



Invitation For Bid

[Federal]

Interloc Mobile Informer User Licenses and Support

IFB No.: FQ16008/SAC

Sherry A. Caison

Date: September 14, 2015

TABLE OF CONTENTS

NOTICE TO BIDDERS	8
NOTICE TO ALL VENDORS	9
SOLICITATION, BID AND AWARD	10
ACKNOWLEDGMENT OF AMENDMENTS	11
SOLICITATION INSTRUCTIONS	12
1. INTRODUCTION	13
2. GOODS TO BE FURNISHED/SERVICES TO BE PERFORMED	13
3. COMMUNICATIONS WITH THE AUTHORITY	13
4. EXPLANATIONS TO BIDDERS	14
5. PRE-BID MEETING – N/A	14
6. AMENDMENTS TO IFB	15
7. ACKNOWLEDGMENT OF AMENDMENTS	15
8. PREPARATION OF BIDS	15
9. SUBMITTAL OF BIDS	16
10. RESPONSIVE BIDS	16
11. LATE BIDS AND MODIFICATIONS OR WITHDRAWALS PRIOR TO BID OPENING	16
12. BID ACCEPTANCE PERIOD AND BIDDER'S DEFAULT	17
13. BID GUARANTEE - N/A NOT REQUIRED FOR THIS SOLICITATION	17
14. BID MISTAKE	18
15. REPRESENTATIONS, CERTIFICATIONS, AND ACKNOWLEDGMENTS	18
16. LAWS AND REGULATIONS	18
17. ROYALTY INFORMATION – N/A	19
18. REQUIREMENT FOR COST DATA FOR CONTRACT AWARD	19
19. PRE-AWARD INFORMATION/BIDDER RESPONSIBILITY	19
20. PRE-AWARD MEETING	20
21. SITE VISIT/INSPECTION OF BIDDER'S FACILITIES – N/A	20
NOT REQUIRED FOR THIS SOLICITATION	20
22. BASIS FOR AWARD	20
23. CONTRACT AWARD	21
24. EQUAL EMPLOYMENT OPPORTUNITY	21
25. DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS	21
26. OPPORTUNITY FOR DISADVANTAGED BUSINESS ENTERPRISES TO BID	21
27. NOTICE OF PROTEST POLICY	22
28. WMATA'S TAX EXEMPT STATUS	22
29. ENGLISH LANGUAGE AND UNITED STATES CURRENCY	23
30. BRAND NAME OR EQUAL	23
31. PERFORMANCE AND PAYMENT BONDS – N/A	23
REPRESENTATIONS AND CERTIFICATIONS	24
PRE-AWARD EVALUATION DATA	32
TERMS AND CONDITIONS	34
CHAPTER I – GENERAL CONDITIONS	35

1.	AGREEMENT	35
2.	ARRANGEMENT OF CONTRACTUAL PROVISIONS.....	35
3.	ORDER OF PRECEDENCE	35
4.	REQUIREMENTS CONTRACT – N/A	35
5.	AUDIT, AVAILABILITY, AND INSPECTION OF RECORDS	36
6.	AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR	36
7.	CONTRACTING OFFICERS TECHNICAL REPRESENTATIVE (COTR)	37
CHAPTER II – TIME/DELAYS/LIQUIDATED DAMAGES		40
1.	PERIOD OF PERFORMANCE	40
2.	LIQUIDATED DAMAGES FOR DELAY – N/A	40
3.	EXTENSIONS OF TIME/FORCE MAJEURE.....	40
4.	AUTHORITY’S DELAY OF WORK	41
5.	NOTICE TO THE AUTHORITY OF LABOR DISPUTES	42
CHAPTER III – ACCEPTANCE/INSPECTIONS/DEFICIENCIES		43
1.	INSPECTION OF SERVICES	43
2.	INSPECTION OF SUPPLIES	44
3.	ACCEPTANCE OF SUPPLIES	44
4.	NEW MATERIAL [SUPPLIES].....	45
5.	CORRECTION OF DEFICIENCIES & WARRANTY	45
6.	FIRST ARTICLE INSPECTION – N/A.....	46
7.	F.O.B. DESTINATION	47
8.	QUALITY ASSURANCE/QUALITY CONTROL	47
1.	CHANGE ORDERS.....	48
2.	PRICING OF ADJUSTMENTS	49
3.	ACCOUNTING AND RECORD KEEPING FOR ADJUSTMENTS.....	49
1.	BILLING AND PAYMENT	50
2.	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA – MODIFICATIONS	
	51	
3.	SUBCONTRACTOR PAYMENTS	52
4.	GARNISHMENT OF PAYMENTS.....	52
CHAPTER VI – CONTRACT TERMINATION/STOP WORK ORDERS/DISPUTES		52
1.	STOP WORK ORDERS.....	52
3.	TERMINATION FOR CONVENIENCE.....	55
4.	ASSIGNMENT	58
5.	DISPUTES	59
1.	INDEMNIFICATION.....	59
2.	INSURANCE REQUIREMENTS	60
3.	TITLE AND RISK OF LOSS	62
1.	PATENT INDEMNITY	62
2.	SET-OFF	63
3.	RIGHTS IN TECHNICAL DATA- GENERAL	63
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.	CONVICT LABOR.....	70
5.	COVENANT AGAINST CONTINGENT FEES.....	71
6.	SEAT BELT USE POLICY.....	71
7.	SENSITIVE SECURITY INFORMATION.....	71
8.	LAWS AND REGULATIONS.....	71
9.	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA.....	71
10.	LIVING WAGE.....	72
11.	METRIC SYSTEM.....	73
12.	WHISTLEBLOWER PROTECTION.....	74
13.	DRUG AND ALCOHOL TESTING – N/A.....	76
14.	EMPLOYMENT RESTRICTION WARRANTY.....	76
15.	GRATUITIES.....	77
16.	OFFICIALS NOT TO BENEFIT.....	77
17.	ORGANIZATIONAL CONFLICTS OF INTEREST.....	78
18.	CONTRACTOR PERSONNEL.....	79
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
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 - N/A.....	86
9.	CLEAN AIR.....	86
10.	CLEAN WATER.....	86
11.	RECYCLED PRODUCTS.....	87
12.	ENERGY CONSERVATION.....	87
13.	CHANGES TO FEDERAL REQUIREMENTS.....	87
14.	FLY AMERICA REQUIREMENTS.....	87
15.	PAYMENT DEDUCTIONS - NONCOMPLIANCE WITH DBE REQUIREMENTS.....	88
16.	GOVERNMENT-WIDE DEBARMENT OR SUSPENSION.....	88
17.	INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS.....	88
18.	NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES.....	89
19.	FALSE STATEMENTS OR CLAIMS CIVIL AND CRIMINAL FRAUD.....	89
20.	RECOVERED MATERIALS.....	90

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT IFB FQ16008/SAC – INTERLOC LICENSES

21. LOBBYING	90
22. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS	90
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
TECHNICAL SPECIFICATIONS	94
Interloc Mobile Informer User Licenses and Support	94
COMBINED GLOSSARY OF DEFINITIONS	96

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC - INTERLOC LICENSES**

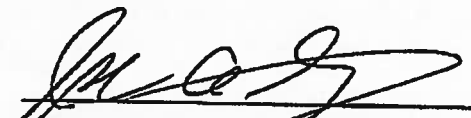
INTRODUCTORY INFORMATION

SOLICITATION CERTIFICATIONS PAGE

IFB FQ16008/SAC

INTERLOC MOBILE INFORMER USER LICENSES

APPROVED FOR RELEASE


Project Manager/Office Designee

9/25/15
Date


Contracting Officer

8/13/15
Date


COUN

25 SEP 2015
Date

END OF SECTION

DATE: October 2, 2015

SUBJECT: Invitation for Bid (IFB)

Washington Metropolitan Area Transit Authority (WMATA) is seeking bids from authorized vendors and resellers to provide 200 each Interloc Mobile Informer User Licenses and Two Years of Annual Support. NOTE: This IFB has no 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 received no later than 2:00 P.M. on November 4, 2015.

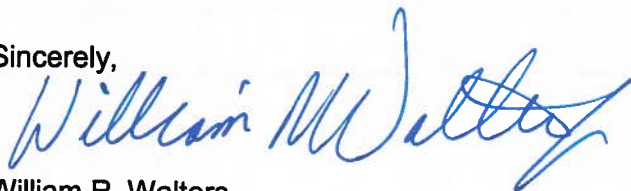
If you have any questions, Technical, Contractual or Administrative please email them to the Contract Administrator, Sherry A. Caison at scaison@wmata.com no later than 12:00 PM, October 21, 2015. WMATA will provide written answers, by email to all those who obtain the IFB and provide their email addresses.

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

Required bid documents:

- Bid Form
- Solicitation, Offer & Award Form
- Price Schedule
- Pre Award Survey
- Representations and Certifications
- Specifications
- Certificate of Insurance

Sincerely,



William R. Walters
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 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 signed and submitted the bid form and the solicitation, Bid & Award page(s)?
4. Have you properly completed and checked the appropriate box for each certification and representation? Have you included the Representations and Certifications with your bid?
5. Have you completed and included Pre-Award Data?
6. Have you complied with the Appendix B requirement? Met the required 0% 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. The Authority makes no representations regarding the quantities that may be ordered by any such jurisdictions.
8. Have you marked the bid envelope with solicitation number and addressed to the Contract Administrator, Sherry A. Caison?
9. Have you included a copy of any required certificate(s) of insurance (COIs)?

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;
- Ability to sign up for electronic payment option; and
- Ability to electronically reset user Id and password.

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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SOLICITATION, BID AND AWARD

CONTRACT NO. FQ16008/SAC	SOLICITATION NO. IFB FQ16008/SAC <input checked="" type="checkbox"/> ADVERTISED <input type="checkbox"/> NEGOTIATED	DATE ISSUED 9/14/15	ADDRESS OFFER TO OFFICE OF PROCUREMENT Office of Procurement 600 Fifth Street NW Washington, DC 20001
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SOLICITATION

Sealed bid in original and TWO (2) copies for furnishing the supplies or services in the schedules will be received at Authority until 2:00 P.M. local time November 2, 2015
 (Hour) (Date)

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

All bids are subject to the following:

1. The Solicitation Instructions that that are attached.
2. The Terms and Conditions, thatthat 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
1	Interloc Mobile Informer User License	200	EA	\$	\$
2	Two Year Annual Support	200	EA	\$	\$
<small>(See continuation of schedule on page</small>					

DUN & BRADSTREET ID NUMBER: _____

BIDDER

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

 Name of Contracting Officer (Print of Type) WASHINGTON METROPOLITAN TRANSIT AUTHORITY AWARD 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 that would require rejection of the bid.

DIRECTIONS FOR SUBMITTING BID:

1. Read and comply with the solicitation instructions. This form is to be submitted with the bid schedule. Attached certifications and Appendix B (DBE) / BI data must be completed and returned with the bid forms if required.
2. Complete and return the Representations and Certifications form.
3. Include copies of any required Certificate(s) of Insurance (COIs).
4. Envelopes containing bids and related required documents must be sealed, marked and addressed as follows:

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY
BID UNDER SOLICITATION FQ-16008/SAC
OFFICE OF PROCUREMENT
600 FIFTH STREET-N.W.
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 CLOSING. BIDS HAND CARRIED BETWEEN 1:00 P.M. AND 2:00 P.M. SHOULD BE PRESENTED TO THE CONTRACT ADMINISTRATOR OR CONTRACT ADMINISTRATOR'S DESIGNATED REPRESENTATIVE.

SOLICITATION INSTRUCTIONS

INVITATION FOR BID
SOLICITATION INSTRUCTIONS

1. INTRODUCTION

- a. The Authority seeks to award a Contract for 200 each Interloc Licenses with annual support. 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:

Sherry A. Caison
600 Fifth Street NW, 3C09A
Washington, DC 20001
scaison@wmata.com
202-962-1344

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, general or special 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 six (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 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 in the solicitation that that should have been discovered by a reasonably prudent bidder.

5. PRE-BID MEETING – N/A

There will be no Pre-Bid Meeting for this solicitation.

For the purpose of further clarifying the requirements of this Invitation for Bid, a pre-bid conference will be held to respond to questions by prospective bidders. This pre-bid conference will be held at _____ a.m/p.m. on _____, in the Lobby Level Meeting Room of the WMATA Jackson Graham Building, 600 5th Street, NW, Washington, DC 20001. It is requested that prospective bidders submit their questions in writing whether in advance of, or during, the meeting. Questions from the floor, however, are permissible.

6. AMENDMENTS TO IFB

- a. The Authority reserves the right to revise or amend the terms of this IFB, the proposed Contract's 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 the submission of revised bids. In such case, 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 for Bids 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 that 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 fully examine the IFB and any attachments thereto. Failure to do so will be at the bidder's risk.
- 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 discounted period referenced in the bid.
- d. The Price Schedule may provide for submittal of a price(s) for one (1) or more items that may be unit prices, lump sum bids, alternate prices, or a combination thereof. The Price Schedule expressly requires that the bid include prices for all items. Failure to do so will render the bid nonresponsive.
- e. All bid prices shall be deemed to include the cost of all work, labor and materials required by the Contract documents, including without limitation, delivery charges, insurance, container charges or any other expenses incidental to the work, as well as expenses for compliance with federal, state and local laws or regulatory requirements. All bid prices are deemed to be F.O.B. delivery point.

- f. Unless specifically stated 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 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 that is at variance or noncompliant with any provision of this solicitation, including a qualified or conditional bid, may be rejected as nonresponsive.
- b. The Authority may reject a bid as nonresponsive 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 (1) 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 in 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 and it:
 - (1) Was sent by registered or certified U.S. or Canadian mail not later than the fifth (5th) 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 the Authority's mishandling, after its timely delivery on the Authority's 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 (2) 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 Authority's receipt 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, received subsequent to 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 it 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 furnish such Contract documents as may be required in the Solicitation or to otherwise 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." The "cost to cover" is the difference between the bidder's 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 NOT REQUIRED FOR THIS SOLICITATION

- a. This solicitation requires submission of a bid guarantee to secure compliance with the bidder's obligation to execute and furnish such documents as may be required in the solicitation and to execute a Contract upon acceptance by the Authority of its bid during the acceptance period.

- b. The bid guarantee shall be in the nature of a bid bond in the form annexed hereto as Appendix _____, or in a postal money order, certified check, cashier's check, or irrevocable letter of credit in a form and from an institution acceptable to the Authority. The bid guarantee shall be provided in an amount equal to five percent (5%) of the total bid.
- c. The bid guarantee, other than a bid bond, shall be returned to unsuccessful bidders as soon as practicable upon the opening of bids. The bid guarantee shall be returned to the successful bidder as soon as practicable upon its furnishing of any documents required by the solicitation and its acceptance of the Contract.

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 three (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 award a Contract to an otherwise low bidder based upon the unit price, subject to the additional terms of this article.
- 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 that 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, that must be submitted with the bid. Failure to do so may result in the bid being rejected as nonresponsive.

16. LAWS AND REGULATIONS

Bidders are responsible for complying with, any and all applicable State of Maryland, Commonwealth of Virginia, District of Columbia, and federal and local laws and regulations governing the supplies or services to be provided under this Contract. Further, the bidder that receives this Contract 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 – N/A

- 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) A brief description, including any part or model number of each contract line item or component on which the royalty is payable;
 - (5) The percentage or dollar rate of royalty per unit;
 - (6) The unit price or Contract line item price;
 - (7) The number of units; and
 - (8) The 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 agreements 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 that are contained in 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 the services or furnish the supplies contained in the solicitation, in a timely manner, to the complete satisfaction of the Authority. Failure on the part of the low bidder to 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. This process 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 furnish the following when requested by the Contracting Officer:

- (1) A completed and signed pre-award evaluation data form (copy attached), including the required financial statements;
- (2) The Disadvantaged or Small Business Enterprise data form 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 further assist the Authority in determining the Bidder's responsibility for purposes of award

21. SITE VISIT/INSPECTION OF BIDDER'S FACILITIES – N/A

NOT REQUIRED FOR THIS SOLICITATION

A bidder must provide and maintain sufficient facilities that will allow it to adequately perform Contract functions as specified herein. WMATA may make site visits prior to Contract award to examine the bidder's facilities.

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 this Contract 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. **There is no DBE requirement goal for this contract.**

- a. If the Bid is over \$100,000, 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 this is a 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 an 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's 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 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 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

- a. If items called for by this IFB have been identified in the Price Schedule with a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products including products of the brand name manufacturer other than the one described by brand name will be considered for award, if such products are clearly identified in the bid and are determined by the Authority to meet fully, the salient characteristics requirements, stated in the Scope of Work..
- b. Unless the bidder clearly indicates that it is offering an "equal" product, its bid shall be considered as offering a brand name product referenced in the IFB.
- c. If the bidder offers to furnish an "equal" product, the brand name, if any, of the product shall be furnished in the space provided in the Invitation for Bid, or such product shall be otherwise clearly identified in the bid. The determination as to equality of the product offered shall be at the sole discretion of the Authority.

CAUTION TO BIDDERS. WMATA is not responsible for locating or securing any information that is not identified in the bid and/or reasonably available to the Authority. Accordingly, to ensure that sufficient information is available, the bidder must furnish as a part of its bid, all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the Authority to determine whether the product offered meets the requirements of the IFB.

31. PERFORMANCE AND PAYMENT BONDS – N/A

NOT REQUIRED FOR THIS SOLICITATION

The successful bidder shall, within the time established in the Contract documents, furnish performance and payment bonds on forms acceptable to the Authority and in the sums provided in the Contract documents.

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 bidder 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 bidder 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 that either owns or controls the activities and basic business policies of the bidder. To own another company means the parent company must own at least a majority, i.e., more than fifty (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 bidder such other company is considered the parent of the bidder. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, contractual arrangements or otherwise.

(b) If the bidder 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 bidder 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).

Bidder's E.I. N.: _____ or, parent company's E.I. N. _____

(d) If a Data Universal Numbering Systems (DUNS), number has not been established for the address entered on the solicitation, bid, 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 bidder 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; that 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 bid, the bidder represents that:

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT IFB FQ16008/SAC – INTERLOC LICENSES

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

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

"Socially and Economically Disadvantaged 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 for profit small business concern that is at least fifty one percent (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 fifty (50) or more employees. By submission of this bid, the bidder 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 bid, the bidder certifies, and in the case of a joint bid, 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 a view toward securing favorable treatment in the awarding, amending, or the making of any determination with respect to this Contract.

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

By submission of this bid, the bidder certifies, and in the case of a joint bid, 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 bidder) 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 bidder) 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 quantity, indefinite delivery 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 Clean 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:

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

- (a) Any facility to be utilized in the performance of this proposed contract [] is, or [] is not listed on the EPA's list of violating facilities;
- (b) Bidder will immediately notify the Contracting Officer, before award, of the receipt of any communications from the Administrator, or a designee of the EPA, indicating that any facility that that it proposes to use for the performance of the contract is under consideration to be listed on the EPA's list of violating facilities; and
- (c) Bidder will include a certification substantially the same as this certification, including this paragraph, in every nonexempt 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 bid 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 bidder 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 otherwise excluded from covered transactions by any federal or state department or agency;
 - (ii) have not, within a three(3) year period preceding this offer, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (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 (3) year period preceding this offer, had one (1) or more public transactions (federal, state, or local) terminated for cause or default.
 - (2) Where the bidder is unable to certify to any of the statements in this certification, the bidder shall attach an explanation to this bid. .
- (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 otherwise 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 bid.
- (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 his or her request.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

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

- (a) By submission of this bid, the bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, that in connection with this procurement:
- (1) The prices in this bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or with any other competitor, as to any matter relating to such prices;
 - (2) Unless otherwise required by law, the prices that have been quoted in this bid have not been knowingly disclosed by the bidder and will not be knowingly disclosed by the bidder prior to the opening of bids directly or indirectly, to any other bidder or to any competitor; and
 - (3) No attempt has been made or will be made by the bidder to induce any other person or firm to submit or not to submit a bid for the purpose of restricting competition.
- (b) Each person signing this bid certifies that:
- (1) He or she is the person in the bidder's organization responsible for the decision as to the prices being bid 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 bidder's organization responsible for the decision as to the prices being bid 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 bid, the bidder certifies, and in the case of a joint bid, 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 bidder 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 that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom or otherwise.
 - (4) It further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will:
 - (a) Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;
 - (b) Retain such certifications in its files; and
 - (c) 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 that is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for such subcontract or for all subcontracts during a period (i.e., quarterly, semiannually or annually).

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

By submission of this bid, the bidder certifies, and in the case of a joint bid, 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 bidder 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, that may result in the termination of this Contract or such other remedy as the Authority deems appropriate. The bidder further agrees that by submitting this bid, 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 bid, the bidder certifies, and in the case of a joint bid, 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 sub-awards at all tiers and that all sub-recipients 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. . 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 bid , the bidder 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, that 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 bidder 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. Bids that are not

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

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 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 bidder 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 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 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 bid, the bidder 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 (3) 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 bidder 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:

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

(b) Retain such certifications in its files; and

(c) 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 that 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 bid, the bidder certifies, and in the case of a joint bid, , 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 (have) 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 years 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 his or her request.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

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

SIGNATURE BLOCK FOR ALL REPRESENTATIONS AND CERTIFICATIONS

Name of Bidder: _____

Name and Title of Authorized Representative: _____
_____ Print and Sign Name

_____ _____
Title Date

(RC-116, OCTOBER 08)

**PRE-AWARD EVALUATION DATA
PROJECT DESCRIPTION:**

1. Name of firm: _____

2. Address: _____

3. Individual Partnership Corporation Joint Venture
4. Date organized _____
State in which incorporated _____
5. Names and addresses of officers or partners:
 - a. _____
 - b. _____
 - c. _____
 - d. _____
 - e. _____
 - f. _____
6. How long has your firm been in business under its present name? _____
7. Attach as Schedule One (1), a list of current contracts, that demonstrate your firm's proficiency, each with contract amount, name of contracting party, type of work and percentage of completion.
8. Attached as Schedule Two (2), 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. In the last two (2) years, has your firm been denied an award where it was the low bidder? If the answer is YES, attach as Schedule Three (3) the full particulars regarding each occurrence.
10. Has your firm ever failed to complete any contract, on which it was the low bidder?
If the answer is YES, attach as Schedule Four (4), the full particulars regarding each occurrence.
11. State the financial resources available as working capital for the Contract:
 - a. Cash on hand \$ _____

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT IFB FQ16008/SAC – INTERLOC LICENSES

b. Source of credit: _____

12. Attach as Schedule Five (5) 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. Attach as SCHEDULE fifteen (15), a list of all principal subcontractors and the percentage and character of work (contract amount) that each will perform. Principal items of work shall include, but not be limited to, those items listed in the "Pre-Award Information" article..
15. If the Contractor or subcontractor is a joint venture, submit the 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: _____

TERMS AND CONDITIONS

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT IFB FQ16008/SAC – INTERLOC LICENSES
CHAPTER I – GENERAL CONDITIONS

1. AGREEMENT

The Work to be performed under this Contract may briefly be described as software licenses and maintenance support, 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 specifications or scope of work; (c) drawings, if any; (d) other documents, exhibits, and attachments generated by the Authority as part of the Contract documents; (e) the technical proposal, if any, and other submissions of the Contractor generated as part of the Contract documents. In the event of a conflict within or between provisions entitled to equal precedence pursuant to the foregoing, the more stringent requirement shall apply.
- (b) Notwithstanding paragraph (a), in the event that this Contract is funded in whole or part 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

- (a) This is a requirements Contract, Notwithstanding the foregoing if, as the result of an urgent need, the Authority requires delivery of any quantity of an item before the date otherwise specified under this Contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Authority may acquire the urgently required goods or services from another source.
- (b) In the event that the Contractor is unable or otherwise fails to provide goods or services within the time frames required in the Contract, the Authority reserves the right to procure the goods or services from any other source and in any other manner it deems appropriate. Nothing contained herein shall be deemed to waive, modify or impair the right of the Authority to treat any such failure to meet a required delivery schedule as a material breach of the Contractor's obligations pursuant to the provisions of the

"Termination For Default" article, or any other right that the Authority may be entitled to pursuant to this Contract, at law or in equity.

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 properly reflect all costs incurred or anticipated to be incurred directly or indirectly in performance of this Contract. This right of examination shall include inspection at all reasonable times of the Contractor's facilities engaged in performing this Contract.
- (c) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this Contract, the Contracting Officer shall have the right to examine and audit all of the Contractor's records related to: (1) any bid or proposal for the Contract, subcontract, or modification; (2) any clarifications or discussions conducted on the bid or proposal; (3) pricing of the Contract, subcontract or modification; or (4) performance of the Contract, subcontract or modification.
- (d) Availability. The accounts, records and cost information required to be originated under this Contract, 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 (3) years from the date of final payment under this Contract. 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. If a pricing adjustment is involved in any dispute or litigation related to this Contract, for a period equal to the later of three (3) years from the date of final payment or one (1) year following the final disposition of the dispute or litigation.
- (e) Subcontracts. The Contractor shall insert a provision 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 that ends on June 30, 2016. 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). a. The Work will be conducted under the general direction of the Contracting Officer on behalf of the Authority, who may delegate certain responsibilities to a Contracting Officer's Technical Representative (COTR). While the COTR will be thereupon authorized to perform such designated functions, the Authority will not be responsible for actions of the COTR or any other Authority employee or representative that exceed his or her authority. The Contractor will be furnished, upon written request, a copy of the delegation, if any, to a COTR for this Contract.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

A COTR may take the following actions:

- (1) Act as the principal point of contact with the Contractor. The COTR shall submit a copy of each item of incoming correspondence and a copy of any enclosures to the Contract Administrator;
- (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 in, or disputes concerning, Contractor invoices or payments. In those cases requiring release of final retained percentages of payment, the COTR will make his or her recommendations in writing to the Contracting Officer;
- (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's estimate for proposed contract modifications. Participate in negotiations of modifications;
- (10) Approve, in writing, the Contractor's progress schedule, when required.
- (11) Receive from the Contractor, monthly, if applicable, DBE status reports and forward them to the Office of Procurement and Materials, DBE Branch;
- (12) Receive from the Contractor, 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;
- (13) Maintain a comprehensive file record of documents and correspondence concerning contract activities and actions;
- (14) Provide the Contract Administrator with a written notification after all supplies/services that 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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

- records, correspondence, etc., to the Contract Administrator;
- (15) Execute Standard Form 1420, containing 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; and
 - (16) Provide the Contract Administrator with a written request (and 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.
- b. There are certain actions that are reserved for only the Contracting Officer. They are:
- (1) Approval of contract modification proposals and/or other unilateral actions.
 - (2) Issuance of written orders to stop and/or resume work under Article entitled, "Stop Work Orders."
 - (3) Negotiation with the Contractor for adjustment of contract price and/or time.
 - (4) Rendering final decisions under the DISPUTES article.
 - (5) Issuing Termination Notices pursuant to the terms of this Contract.
- c. The presence or absence of the COTR or his or her inspectors shall not relieve the Contractor from any requirements of the Contract.

CHAPTER II – TIME/DELAYS/LIQUIDATED DAMAGES

1. PERIOD OF PERFORMANCE

The period of performance is 365 days commencing on the date of award.

2. LIQUIDATED DAMAGES FOR DELAY – N/A

- (a) Time is of the essence to this Contract. In the event of a delay in delivery of any work under this Contract beyond the period of performance as set forth in the "Period Of Performance" article of the Contract or beyond the any extension granted by the Authority, the Contractor shall pay the Authority damages for such delay. Since the amount of such damages and the loss to the Authority will be extremely difficult to ascertain, it is hereby expressly agreed that such damages will be liquidated and paid as follows:
- (b) For each and every day (per day), of unexcused delay, the sum of _____ dollars (\$_____.00) which sum is hereby agreed upon, not as a penalty, but as liquidated damages.
- (c) The Authority shall have the right to deduct such liquidated damage assessments from any monies due or that may thereafter become due to the Contractor under this contract. In case the amount that may become due hereunder shall be less than the liquidated damages due to the Authority, the Contractor shall pay the difference upon the Authority's demand.

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, that gives rise to a delay in the progress of 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 (ies) 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 will be delayed at any time or for any period by two (2) or more of the abovementioned causes in this article, the Contractor shall not be entitled to a separate extension for each one (1) of the causes, but shall be entitled to only one (1) period of extension for the cumulative effects of the delay.

- (d) The Contracting Officer may rescind or shorten any extension previously granted, if he or she 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 it and if, in the judgment of the Contracting Officer, such extension was based on information that, 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 of any cause that it may claim as an excusable delay. The Contractor shall identify any actual or potential basis for an extension of time, and describe, as fully as possible the nature and projected duration of the delay and its effect on the completion 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. 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 state the approximate date that 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 this Contract. In no event shall a subcontractor at any tier be deemed a party outside the control of the Contractor for purposes hereof.

4. AUTHORITY'S 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, that 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 shall be modified in writing accordingly. Adjustment shall also be made to the delivery or performance dates and any other contractual provision, if compliance was materially affected by such delay or interruption. However, no adjustment shall be made under this Contract for any delay or interruption if performance was 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 ; or (iv) any other cause for which an adjustment is provided or excluded under any other provision of this Contract or otherwise at law or in equity.

- (b) An adjustment pursuant to paragraph (a) shall not be allowed:
 - (1) for any costs incurred more than twenty (20) days before the Contractor notifies the Contracting Officer, in writing, of the act or omission claimed; and
 - (2) Unless the claim, in a sum certain, is asserted in writing as soon as practicable after the termination of the delay or interruption. In no event, shall a claim be asserted later than thirty (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. In any instance where it is not reasonably practical for the Contractor to fully determine such impact within the thirty (30) day period, the Contractor shall support the claim with documentation as reasonably available and submit it to the Contracting Officer with a statement of the anticipated time frame in which it 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 if 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 to be provided under this Contract. The Contractor shall maintain complete records of all inspection work and provide them to the Authority during Contract performance in the manner and in accordance with the time periods set forth in the “Audit and Inspection of Records” article of this Contract.
- (b) The Authority has the right to inspect and test all services provided under this Contract, at all times and places reasonably practicable during the term of this 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 Contractor’s or subcontractor’s premises , the Contractor shall furnish, and I 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 the Contractor for any cost incurred by the Authority; and/ or
 - (2) In the event that the Contracting Officer deems such failure to comply to be 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 nonconformity.

2. INSPECTION OF SUPPLIES

- (a) The Contractor shall provide and maintain an inspection system, acceptable to the Authority, covering supplies provided under this Contract. The Contractor 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 this 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 this 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 during the manufacturing period, and 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 this 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 testing, 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 testing 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 this Contract. In no event shall a failure of the Authority to inspect and/or accept or reject the supplies relieve the Contractor from responsibility, nor impose liability upon the Authority, for nonconforming supplies.
- (b) Acceptance by the Authority shall be deemed conclusive, except for latent defects, fraud, willful misconduct or gross mistakes amounting to fraud 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, in accordance with a reasonable delivery schedule as agreed upon between the

parties. 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 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 that are not new is in the Authority's best interests, 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 regarding 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 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, 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 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.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

- (f) Any warranty or retrofit work shall be accomplished with minimum disruption to the Authority's 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 twenty four (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 in equity.

6. FIRST ARTICLE INSPECTION – N/A

- (a) The Contractor shall deliver one (1) unit to the Authority for first article (pre-production sample) tests. The shipping documentation shall contain this Contract number and the lot/item identification. The characteristics that the first article must meet and the testing requirements are specified in the technical specifications.
- (b) Within ten (10) days after the Authority receives the first article, the Contracting Officer shall notify the Contractor, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of conditional approval or approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this Contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite the reasons for the disapproval.
- (c) If the first article is disapproved, the Contractor, upon the Authority's request, shall submit an additional first article for testing. After each request, the Contractor shall make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the Contractor. The Contractor shall furnish any additional first article to the Authority under the terms and conditions and within the time specified by the Authority. The Authority reserves the right to require an equitable adjustment to the Contract price for any extension of the delivery schedule or for any additional costs to the Authority related to these tests.
- (d) Unless otherwise provided in the Contract, the Contractor:
 - (1) May deliver the approved first article as a part of the Contract quantity, provided it meets all Contract requirements for acceptance and was not damaged or impaired in testing; and
 - (2) Shall remove and dispose of any first article from the Authority's testing facility at the Contractor's expense.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

- (e) The Contractor is responsible for providing operating and maintenance instructions, spare parts support, and repair of the first article, during any first article test.
- (f) The Authority will inspect the first article (pre-production sample) in accordance with the Contract's requirements. A written report will be forwarded to the Contractor in accordance with (b) above.

7. F.O.B. DESTINATION

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

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 thirty (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. In any instance in which it is not reasonably practical for the Contractor to fully determine or project such impact within such thirty (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 when the Contractor expects 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 he or she 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 property disposition.
- (e) Failure to agree 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. Notwithstanding 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, that the Contractor believes may reasonably result in either an increase or decrease to the Contract price or the time required for performance and shall take action 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 modifications to any requirement or term of this 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 proposal for any modification to this Contract requiring a price adjustment in excess of \$100,000, 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 at any tier if 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 Price Adjustments.** Unless waived in writing 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. The records shall be specifically segregated and identified in the Contractor's accounting system as being applicable to the pricing adjustment request.
- (c) **Post Price Adjustments.** This paragraph shall be applicable with respect to price adjustments that either (i) are expected to exceed \$50,000; or (ii) regardless of the value of the adjustment, arise in connection with a Contract that has a base sum in excess of

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

- (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 for completing the work in accordance with this Contract. These costs and expenses include, but not limited to, all labor and material required to be furnished under this Contract, all overhead, expenses, fees and profits, including the cost of providing storage yards or facilities, all risks and obligations set forth in this Contract, any applicable fees 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 and acceptance of a properly completed invoice. WMATA will accept the submittal of invoices in one of the following methods:
- (1) Email: Invoices may be submitted through email at: apinvoice@wmata.com. Please submit one invoice and supporting documentation per PDF attachment. You may submit more than one PDF attachment per email.
 - (2) Fax: Invoices may be submitted via the following number: 1-866-534-9063. Please submit one invoice and all supporting documentation for this invoice per fax.
 - (3) Regular Mail: Invoices may be submitted via U.S. Postal Service to the following address:

WMATA-Accounts Payable
PO Box 1910
Beltsville, MD 20704-1910
- Note: This address is only for vendor invoices. Correspondence should not be sent to this address.
- (c) Invoices shall contain the vendor's 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, contact name and email address. Final invoices must clearly be marked "Final" and cite the total amount of the Contract, amount previously paid, and the balance due
- (d) The Authority shall remit payment, generally within thirty (30) days of its receipt of an invoice satisfying the requirements of paragraphs (b) and (c), at the prices stated in the Contract for supplies or services accepted, less any applicable deductions.

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

If any modification, change order, or otherwise, to this Contract involves aggregate increases and/or decreases in costs plus applicable profit in excess of \$100,000, and the Contracting Officer ultimately determines that any price, including profit or fee, previously negotiated in connection with any such modification was based upon the Contractor's cost or pricing data (including any prospective or actual subcontractor at any tier) that was not complete, accurate or current, such that the amount paid to the Contractor was greater than the amount that the Contractor would have been entitled based upon accurate and complete data, the Authority shall be entitled to an adjustment in an amount equal to such overpayment. The right granted to the Authority hereunder shall be in addition to any other rights it may have under this Contract, at law or in equity.

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, any retention withheld from the subcontractor within ten (10) days of satisfactory completion of all work required by 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. The Contractor shall notify the Contracting Officer or other delegated Authority representative with each payment request, of any scheduled subcontractor payments that 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 that 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 shall be deemed to create a contractual relationship between the Authority and any subcontractor, to make the subcontractor an intended beneficiary of this Contract 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 ninety (90) days after the order is delivered to the Contractor, and for any further period to which the parties 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 shall 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 ninety (90) days after an SWO is delivered to the Contractor, or

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

within any extension of that period to which the parties agree, the Contracting Officer shall either:

- (1) Cancel the SWO; or
 - (2) Terminate the work covered by the SWO as provided in this Contract, as appropriate.
- (b) If a SWO is cancelled or its initial period or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or to Contract price, or both, and he or she shall modify the Contract in writing accordingly, if, in his or her judgment :
- (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 thirty (30) days after the end of the period of work stoppage. At the sole discretion of the Contracting Officer, the Authority may 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 a termination settlement pursuant to the this 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 SWO. If the Contracting Officer determines that the SWO was precipitated by, or arose from, the Contractor's material breach of any term or condition of this Contract, 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" article 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 this Contract deemed material by the Contracting Officer. In addition to those instances specifically referred to in this 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;

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

- (iii) It fails to make progress in a manner deemed unreasonable or unnecessary by the Contracting Officer 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 this 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, stating the nature of the breach and stating that, if the Contractor fails to cure such failure(s) within ten (10) days (or such additional time as the Contracting Officer authorizes), the Authority shall terminate the Contract, in whole or designated part, for default in accordance with the provisions thereof (a "Notice to Cure"). Should the Contractor fail to cure the breach to the satisfaction of the Contracting Officer within the ten (10) day period, or such additional period as may be designated in the Notice to Cure, the Authority may, 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, tooling costs, equipment, and property costs. 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 that 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 regarding 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 any completed or 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 that 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" article of this 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" article of this Contract. In no event shall the Authority's issuance of a Notice to Cure pursuant to paragraph (b) be the basis of a Dispute or otherwise be subject to further review under this Contract. Nor shall the pendency of any Dispute constitute a basis for the delay or suspension of, or otherwise affect, the Authority's right to proceed under this article, including its right to complete the work. Or its right to demand that the Contractor complete any portion of the Work that was not terminated.
- (i) The rights and remedies of the Authority in this article are in addition to any other rights and remedies provided for under this Contract, at law or in equity.

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 a "Notice of Termination" to the Contractor specifying the extent of the termination and its effective date.
- (b) Upon receipt of a "Notice of Termination", 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 of the Contractor's right(s), title, and interests 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) Parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

- (ii) The completed or partially completed plans, drawings, information and other property that, would have been required to be furnished to the Authority, if the Contract was completed.

- (8) Take any action that may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Contract that is in the Contractor's possession and in which the Authority has or may acquire an interest;

- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (b)(7). 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 one hundred twenty (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 twenty (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 he or she prescribes 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 so determined.

- (e) Following submission of the Contractor's proposal pursuant to paragraph (d), the parties shall agree upon the whole or any part of the amount to be paid or remaining to be paid as a result of the termination. The amount may include a reasonable allowance for profit on work completed. 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 he or she determines as follows, but without duplication of any amounts agreed upon under paragraph (e):
 - (1) The Contract price for completed supplies or services 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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT IFB FQ16008/SAC – INTERLOC LICENSES

- 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 (FAR), in effect on the date of this Contract, to be fair and reasonable. If it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the Contracting Officer shall allow no profit under this subparagraph and shall reduce the settlement to reflect the projected rate of loss.
- (3) The reasonable indirect costs 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 he or she determines 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 FAR in effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this article, except for the payment of interest.
- (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 the Contractor's failure to submit the termination settlement proposal within the time provided in paragraph (d), or to timely request an extension thereof, shall constitute a waiver of its right to appeal the Contracting Officer's determination pursuant to the "Disputes" article or any otherwise applicable contractual, legal or equitable remedy.
- (j) In determining any sum due to the Contractor under this article, there shall be deducted:
- (1) All unliquidated advances or other payments to the Contractor under the terminated portion of 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,

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

including any third party claims if the Contracting Officer is not satisfied that sufficient insurance coverage is in place; and

- (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other items 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. Such proposal shall be submitted within ninety (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 article, 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 that he or she 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, he or she 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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

and the Authority may thereupon terminate the Contract in accordance with the "Termination for Default" article 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 to 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 that 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's Board of Directors. Such notice should indicate that an appeal is intended and should reference the decision and the 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, it determines the decision to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or 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

- (a) The 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, known or unknown, 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 the Contractor from ultimate liability for any obligation under this Contract.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

- (b) The 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, unless the loss or damage is due to the sole negligence of the Authority.
- (c) 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 its own expense, resist or defend such action or proceeding by counsel approved by the Authority in writing. 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, at the Authority's sole cost and expense without waiving or impairing the Contractor's right to indemnification hereunder.
- (d) The Contractor understands and agrees that it is Contractor's responsibility to provide indemnification to the Authority pursuant to this article. The provision of insurance, while anticipated to provide a funding source for this indemnification, is independent of this indemnification obligation 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. INSURANCE REQUIREMENTS

Workers' Compensation – Statutory Limits; Employer's Liability, \$1,000,000 per accident/disease

Commercial General Liability insurance (CGL) - \$2,000,000 per occurrence

Automobile Liability insurance - \$1,000,000 per occurrence

Technology Errors and Omissions - \$1,000,000 per claim

Insurance Provisions:

- Insurance carriers shall have an A.M. Best rating of at least A-/VII.
- WMATA shall be named as an additional insured on the Commercial General Liability and the Auto Liability insurance policies.
- All insurance shall be primary and non-contributory to any insurance WMATA may have.
- WMATA shall be provided at least 30 days written notice of cancellation, nonrenewal or material change in coverage.
- Contractor/Vendor shall provide evidence of insurance coverage to WMATA in the form of a current certificate(s) of insurance, including the Additional Insured Endorsement on the CGL, at least ten (10) days prior to performance of work and/or services. The coverage provided by the additional insured endorsement shall be at least as broad as the Insurance Service

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

Office, Inc.'s Additional Insured Form CG 20 10 11 85 or CG 20 26 11 85 as determined by WMATA.

- Upon expiration of the policies, Contractor shall provide renewal COIs and all applicable endorsements to the Authority, with terms and limits no less favorable than the expiring insurance policies.

Contractor/Vendor agrees to indemnify, defend and hold harmless WMATA from all liability for bodily injury (including death) and property damage suffered by any person, and for all physical damage to Contractor/Vendor's property occurring in connection with or arising out of the work activities to be performed under the Purchase Requisition. Contractor/Vendor agrees to procure and maintain the insurance indicated above.

10. Waiver of Subrogation

Contractor and subcontractors at every tier are required to have all insurance policies, endorsed to waive the insurance company's rights of recovery against WMATA, its independent contractors and the WMATA Board of Directors.

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

11. Certificate of Insurance (COI)

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

- 1) Satisfactory COIs delineating all required insurance coverage requirements under this section shall be delivered before the execution of this Contract by WMATA.
- 2) Failure to provide satisfactory evidence of all required insurance may result in Contractor and/or subcontractors at every tier being denied access to work locations, including, but not limited to WMATA's properties.
- 3) COIs shall reflect the total limits of insurance purchased by Contractor for the types of insurance required under this Contract.
- 4) Proposed material modifications to insurance required under this section must be received by WMATA at least thirty (30) days prior to the effective date of the proposed modifications to such insurance.
- 5) 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 continuously comply with these insurance requirements shall constitute a material breach of this Contract.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT IFB FQ16008/SAC – INTERLOC LICENSES

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

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

3. TITLE AND RISK OF LOSS

- (a) Unless this Contract specifically provides for earlier passage of title to deliverables (including documents, reports, and data) or other items resulting from this Contract, title shall pass to the Authority upon acceptance, regardless of when or where the Authority takes physical possession. Risk of loss, theft, destruction of, or damage to, such deliverables or other items remains with the Contractor until the transfer of title or at the time when 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 that the Authority takes physical possession, the Contractor agrees to repair or replace the loss or damage as soon as reasonably practicable 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. Nothing contained herein shall be deemed to require the Contractor to repair or replace 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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

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. 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 that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

2. SET-OFF

The Authority shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the Authority's option to withhold, for the purposes of set-off, any monies 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.

3. RIGHTS IN TECHNICAL DATA- GENERAL

- (a) The term "technical data" as used in this Article means technical writings, computer software, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether or not copyrighted, that 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 shall have the right to use, duplicate, or disclose technical data, including computer software, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so, if it is contained in or derived from:
 - (1) Any manuals, instructional materials prepared for installation, operation, maintenance or training purposes;
 - (2) end items, components or processes that were prepared for the purpose of identifying sources, sizes, configurations, mating and attachment

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

- characteristics, functional characteristics and performance requirements ("form, fit and function" data; e.g., specification control drawings, catalog sheets, outline drawings). For computer software, it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulae, and flow charts of the software);
- (3) Other technical data that was, or is normally furnished without restriction by the Contractor or subcontractor; or
 - (4) Other specifically described technical data that the parties have agreed will be furnished without restriction.
- (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, except 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 emergency repair or overhaul work, performed by or for the Authority where the item or process concerned is not otherwise reasonably available to enable timely performance of the work. Release or disclosure outside the Authority shall be made subject to a prohibition against further use, release or disclosure.
- (d) Technical data provided in accordance with the provisions of paragraph (b) shall be identified by a legend that suitably recites this limitation. Nothing herein shall impair the right of the Authority to use similar or identical data acquired from other sources.
- (e) Material covered by copyright:
- (1) The Contractor hereby grants 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, , all technical data now or hereafter covered by copyright and to authorize others to do so.
 - (2) No such copyrighted matter shall be included in technical data furnished hereunder, without the written permission from the copyright owner for the Authority to use such copyrighted matter, in the manner above described.
 - (3) The Contractor shall report to the Authority, promptly and in reasonable written detail, each notice or claim of copyright infringement that the Contractor receives regarding any technical data delivered hereunder.
- (f) Relation to patents: Nothing contained in this article shall imply the existence of 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.
- (g) Any dispute 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 payment up to ten percent (10%) 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 Contract documents

4. RIGHTS IN TECHNICAL DATA – UNLIMITED

- (a) The term “technical data” as used in this article means technical writings, computer software, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether or not copyrighted, that 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, including computer software, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so. Technical data shall include:
 - (1) Any manuals, instructional materials prepared for installation, operation, maintenance or training purposes;
 - (2) Data pertaining to end items, components or processes that were prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements (“form, fit and function” data; e.g., specification control drawings, catalog sheets, outline drawings)For the computer software, it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulae, and flow charts of the software;
 - (3) Other technical data that has been, or is normally furnished without restriction by the Contractor or subcontractor;
 - (4) Other specifically described technical data that 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, algorithms, processes, formulae, and flow charts, that are developed or materially modified by the Contractor for the Authority. If the Authority is required by federal law or regulation to provide a royalty-free, irrevocable and nonexclusive software license to the federal government, then such computer software falls within this paragraph.
- (c) The Authority shall have the right to use, duplicate, or disclose technical data other than as 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 manufacturing, or

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

- (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 or service 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 that suitably recites this limitation. Nothing herein shall impair the right of the Authority to use similar or identical data acquired from other sources.
- (e) Where any supplies or services are purchased as separate line items 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 may 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 or she 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 to do the same, 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 technical data or computer software covered by subsection (b) (5), 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 promptly and in reasonable written detail, each notice or claim of copyright infringement it receives regarding any (technical data or 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 A0rticle 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 ten percent (10%) 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 price schedule or the contract specifications.

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 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 services performed hereunder, the Contractor shall furnish to the Authority, when requested by the Contracting Officer, all evidence and information in its possession pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Contractor since it has agreed to indemnify the Authority under this Contract.
- (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. § 2000(d), section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the American with Disabilities Act of 1990, 42 U.S.C. § 12132, federal transit law at 49 U.S.C. §5332, the Contractor, subrecipient, 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, or sexual preference. In addition, the contractor, sub-recipient, or subcontractor agrees to comply with applicable federal implementing regulations and other regulations that the 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. §2000(e), 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.*, ([implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) 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 this 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 that the 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 or prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements that the 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 that the FTA may issue.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

- (c) The Contractor also agrees to include all of these requirements in each subcontract financed, in whole or in part, with assistance provided by the FTA, modified only 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, that 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, if 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, to all other applicable provisions and exceptions to 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 that may require or involve the employment of laborers, mechanics, apprentices, trainees, watchmen, and guards shall require or permit any such employee in any workweek that he or she is employed, to work in excess of forty (40) hours in such work week on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such employee receives compensation at a rate not less than one and one half (1 1/2) times his or her basic rate of pay.
- (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 or her 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 provisions of paragraph (a), in the sum of \$10 for each calendar day that such employee was required or permitted to be employed on such work in excess of his or her 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 at 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 that 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, herein. 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 (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. 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 the federal government, 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 were pardoned or who have served their terms; or
 - (3) Who are Confined for violation of the laws of the federal government, 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 the local union's 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 where 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 where 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.

5. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency was 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 terminate this Contract without liability or, in its discretion, to deduct from the Contract price, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee, if no fraud is suspected.

6. 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.

7. 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. § 40119(b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 CFR Part 15, and with 49 U.S.C. § 114(s) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 CFR Part 1520.

8. LAWS AND REGULATIONS

The Contractor shall be responsible to comply with any applicable State of Maryland, Commonwealth of Virginia, District of Columbia, federal and local laws and regulations governing the services or supplies to be provided under the Contract. Further, the Contractor shall be responsible to obtain, at its own cost and expense, any and all required licenses/permits to transact business in any political jurisdictions where work will be performed.

9. 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 (5) days before delivery of the material, whether or not listed in Appendix A of the Standard. This obligation applies to all materials delivered under this Contract that involve exposure to hazardous materials or items containing these materials.
- (b) "Hazardous material," as used in this article, is 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 personnel or property.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

- (d) Nothing contained in this article shall relieve the Contractor from complying with applicable federal, state, and local laws, codes, ordinances, and regulations (including those regarding 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 that they may be exposed to in using, handling, packaging, transporting, or disposing 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) The Authority is not precluded from using similar or identical data acquired from other sources.
 - (4) The data shall not be duplicated, disclosed, or released outside of 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. FQ16008 and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of the Contracting Officer. This legend shall be marked on any reproduction of this data."
 - (5) The Contractor shall not place the above legend or any other restrictive legend on any data that (i) the Contractor or any subcontractor previously delivered to the Authority without limitations; or (ii) should be delivered without limitations under the 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.

10. 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 twelve (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:

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT IFB FQ16008/SAC – INTERLOC LICENSES

- (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 twelve (12) month period awarded under this Contract;
 - (3) Maintain payroll records, in accordance with the retention and examination of records requirements in the terms and conditions, and 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's Living Wage Rate was paid to affected employees, or if applicable, certify prior to contract award or contract extension, 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 (10) employees.
- (e) The Authority may adjust the Living Wage Rate effective in January of each year. The adjustment will reflect the average Living Wage Rate among Metro's Compact jurisdictions with Living Wage provisions. If after contract award the living wage rate increases, the Contractor is entitled to an equitable adjustment to the 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

11. METRIC SYSTEM

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

12. WHISTLEBLOWER PROTECTION

- (a) The Contractor and its subcontractors shall encourage their employees and independent contractors to report information without fear of actual or threatened discrimination, retaliation or reprisal that they, in good faith, reasonably believe is evidence of gross mismanagement; gross misuse or waste of public resources or funds; fraud; violation of law; abuse of authority in connection with the conduct of WMATA's 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 proceedings 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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

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 his or her 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), that 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 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 his or her 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 his or her 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 subparagraph (e)(1) or refusal under subparagraphs (e)(2), (3) or (5).
- (g) The enforcement, filing and investigation of complaints, and remedies under this section shall be governed by the NTSSA, applicable federal regulations and federal law.

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

13. DRUG AND ALCOHOL TESTING – N/A

Contractors who perform safety-sensitive functions shall be subject to compliance with a drug and alcohol testing program according to Federal guidelines published in FTA regulations. The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 40 and 655, produce any documentation necessary to establish its compliance with these regulations, and permit any authorized representative of the United States Department of Transportation or its operating administrations, applicable state oversight agency, or the Authority to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The Contractor further agrees as follows:

- (a) to certify its compliance with 49 CFR Parts 40 and 655 and to submit a Management Information System (MIS) report, as required by federal regulations, to WMATA's Medical Compliance Monitor (MCM) and the Contracting Officer before February 15th of each year. To certify compliance, the Contractor shall use the "Alcohol and Controlled Substances Testing" certification contained in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," that is published annually in the Federal Register.
- (b) to submit to the MCM and the Contracting Officer before February 15th of each year, a copy of the Policy Statement developed to implement its drug and alcohol testing program.
- (c) to provide to the MCM and the Contracting Officer before February 15 of each year the following:
 - (1) Employee and supervisor training documentation;
 - (2) The name and location of the collection site(s), laboratory(ies), Medical Review Officer(s), Breath Alcohol Technician(s), Collector(s), and Substance Abuse Professional(s); and a description of their random selection drug and alcohol testing process.
- (d) The contractor further agrees to submit quarterly management reports summarizing test results to the MCM and the Contracting Officer by the 15th of the month following the end of each quarter.

14. EMPLOYMENT RESTRICTION WARRANTY

- (a) The Contractor warrants that it will not offer employment to, solicit or discuss prospective employment with, or otherwise engage in substantive employment related discussions or communications with, any present or former officer or employee of the Authority who has been involved, directly or indirectly, in any matter of financial

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT IFB FQ16008/SAC – INTERLOC LICENSES

interest to the Contractor until at least one (1) year after the officer or employee has ceased involvement in or responsibility for the matter. The Contractor shall not knowingly engage in communications of the nature described above with any immediate family member or member of the household of any Authority employee during the period in which such employee is involved in any such matter of financial interest to the Contractor.

- (b) If a waiver is granted, or if a former employee of the Authority is eventually hired, the Contractor shall ensure that the former employee is not involved in negotiating or otherwise dealing with the Authority on any particular matter that such employee had responsibility for during his or her period of employment at the Authority.
- (d) Should the Contractor fail to comply with the provisions hereof, the Contracting Officer shall have the right to report the matter to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's OIG (DOT_OIG), the OIG of any other federal agency providing funding for this Contract and/or appropriate federal, state, and local law enforcement authorities. If any of these authorities find that no fraud exists then the Authority may 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. Any objections or appeal shall be settled in accordance with the "Disputes" article of this Contract

15. GRATUITIES

- (a) In connection with performance of work required under this Contract, or any changes or modifications relative thereto, the giving of or offering to give gratuities (in the form of entertainment, gifts or otherwise) by the Contractor, or any agent, representative or other person deemed to be acting on behalf of the Contractor, (including suppliers and subcontractors), to any Board member, officer, employee, consultant, agent or independent contractor of the Authority; with a view toward securing a contract or securing favorable treatment regarding contract execution or administration 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 of gratuities 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 report the matter to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's OIG (DOT_OIG), the OIG of any other federal agency providing funding for this Contract and/or appropriate federal, state, and local law enforcement authorities
- (1)
- (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 r under this Contract, at law or in equity.

16. OFFICIALS NOT TO BENEFIT

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

- (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 therefrom;
- (b) No member, officer or employee of the Authority or of a local public body during his tenure or one (1) year thereafter shall hold any interest, directly or indirectly, in this Contract or the proceeds thereof.
- (c) Enforcement of this Article shall be consistent with 18 U.S.C. §431.

17. ORGANIZATIONAL CONFLICTS OF INTEREST

- (a) An organizational conflict of interest (OCI) 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 has 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 OCI, 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 OCI. . 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.
- (d) Should the Contractor identify or become aware of a conflict during the term of this Contract, including any extension of the Contract, that 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.

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.
- (e) If the request for an exception is not granted by the Contracting Officer, and the Contract is not terminated 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 article.
- (g) If the proposed measures are determined acceptable to the Contracting Officer, he or she 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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

obligations under this Contract and the duties and obligations imposed on the Contractor under another contractual or other relationship..

(1) If the Contractor fails to comply with the terms of this Article, and no fraud is suspected, then 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 this Contract.

(2) If fraud is suspected in a Contractor's failure to comply with this section, then the matter must be reported to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's OIG (DOT-OIG) and/or appropriate federal, state and local law enforcement authorities.

(3) The Contractor, in performing this Contract, shall avoid any conduct that might result in or give the appearance of creating for Board members, , 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 that might result in a Board member, or employee failing to adhere to the Standards of Conduct adopted by the Authority's Board of Directors.

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

18. CONTRACTOR PERSONNEL

(a) The Contracting Officer may direct the replacement of the Contractor's employees reasonably that he or she deems to be unsuitable, or whose continued participation in the work is deemed contrary to the best interests of the Authority. Except in circumstances deemed exigent by the Contracting Officer, the reason for replacement will be discussed with the Contractor before a replacement directive is issued. Upon receipt of a written replacement directive from the Authority specifying the date when the replacement must occur, the Contractor shall proceed with the replacement and shall do so in a manner that minimizes, to the greatest extent practicable, any impact upon any aspect of the work.

(b) Contractor personnel required to work on WMATA property must obtain a WMATA vendors' badge and successfully complete the mandatory safety training that must be renewed yearly. The Contractor shall advise affected personnel that they must sign a waiver to perform a background check to obtain a vendor's badge.

19. FALSE STATEMENTS, CLAIMS OR SUBMISSIONS

(a) The Contractor acknowledges its responsibility to undertake its obligations under this publicly funded Contract with full integrity and, , 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.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB FQ16008/SAC – INTERLOC LICENSES**

- (b) In the event that it is finally determined by a court of competent jurisdiction that any statement, claim, submission, or certification made by or on behalf of the Contractor pursuant to a material element of the Contract was false, fictitious or fraudulent, the Authority shall be entitled to recover, from the Contractor, an amount equal to not more than three (3) 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.

Where the Authority believes that there are reasonable grounds to conclude that the Contractor has engaged in one or more violations of paragraph (b), it shall report it to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's OIG (DOT-OIG) and/or appropriate federal, state and local law enforcement authorities.

- (c) The rights of the Authority set forth in this article are in addition to any contractual, legal or equitable rights that 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 that 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 that 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 its obtaining a refund or drawback of, any federal excise tax or duty that would otherwise have been payable on such transactions or property or that 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 its fault or negligence or its failure to follow the Contracting Officer's instructions, is required to pay or bear the burden of, or does not obtain a refund for 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 that 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 proposal, the Contractor certified that none of the taxes as that the Authority is exempt from 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 that the Authority is exempt from 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 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 Armed Services Board of Contract Appeals (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 that maintain jurisdiction over such claims and where venue properly resides.

5. SEVERABILITY

If this 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 its binding force 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. 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, 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 representative's access to any of its books, documents, papers and records that 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, that it will provide the FTA Administrator or his or her authorized representatives including any Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U. S. C.§ 5302(a)1, that is receiving federal financial assistance through the programs described at 49 U. S. C.§§ 5307, 5309 or 5311.
- (b) The Contractor agrees to permit any of the foregoing parties to reproduce, by any means whatsoever, excerpts and transcriptions as reasonably needed.
- (c) The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract. In the event of litigation or settlement of claims arising from this Contract, the Contractor agrees to maintain all records 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 descriptions in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punch 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 Contract 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 either releases or approves the

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT IFB FQ16008/SAC – INTERLOC LICENSES

release of such data to the public. This restriction on publication, , 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, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, the following subject data for the federal government's 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. Therefore, unless the FTA determines otherwise, the Contractor agrees that, in addition to the rights set forth in subsection (b)(2) of this article, the FTA may make available to any FTA recipient, sub-recipient, third party contractor, or third party subcontractor, either the 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 federal 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 the Contractor's willful or intentional violation 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 article on rights in data shall imply a license to WMATA or to the U.S. government under any patent or be construed as affecting the scope of any license or other right otherwise granted to WMATA or to the U.S. 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 prior to the time of acceptance 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 ten 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 price 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 the FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for fifteen (15) passenger vans and fifteen (15) passenger wagons produced by 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 sixty percent (60%) domestic content.

5. CHARTER BUS REQUIREMENTS – N/A

Contractor shall comply with 49 USC §§ 5323(d) and (g) and 49 CFR 604, which state that recipients and sub-recipients of FTA assistance may provide charter service for transportation projects that use equipment or facilities acquired with federal assistance authorized under federal transit laws (except as permitted by 49 CFR 604), or under 23 U.S.C. §§133 or 142, only in compliance with those laws and FTA regulations, "Charter Service," 49 CFR part 604, the terms and conditions of which are incorporated herein by reference.

6. SCHOOL BUS REQUIREMENTS –N/A

Pursuant to 49 USC 5323(f) or (g) as amended by MAP-21, 23 USC § 133, 23 USC § 142, and 49 CFR 605, recipients and sub-recipients of FTA assistance shall not engage in school bus operations exclusively for transportation of students and school personnel in competition with private school bus operators, unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and sub-recipients shall not use federally funded equipment, vehicles, or facilities. . If a recipient or any third party participant has operated a school bus service in violation of the FTA's school bus laws and regulations, the FTA may: (1) Require the recipient or third party participant to take such remedial measures as FTA considers appropriate, or (2) Bar the recipient or third party participant from receiving federal transit funds.

7. BUS TESTING – N/A

The Contractor shall comply with 49 U.S.C. § 5323(c), applicable amendments of Map 21, and the FTA's implementing regulations at 49 C.F.R. 665 and shall perform the following:

- (1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient prior to the recipient's final acceptance of the first vehicle.
- (2) A manufacturer who releases a report under paragraph (1) above shall provide notice to the operator of the testing facility that the report is available to the public.

- (3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report. Such test report must be provided to the recipient prior to the recipient's final acceptance of the first vehicle. If configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- (4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the US before Oct. 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

8. CARGO PREFERENCE - N/A

The Contractor agrees:

- (a) To utilize privately owned United States flag commercial vessels to ship at least fifty percent (50%) 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 twenty (20) working days following the date of loading for shipments originating within the United States, or within thirty (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 bill 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 the 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 the 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 the 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 the 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 that 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 (21) dated October 1, 2014) between the Authority and the 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.
- (c) Flow-down requirement. The Contractor agrees to include this article in each subcontract financed in whole or in part with federal assistance provided by the 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. If the Contractor uses a foreign air

carrier, it shall submit, 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, provide a certificate of compliance with the Fly America Act 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, if 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 noncompliant 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 DBEs' 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 is 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, nor 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 that would cause the Authority to be in violation of the FTA's terms and conditions.

- (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 the FTA. It is further agreed that this article shall not be modified, except to identify the subcontractor who will be subject to its 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, it is not a party to this Contract and shall not be subject to any obligations or liabilities to the Authority, the Contractor, or any other party (whether or not a party to this Contract) pertaining to any matter resulting from the underlying 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 the FTA. It is further agreed that this article 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 Contract. 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 the 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 article in each subcontract financed in whole or in part with federal assistance provided by the 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 the 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 C.F.R. Part 19, or 49 C.F.R. Part 20. The Contractor agrees to comply with this requirement throughout the term of this Contract.
- (b) Flow down requirement. The Contractor agrees to include this article 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.

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 where 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's OSHA standards pertaining to the safe performance of the work. In the absence of a specific construction industry standard, the Contractor is 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. If work is performed on, or interfaces with the Metrorail System, the Contractor shall also comply with the publication entitled "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, or 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's 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 safety supervision and have a working knowledge of all OSHA regulations. He or she shall have the ability to develop and conduct safety training courses. He or she 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 site 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 fifteen (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 or her 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 that shall be fully equipped to meet the needs of the anticipated work force.
- (d) The Contractor shall follow all appropriate RAIL Operational Rules, 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's property and facilities. The Contractor's employees and candidates who pass the background screenings are eligible to enter WMATA's property once WMATA issues them a contractor's badge. The Contractor's employees and candidates who do not authorize background screenings or whose background screenings are unsatisfactory will not be granted contractor's badges or access to WMATA's property. Successful background checks are valid for one (1) year from the date of issuance.

3. WORKPLACE VIOLENCE/ZERO TOLERANCE

Pursuant to Metro Policy/Instruction 7.8.3, WMATA's Chief Procurement Officer hereby states that WMATA has a zero tolerance policy for acts of workplace violence by all Contractor and subcontractor employees, Contractors and subcontractors at all tiers will not retaliate against any of their employees or independent contractors for cooperating with investigations regarding workplace violence.

PART III
TECHNICAL SPECIFICATIONS

TECHNICAL SPECIFICATIONS
Interloc Mobile Informer User Licenses and Support

SCOPE OF REQUIREMENT:

1.0 Background.

The purpose of this Statement of Work (“SOW”) is to define the requirements and applicability of the Mobile Software for the asset management and condition assessment solution implementation. The solution was designed and developed over a 6 month period to support several asset groups including ELES, CMNT, BMNT, SMNT and PLNT. Once the software was configured and developed according to each group’s requirements a 2 month pilot of the software was performed in the field. The software performed satisfactorily both functionally and technically. It is the requirement of the Asset Management Program (AMP) to roll this solution out to a Production environment for ELES, ATCS (part of SMNT) and BMNT. This roll out will require another 200 Licenses of the Interloc Informer product to support the three (3) mentioned departments.

2.0 Scope/Objective.

The software will be used for performing asset management activities to include barcode scanning, condition assessments, work order management, reading and measurements entry, image and defect capture, asset nameplate and specification data capture.

2.0 Applicable Documents.

User Licensing Agreement, Maintenance Support Agreement

3.0 Deliverables

3.1 Interloc Informer Mobile Application Software License Quantity: 200

3.2 Two Years Annual Maintenance and support

- 3.2.1** Telephone, web-conferencing, and email-based support
- 3.2.2** Request for information about product functionality
- 3.2.3** Software upgrades and patches at no extra charge to WMATA
- 3.2.4** Attempting to replicate/debug issues in a lab environment
- 3.2.5** Providing updates compatible with newer versions of Maximo when available
- 3.2.6** 24/7 support for mission critical issues(Defined by WMATA)
- 3.2.7** Normal working hours east coast time for non-mission critical issues
- 3.2.8** Expert response for all issues within 4 hours of reporting

4.0 Place of Performance

Support of the software will be remotely and onsite performed by Interloc and consist of telephone and email communications.

5.0 Period of Performance

Maintenance Support should begin at date of go-live and last for two years.

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 contained 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 supply originally specified.

Article: One of the provisions of this Contract, each identified separately by number and title that 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 reference is made to the Contract documents.

Authority, 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 its bid. The bidder will furnish bonds in the required amount. 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 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 that is produced or controlled by one or more entities, including trademarks, manufacturer names, or model names or numbers that are associated with a certain manufacturer.

Breach: An unexcused and unjustifiable failure or refusal of a party to satisfy one or more terms of the Contract that, 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 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's 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 Contract, and all Modifications issued after the effective date of the Contract; 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 and final settlement.

Contracting Officer's Representative: The person to whom the Contracting Officer delegate's authority and responsibility for post award administration of the Contract. The Contracting Officer's 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 that 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 Contract.

Disadvantaged Business Enterprise (“DBE”): A for-profit small business concern that has been certified by the Authority to be at least fifty one percent (51%) owned by one (1) or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty one percent (51%) of the stock is owned by one or more individuals, and whose management and daily business operations are controlled by one (1) 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 (1) or more prospective bidders in response to an inquiry relating to the solicitation. Such 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 than specified in the solicitation, 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, and the Authority indicates that it is acceptable.

Final Payment: The last payment to the Contractor for work performed under the Contract.

Force Majeure: An unforeseen event or circumstance, beyond the control of, and not occasioned by the fault or neglect of, the Contractor or the Authority, that 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: The Federal Transit Administration, an agency within the United States Department of Transportation that provides financial and technical assistance to local public transit agencies.

Terms and Conditions: A compilation of contractual and legal requirements that list the rights, responsibilities, and relationship of the parties.

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, WMATA Guide Specification or the Contract.

Jurisdictional Authority: Refers to federal, Maryland, Virginia or District of Columbia agencies that are signatories to WMATA’s Compact.

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) and other regulations of any government or quasi-government entity that are applicable under this Contract.

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 nor does it adversely impact the interests of the Authority.

Modification: A written document issued that 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 or business entity is unable or potentially unable to render impartial assistance or advice to the Authority, or the person's or business entity's objectivity in performing the contract work is or might be otherwise impaired, or a person or business entity has an unfair competitive advantage.

Paragraph: A subdivision of an article contained in this Contract, generally introduced through a noncapitalized 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 Contract execution or the effective date of the Notice to Proceed and ends on the date specified in this Contract. . The period of performance incorporates the milestones established for this 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.

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

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.

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; recurring maintenance of real property; housekeeping, operation of Authority owned equipment, facilities and systems; communication services, Architect-Engineering services, professional and consulting services, 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 solicitation that describes specifically what is to be done by the Contractor. It may include specifications, performance outcomes, dates and time of performance, quality requirements, etc.

Solicitation: This Invitation for Bids (IFB) and the accompanying Contract documents.

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

Similar: Generally the same but not necessarily identical. The details shall be worked out regarding 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 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 with another subcontractor.

Submittal: Written or graphic documents or samples prepared by the Contractor or a subcontractor and submitted to the Authority, 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 that functionally meets the requirements of the Contract documents, but is submitted in lieu of item specified therein.

Supplier: A subcontractor who is a manufacturer, fabricator, 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.

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

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.