.
- E. Certification letter of the DBE regular dealer/supplier, if applicable. If the bidder wants to receive the maximum allowable credit of its expenditures for material(s) or supplies required under this Contract, from DBE regular dealers/suppliers, the DBE must submit a signed and notarized statement on their letterhead, that they are a regular dealer of the material(s) or supplies. By submission of this statement, the bidder certifies that it is satisfied that the subcontractor is a regular dealer/supplier that meets the requirements of 49 CFR Part 26.
- F. For Design-Build contracts, if a DBE goal is specified in Section 00872, DBE GOAL REQUIREMENTS, the bidder shall submit with its initial Bid a list of DBE-certified firms that it intends to enter into subcontract agreements with for this Contract. If no goal is specified in Section 00872 of the solicitation and the offeror still intends to utilize DBEs in the performance of this Contract, the offeror shall submit with its initial Bid a list of those DBE-certified firms. The documentation requirements of Section 00453 of the solicitation shall be completed and submitted at the time set forth for the submittal of Best and Final Offer (BAFO) to the Authority for any Contract in which a DBE goal is applicable or for any Contract in which there was no goal established, but the bidder identified DBE-certified firms that it intends to enter into subcontract agreements with in its initial Bid. Any offeror who fails to complete and return the following information, if applicable, with their BAFO Bid may be deemed to be not responsible and may be ineligible for contract award. Offerors that fail to meet the DBE goal, if any, specified in Section 00872 and fail to demonstrate a good faith effort and to justify waiver of the DBE goal may be deemed to be not responsible and may be ineligible for contract award.

8. 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 in support of the DBE goal:

“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. (1) The Contractor shall monitor the performance of, collect and report data on DBE participation to the WMATA’s DBE office on the attached “Prompt Payment Report-Prime Contractor’s Report” (Attachment B-6) which shall be submitted monthly with each payment request. Failure to submit these reports 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.
- (2) The Contractor shall require each sub-contractor to complete and forward to the DBE Liaison Officer on a monthly basis a “Prompt Payment Report-Subcontractor’s Report” (Attachment B-7). The sub-contractor shall certify that payment has been received.
- C. The Contractor shall have a continuing obligation to maintain a schedule for participation by DBE contractor(s) to meet its goal set forth above in this Appendix. The Contractor shall not have work performed nor the materials or supplies furnished by any individual or firm other than those named in the “Schedule of DBE Participation.” If at any time, the Contractor believes or has reason to believe that it needs to obtain a substitute for a DBE contractor named in the “Schedule of DBE Participation”, the Contractor shall, within ten (10) days, notify the contracting officer and the DBE office of that fact in writing. Situations which may warrant substitution for a DBE firm include, but are not limited to the following:
- (1) Evidence of change in ownership or circumstances regarding the firm’s status as a DBE.
- (2) Death or physical disability, if the named subcontractor or DBE partner of the joint venture is an individual.
- (3) Dissolution, if a corporation or partnership.
- (4) Bankruptcy of the subcontractor, subject to applicable bankruptcy law, and only instances where the bankruptcy affects the Contractor’s ability to perform.
- (5) Inability to furnish a reasonable performance or payment bond, if required.

- (6) Inability to obtain, or loss of, a license necessary for the performance of the particular category of work.
- (7) Failure or inability to comply with a requirement of law applicable to contractors and subcontractors on a construction, alteration or repair project.
- (8) Failure or refusal to execute the subcontract in accordance with the terms of an offer submitted to the Contractor prior to the Contractor's submission of its bid, but only where the contracting officer or other delegated authority's representative can ascertain with reasonable certainty the terms of such offer. In the absence of any other factors, such a failure or refusal will be considered an unusual situation only if the bidder obtained, prior to bidding/proposing, an enforcement commitment from the subcontractor involved.
- (9) Failure to comply with the terms and conditions of this Contract or those of its subcontract or joint venture agreement.

Within 30 days thereafter, the Contractor shall, if necessary to achieve the Appendix B goal, make every reasonable effort to subcontract the same or other work equivalent in value to other certified DBE firms. The Contractor must have the prior written approval of the contracting officer and the DBE office before substitution for a DBE 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 DBE office 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, 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 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. Where the Contractor, after exhausting all its administrative and legal remedies and procedures is found to have failed to exert a "good faith effort" to involve DBE's in the work as herein provided, the Authority may declare the Contractor ineligible to receive further Authority contracts for three years from the date of the finding.
- 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 two 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 DBE 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.

SUMMARY OF SUBMITTALS

With the Bid

1. Completed "Schedule of DBE Participation" (Attachment B-1) with current certification letters attached for each listed DBE.
2. Executed "Letters of Intent to Perform as a Subcontractor/Joint Venture" (Attachment B-2).
3. Justification for grant of relief (waiver of DBE goal), if applicable. Include completed "DBE Unavailability Certifications" (Attachment B-3) as appropriate.

Bid Requirements (Apparent Successful Bidder)

1. All DBEs must submit a copy of their current WMATA or DC DOT certification letters or a certification letter issued by the MWUCP.
2. DBE Manufacturer's Affidavit, if applicable, must be submitted in order to receive 100 percent of the allowable credit for expenditures to DBE manufacturers/suppliers (Attachment B-4).
3. Schedule B Information for Determining Joint Venture Eligibility, if applicable (Attachment B-5, pgs. 1, 2, 3, 4).
4. Copy of Joint Venture Agreement, if applicable.
5. Certification letter of the DBE regular dealer/supplier, if applicable.

After Contract Award

1. "Prompt Payment Report-Prime Contractor's Report" (Attachment B-6) – submitted monthly.
2. "Prompt Payment Report-Subcontractor's Report" (Attachment B-7) - submitted monthly.
3. Request to substitute DBE contractor (see paragraph 8.C.) – submitted as required.
4. Copies of subcontracts-submitted at the time of their execution.

SUBMIT WITH BID

SCHEDULE OF DBE PARTICIPATION

Contract No.: _____

Project Name: _____

Name of Bidder: _____

The bidder shall complete this Schedule by identifying only those DBE firms, with scope of work and price, who have agreed to perform work on this Contract. The prices for the work/supplies of these firms shall be at prices amounting to at least the DBE percentage goal of the total contract price. The bidder agrees to enter into a formal agreement with the DBE 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. If the total amount is less than the DBE percentage goal, a justification for waiver of DBE goal shall be attached to this Schedule.

Name of DBE Subcontractor	Address	Type of Work (Electrical, Paving, Etc.) and Contract Items or Parts Thereof to be Performed and Work Hours Involved	Agreed Price
Subtotal \$ DBE Subcontractors			
Name of DBE 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 \$ DBE Prime Contractor			
TOTAL \$ ALL DBE CONTRACTORS		TOTAL	

Signature of Contractor Representative _____

Title _____

Date _____

Contract Number: _____

Project Name: _____

M

23.26a (Rev 02/12)

**LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR/JOINT VENTURE
 (ALL ITEMS MUST BE COMPLETED)**

TO: _____
 (Name of Bidder)

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 non-DBE contractors, 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 DBE Subcontractor/Joint Venture	Phone Number
Address	WMATA Vendor ID #/DBE Cert. #
Signature & Title	Date

 The following is to be completed by the Prime Contractor. A copy of this letter must be returned to the DBE subcontractor to indicate acceptance.

To: _____
 (Name of DBE)

You have projected your interest and intent for such work, and the undersigned is projecting completion of such work as follows:

WORK ITEMS	PROJECTED DBE COMMENCEMENT DATE	PROJECTED DBE COMPLETION DATE
---------------	---------------------------------------	-------------------------------------

 (Date)

 (Name of Prime Contractor &
 Acceptance Signature)

SUBMIT WITH BID

DBE UNAVAILABILITY CERTIFICATION

I, _____, _____, of _____
(Name) (Title) (Bidder)

certify that on _____ I contacted the following DBE contractor to obtain a bid for work
(Date)
items to be performed on Contract Number _____

DBE Contractor	Work Items Sought	Form of Bid Sought (i.e., Unit Price, Materials and Labor Only, Etc.)
_____	_____	_____

To the best of my knowledge and belief, said DBE contractors were unavailable (exclusive of unavailability due to lack of agreement on price) for work on this project, or unable to prepare a bid, for the following reason(s):

Signature: _____

Date: _____

_____ was offered an opportunity to bid on the above
(Name of DBE Contractor)

identified work on _____ by _____
(Date) (Source)

The above statement is true and accurate account of why I did not submit a bid on this project.

(Signature of DBE Contractor)

(Title)

M 23.25 (Rev 10/99)

DBE Certification Instructions

Important Notice

If you do not have a current, official letter of certification from WMATA, D.C. DOT or MWUCP, you are not pre-certified and are therefore not eligible to participate as a Disadvantaged Business Enterprise on the bid.

For those who wish to access the MWUCP certification application, it may be found on the internet at the following address:

https://www.wmata.com/business/disadvantaged_business_enterprise. Go to "Procurement and Contracting", click on "Disadvantaged Business Enterprise", then click on "DBE Application for Certification".

49 CFR Part 26 gives Metropolitan Washington Unified Certification Program (MWUCP) 90 days in which to process a complete DBE application. In order to become certified and participate in the MWUCP, you must comply with the procedures that follow. Certification must be final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

Instructions

49 CFR Part 26.81(d) of the Certification Procedures requires a firm to be certified as a DBE in its "home state", where it has its principal place of business, in order to become certified outside such "home state". Therefore, you must attach a copy of a valid DBE Certification letter from your home state Department of Transportation to the MWUCP Application. In addition, submit the pertinent documents for your company listed below. The application should be completed in full and NOTARIZED.

General (All firms must submit documents under General)

- Current (unaudited) Financial Statements
- Prior three (3) years Federal Tax Returns
- Resume of Principal(s) and Key Personnel
- Third Party Agreements, such as Rental and Management Agreements
- Licenses to Do Business
- Personal Net Worth (PNW) Statement
- Statement of Disadvantage
- No Change Affidavit or Notice of Change (where applicable)

Corporations

- Articles of Incorporation
- By-Laws
- Stock Ownership Options
- Copy of Stock Certifications of Each Holder
- Copy of Voting Rights
- Record of First Organizational Meeting

Partnerships

- Partnership Agreement

Proprietorships

IRS Employer ID Number
WMATA Vendor ID#

Limited Liability Companies

Operating Agreement
Certificate of Formation, Operating Agreement with any amendments
U.S. Corporate or Partnership Income Tax Returns

Change of Status Review

On or before each certification anniversary date, you must submit a No Change Statement attesting that there have been no changes in the firm's circumstances affecting its ability to meet the eligibility requirements of 49 CFR Part 26 or WMATA's DBE Program Plan. Those firms which have undergone changes in circumstances must submit a Notice Regarding Change for review by the Office of Procurement and Materials, DBE Unit. A review of these changes shall be made to determine if the firm is in compliance with the 49 CFR Part 26.

Affidavit Enclosure

NOTE: When completing MWUCP Application, complete all information blocks. Type "N/A" if item does not apply to you or your firm.

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.

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.

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: _____



23.06c (Rev 10/99)

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 DBE Program shall have access to the information provided herein above for the purpose of establishing eligibility and authenticity of the minority/woman-owned status 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)

.....
23.29 (10/99)

M

Information For Determining Joint Venture Eligibility

Page 4

.....

Date: _____ State: _____ County: _____

On this _____ day of _____, 19____,

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: _____

On this _____ day of _____, 19____,

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: _____

.....



23.06c (Rev 10/99)

Washington Metropolitan Area Transit Authority

DISADVANTAGED BUSINESS ENTERPRISE (DBE)
 MONTHLY PROMPT PAYMENT REPORT

PRIME – CONTRACTOR’S REPORT

This report is required to be submitted to the Office of Procurement, DBE Branch 600 5th Street, NW, Suite 3C, Washington, DC 20001, pursuant to the requirements of WMATA’s DBE Program Plan and §26.29 of 49 CFR Part 26.

Contract No.: _____ Reporting Period: _____

Name of Prime Contractor: _____ DBE – Yes or No

Prime Contract Amount: _____ Total Received this Reporting Period: _____ Total Received to Date: _____
 DBE Goal _____

Name of Sub-Contractor	DBE (Y/N)	Description of Work	Date of Contract Awarded	Amount of Sub-Contractor Award	Amount Paid This Reporting Period	Cumulative Paid To Sub-Contractor	% of Physical Work Complete
TOTAL							

I certify the information furnished with respect to DBE subcontractor performance correct to the best of my knowledge and represents a current status of the prime contractor with the DBE 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.

By: _____ Title: _____ Date: _____

Washington Metropolitan Area Transit Authority

DISADVANTAGED BUSINESS ENTERPRISE (DBE)
 MONTHLY PROMPT PAYMENT REPORT

SUBCONTRACTOR'S REPORT

This report is required to be submitted to the Office of Procurement, DBE Branch 600 5th Street, NW, Suite 3C, Washington, DC 20001, pursuant to the requirements of WMATA's DBE Program Plan and §26.29 of 49 CFR Part 26.

Contract No.: _____ Reporting Period: _____

Name of Subcontractor: _____ DBE – Yes or No

Subcontractor Contract Amount: _____ Total Received this Reporting Period: _____ Total Received to Date: _____

Name of Sub-Contractor	DBE (Y/N)	Description of Work	Date of Contract Awarded	Amount of Sub-Contractor Award	Amount Paid This Reporting Period	Cumulative Paid To Sub-Contractor	% of Physical Work Complete
TOTAL							

I certify the information furnished with respect to DBE subcontractor performance correct to the best of my knowledge and represents a current status for the designated period covered by this report. Further, those contractors, due payment pursuant to the terms of their subcontracts will be paid within ten days after receipt of payment from the Contractor.

By: _____ Title: _____ Date: _____

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 DBEPO'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

Information For Determining Joint Venture Eligibility

Page 4

.....

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: _____

.....

SUBMIT WITH BID/PROPOSAL
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
 SUPPLY AND SERVICE CONTRACT IFB NO.: FQ16119/LP

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. **C**

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. R

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. I,R,C

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.