



Invitation For Bids

[Non-Federal]

**CONTRACT FOR SERVICES RELATED TO
PERSONAL SAFETY PROTECTIVE WEAR
FLAME RESISTANT APPAREL & ACCESSORIES**

IFB No.: CQ16063/DYB

Date: December 31, 2015

DATE: December 31, 2015

SUBJECT: Invitation for Bid (IFB) Contract for Services Related to Personal Protective Safety Wear/Flame Resistant Apparel & Accessories

The Washington Metropolitan Area Transit Authority's (WMATA) Office of System Maintenance is seeking bids from qualified firms to enter into a Contract to provide services related to the provision of flame resistant clothing and accessories in compliance with the Occupational Safety and Health Administration's (OSHA) regulations at 29 C.F.R. § 1910, Subparts S and I. Bidders must include certification of compliance with these regulations in their bid submittals.

The resultant Contractor will effectively manage a program providing the apparel, accessories and services while maintaining ownership of it. The Contractor will provide regular inspection services; provide for periodic replacement/upgrade and tailoring services for the apparel and accessories as required. Additionally the Contractor will be responsible for proper laundering of the safety apparel in accordance with industry standards.

The IFB contains a 0 percent DBE Goal requirement.

A pre-bid conference will not be held. Bids must be submitted in accordance with this IFB 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 January 27, 2016.

If you have any questions, technical, contractual or administrative please email them to, Doris Y. Boggs at dboggs@wmata.com the Contract Administrator no later than 12:00 PM on January 13, 2016. WMATA will provide written answers, by email to all those who obtain the IFB and provide their email addresses.

The following completed documents are to be submitted with all bids:

- Bid Form;
- Solicitation, Offer & Award Form;
- Price Schedule;
- Pre-Award Survey;
- Certification of Compliance stated (OSHA) regulations
- Representations and Certifications;
- Certificate(s) of Insurance;

Sincerely,

Laura Marshall
Contracting Officer

**NOTICE TO BIDDERS
IMPORTANT
PLEASE READ CAREFULLY**

To ensure submission of complete bids and to avoid irregularities that could result in a nonresponsive 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, Solicitation, Offer & Award page(s), and Price Schedule?
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 marked the bid envelope with solicitation number and addressed it to the Contract Administrator, Doris Y. Boggs.
- 7.. Have you included copies of any required Certificate(s) of Insurance?

Note: 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.

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 CQ-16063/DYB

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SOLICITATION, OFFER AND AWARD

CONTRACT NO. CQ16063	SOLICITATION NO. IFB CQ16063/DYB <div style="display: flex; justify-content: space-around;"> <div style="border: 1px solid black; padding: 2px;"><input checked="" type="checkbox"/></div> ADVERTISED <div style="border: 1px solid black; padding: 2px;"><input type="checkbox"/></div> NEGOTIATED </div>	DATE ISSUED 12/31/2015	ADDRESS OFFER TO OFFICE OF PROCUREMENT Office of Procurement 600 Fifth Street NW Washington, DC 20001
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SOLICITATION

Sealed offer in original and two (2) hard copies and 1 copy on electric media (CD or USB Drive) for furnishing the supplies or services in the schedules will be received at Authority until 2:00 P.M. Local time January 27, 2016
 (Hour) (Date)

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

All offers are subject to the following:

1. The Solicitation Instructions that are attached.
2. The terms and conditions that 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 Phone Number _____ Bidder's Email _____

SCHEDULE					
ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	Services Related to Personal Protective Safety Wear/Flame Resistant Apparel & Accessories (See Price Schedule for service locations and requirements). (See continuation of schedule on page 22)				\$

DUN & BRADSTREET ID NUMBER: _____

OFFEROR	
Name and Address (Street, city, county, state, and zip code) <div style="border: 1px solid black; width: 50px; height: 20px; margin-top: 5px;"></div>	Name and Title of Person Authorized to Sign Offer (Print or Type) <hr/> <div style="display: flex; justify-content: space-between;"> Signature <div>Offer Date</div> </div>

AWARD (To be completed by The Authority)

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

ITEM NO.	QUANTITY	UNIT	UNIT PRICE

The total amount of this award is \$ _____

Name of Contracting Officer (Print of Type)

WASHINGTON METROPOLITAN TRANSIT AUTHORITY

AWARD DATE

Notes to Bidders

1. Bidders are advised that a specific brand is identified in the technical specifications for safety protective apparel and accessories that will be provided by the successful bidder. It does not restrict bidders to the specified manufacturer's brand name. Brand specified is only used to identify quality and performance desired (See Article 29- Brand Name or Equal).

If Bidder is offering a manufacturer other than what is identified in the Specifications, then descriptive literature must be included with pricing data. WMATA will use this literature to verify conformance to industry requirements.

2. Bidders' prices on the following bid sheet must include all associated costs, including but not limited to delivering apparel to multiple locations; traveling; measuring employees; apparel inspection; apparel replacement (as required/needed); laundering, profit and other related costs.
3. All references to the "resultant Contract" contained in the solicitation also include subcontracts that the bidder may enter pursuant thereto.
4. As stated in Chapter 1 section 4 , this is a Requirements Contract, therefore quantities listed on Price Schedule are estimated only. **No maximum or minimum quantities are guaranteed under this Contract.**

Service/Delivery Locations

Deliveries and service requests will be provided for the following locations:

Hector Ramirez* Acting A99 PWR	A99 15903 D Sommerville Dr Derwood, MD 20855
	B98 LV Russell Dunn RM 314 12750 Layhill Road. Silver Spring, MD 20906
Doojin Han B04 PWR	B04 710 Rhode Island Ave NE Washington DC 20018
Carl Mewborn E99 PWR	E99 10406 Trucker St Beltsville, MD 20705
Ted Bailey K99 PWR	K99 7251-D Idylwood Rd Falls Church VA 22043
Orman Clouden* Acting N99 PWR	N99 7251 Idylwood Rd Falls Church VA 22043
Jemichael Jones PMI	Main PMI Group 3500 Pennsy Dr RM 136 Hyattsville, MD 20785
	Jeff Roeger B98 PMI Group BLDG B Rm 310 12750 Layhill Rd. Silver Spring, MD 20906
	Ron Powe K99/ N99 PMI Group 7251 Idylwood Rd;

PRICE SCHEDULE

Items will be supplied in two kits as detailed below: KITS WILL BE IDENTIFIED BY SERIALS NUMBERS.

<u>CLIN</u>	<u>Description</u>	<u>Est. Qty</u>	<u>Wks/year</u>	<u>Fee/week</u>	<u>Annual Fee</u>
<u>Base YEAR -1</u>					
1.1	65 CAL SUITS	120	52	\$	\$
1.2	40 CAL SUITS	230	52	\$	\$
1.3	PPE GLOVES	350	52	\$	\$
Total Base					
<u>Option -1 Year -1</u>					
2.1	65 CAL SUITS	125	52	\$	\$
2.2	40 CAL SUITS	235	52	\$	\$
2.3	PPE GLOVES	360	52	\$	\$
Total Option 1					
<u>Option -2 Year -2</u>					
3.1	65 CAL SUITS	130	52	\$	\$
3.2	40 CAL SUITS	240	52	\$	\$
3.3	PPE GLOVES	370	52	\$	\$
Total Option 2					
Grand Total Base + Options					

1ST KIT Requirement Suits–

1. Flash suit bibs and pants (AR)
2. Flash suit jacket (AR)
3. Flash Suite hood (AR)
4. Flash Face Shields
5. Hard Hat
6. Goggles (SR)
7. Hearing protection device

2ND KIT (PPE)

1. Electrical Gear Bag
2. Electrical Gloves, Class O- w/ Leather Protection and bag
3. Electrical Gloves, Class 4 w/ Leather Protection and bag

Company Name _____

Authorize Signature _____

Name of Manufacture of Bidding _____

Date _____

DIRECTIONS FOR SUBMITTING BID:

- 1. Completed Price Schedule;**
- 2 Acknowledgement of any Amendments;**
- 3 Completed Representations; Certifications (including compliance with OSHA standards);**
- 4. Certificate(s) of Insurance;**

Envelopes containing related required documents must be sealed, marked and addressed as follows:

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY
BID UNDER SOLICITATION CQ-16063/DYB
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 THAT BIDS WILL BE OPENED. BIDS HAND CARRIED BETWEEN 1:00 P.M. AND 2:00 P.M. SHOULD BE PRESENTED TO THE CONTRACT ADMINISTRATOR.

ACKNOWLEDGMENT OF AMENDMENTS

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

Amendment Number____, dated_____

Amendment Number____, dated_____

Amendment Number____, dated_____

Amendment Number____, dated_____

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

SOLICITATION INSTRUCTIONS

INVITATION FOR BIDS
SOLICITATION INSTRUCTIONS

1. INTRODUCTION

- a. The Authority seeks to award a Contract for services to provide personal protective safety wear, including all services required in Part III, of this Invitation for Bids ("IFB"). To that end, it is issuing this IFB to solicit bids from qualified firms and individuals who can satisfy the requirements of the accompanying Contract documents.
- b. Award of a Contract 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, and a lease for all of the Authority's requirements for this apparel and related services.
- d. This solicitation seeks to award a Contract and a lease hereunder for all of the Authority's requirements for the supplies and services specified, effective for the period stated herein. Bidders are advised that the quantities of supplies or services specified in the Price Schedule are estimates only, included for purposes of bid evaluation and in order to provide information to assist the bidders in formulating their bids. While they represent the Authority's best estimate as of the time of the solicitation, they do not constitute a commitment on the part of the Authority to lease supplies or services at the estimated level.

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, materials and other work necessary for satisfactory performance.
- b. If "supplies" are to be leased 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 leased 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 and lease hereunder must be directed to the Contract Administrator as follows:

Doris Y. Boggs
WMATA/PRMT
600 Fifth Street N. W.
Washington D. C. 20001
dboggs@wmata.com
(202) 962-2071

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 Bids, terms or 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 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 and given at any time before the award of the Contract by any employee, officer or agent of the Authority will not be binding upon the Authority, nor does the Authority assume responsibility for the accuracy of any such communication.
- d. The failure of a prospective bidder to request an explanation or clarification as provided herein will preclude the bidder from thereafter claiming any ambiguity, inconsistency or error in the solicitation that should have been discovered by a reasonably prudent bidder.

5. PRE-BID MEETING

N/A

6. AMENDMENTS TO IFB

- a. The Authority reserves the right to revise or amend the terms of this IFB, the proposed Contract'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 Bids. 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 prices, the date set for the opening of bids may be postponed by such number of days as, in the opinion of the Authority, will enable bidders to revise their bids. In such 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 on the amendment acknowledgement form prior to opening of bids. Failure to acknowledge all amendments may cause the bid to be considered not responsive to the solicitation, which would require rejection of the bid.

8. PREPARATION OF BIDS

- a. Bids shall be submitted on the Price Schedule furnished, or copies thereof, and must be manually signed. If erasures or other changes appear on the forms, such erasures or changes must be initialed by the person signing the bid.
- b. Bidders shall furnish all information required by this IFB and, in so doing, are expected to examine fully the IFB documents. Failure to do so will be at bidder's risk.
- c. The Price Schedule provides for submittal of prices for one (1) or more items that are to be unit prices and lump sum bids. The Price Schedule expressly requires that the bidder bid on all items. Failure to do so will render the bid nonresponsive.
- d. All bid prices for the goods and services shall be deemed to include the cost of all work, labor and materials required by the Contract documents, including without limitation, delivery charges, insurance and all related expenses for the work, as well as expenses associated with compliance with federal, state or local laws or regulatory requirements.
- e. Unless specifically called for in the Price Schedule, alternate bids will not be considered.

9. SUBMITTAL OF BIDS

- a. Bids shall be enclosed in sealed envelopes and addressed to the office specified in the solicitation.
- b. The face of the envelope should show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the bidder. A failure to do so may result in a premature opening of, or a failure to open, such bid, for which 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, will 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 it 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;
- b. 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
1. Any modification or withdrawal of a bid is subject to the same conditions as set forth in subparagraphs (a) (1), (2), and (3) above.
 2. The only acceptable evidence to establish the time of receipt by the Authority is the time/date stamp of that event on the bid wrapper or other documentary evidence of receipt maintained by the Authority.
 3. Notwithstanding subparagraph (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.
- c. 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 the bid opening and during the acceptance period set forth in paragraph twelve (12), will not be honored and will be without effect.

12. BID ACCEPTANCE PERIOD AND BIDDER'S DEFAULT

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

13. BID GUARANTEE – N/A

14. BID MISTAKE

- a. A bidder who seeks to withdraw its bid subsequent to bid opening due to a claimed mistake or error in preparation shall notify the Authority in writing immediately upon realizing the mistake and in no event later than 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 (1) or more designated representative(s) of the Authority to provide testimony and/or documentation, including the bidder's computation sheets and calculations, to assist in the Authority's determination.
- d. Nothing contained herein shall be deemed to preclude the Authority from allowing a bidder to cure a deficiency in an otherwise responsive bid where the Authority determines that such deficiency is in the nature of a minor informality or irregularity.

15. REPRESENTATIONS, CERTIFICATIONS, AND ACKNOWLEDGMENTS

The bidder shall check or complete all applicable boxes or blocks, and provide all requested information, on the attached "Representations and Certifications" form. Bidders are reminded of the obligation to fully and faithfully complete the accompanying

“Representations and Certifications” form, as applicable, 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 must comply with, any and all applicable State of Maryland, Commonwealth of Virginia, District of Columbia, federal and local laws and regulations governing the supplies and 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 where work will be performed.

17. ROYALTY INFORMATION – N/A

18. REQUIREMENT FOR COST DATA FOR CONTRACT AWARD- N/A

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 provide personal protective wear (Arc Guard) including heat resistant clothing and accessories and required services as 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 this Contract in a satisfactory and timely manner may result in a rejection of the low bidder as not responsible. In such event, the second lowest bidder will be required to demonstrate its responsibility, a process which will continue until a bidder successfully demonstrates that it is responsible for purposes of this solicitation.
- b. To assist in the Authority's evaluation of its responsibility for purposes of award of a Contract and a lease hereunder, the apparent lowest, responsive bidder shall furnish a completed and signed pre-award evaluation data form (copy attached), including the required financial statements when requested by the Contracting Officer.

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 further assist the Authority in determining the bidder's responsibility for purposes of award.

21. SITE VISIT/INSPECTION OF BIDDER'S FACILITIES

Bidders must maintain sufficient facilities that will allow them to adequately perform this Contract 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 will be made to the bidder(s) (i) whose bid is judged to be responsive to the terms of the solicitation 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. 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 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. OPPORTUNITY FOR SMALL AND LOCAL BUSINESS ENTERPRISES TO BID

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

26. 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.

27. WMATA'S TAX EXEMPT STATUS

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

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

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

28. 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.

29. BRAND NAME OR EQUAL

- a. Materials contained in the products to be leased under this IFB have been identified in the specifications by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and indicates the quality and characteristics of products that will be satisfactory. Bids for providing products including materials 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 in the IFB.
- 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 Bids, or such product shall be otherwise clearly identified in the bid. The determination regarding 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 necessary for the Authority to determine whether the product offered meets the requirements of the IFB.

30. PERFORMANCE AND PAYMENT BONDS – N/A

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

REPRESENTATIONS

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

1. TYPE OF BUSINESS ORGANIZATION (RC-101, MAY 07)

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

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

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

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

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

Name of Parent Company

Main Office Address (including ZIP Code)

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

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

3. SMALL BUSINESS & LOCAL PREFERENCE PROGRAM (SBLPP)

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

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

CERTIFICATIONS

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

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

Neither it nor any of its employees, representatives or agents have offered or given gratuities (in the form of entertainment, gifts or otherwise) to any Board member or employee of the Authority with a view towards securing favorable treatment in the awarding, amending, or the making of any determination regarding the performance of the Contract.

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

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

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

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

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

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

(b) Each person signing this offer certifies that:

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

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

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

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

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

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

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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT IFB-CQ16063/DYB

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

- (a) ☐ No WMATA **Board member, household member or business associate** has a financial interest in this firm, in a **financial transaction** with the Authority to which this firm is a party or prospective party, or in an **actual or prospective business relationship with the Authority** to which this firm is a party.
- (b) ☐ The following WMATA **Board member(s), household member(s) or business associate(s)** has (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 year for services provided, and the name and address of the firm from which the income was received.

Name of Board Member
Household Member or
Business Associate

Nature of Interest

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

SIGNATURE BLOCK FOR ALL REPRESENTATIONS AND CERTIFICATIONS

Name of Offeror: _____

Name and Title of Authorized Representative: _____

Print and Sign Name:

	Title	Date

(RC-116, OCTOBER 08)

PRE-AWARD EVALUATION DATA
Personal Safety Protective Apparel:

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 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 at least two (2) contracts that are similar in scope and discipline as requirements included herewith. References provided must be complete with contract award amount, name of contracting parties, the organization's name, and character or type of work performed. These services must have been completed/preformed within the last two (2) years. **Note:** Similar contracts identified must have been in place for no less than three (3) concurrent years.
9. In the last two (2) years, has your firm been denied an award where it was low bidder/offer? If the answer is YES, attach as SCHEDULE THREE 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, the full particulars regarding each occurrence.

12. Bidders must include with this section, certification that the brand offered complies OSHA regulations at 29 C.F.R. § 1910 Subparts S and I.
11. Financial resources available as working capital for the Contract, and the lease hereunder:
 - a. Cash on hand \$ _____
 - b. Source of credit: _____
12. Attach as SCHEDULE FIVE financial statements and letters from banks regarding credit as required by the "Pre-Award Information" article.
13. What percentage of this Contract does your firm intend performing with its own personnel?
%
14. Attach as SCHEDULE 15, a list of all principal subcontractors and the percentage and character of work for the lease that each will perform. Principal items of work shall include, but not be limited to, those items listed in the "Pre-Award Information" article of the Invitation for Bids.
15. Attached (OSHA) regulations Compliance Certification
16. If the Contractor or subcontractor is in a joint venture, submit PRE-AWARD EVALUATION DATA form for each member of the joint venture.

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

The undersigned certifies to the accuracy of all information.

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

TERMS AND CONDITIONS

CHAPTER I – GENERAL PROVISIONS

1. AGREEMENT

The work to be performed under this Contract may briefly be described as the provision of personal safety protective wear/fire retardant apparel with accessories as specified in the Scope of Work, and related services with all necessary or incidental work, labor and materials. The Contractor agrees to perform this Contract in accordance with requirements and terms and conditions hereinafter set forth in this Contract. 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 therefore, the sums of money set forth in the Price Schedule at the time and in the manner and upon the terms and conditions set forth in the Contract.

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) the Contract terms and conditions; (c) the specifications or scope of work; (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 Contractor's submittal. In the event of a conflict within or between provisions the Contract documents, the more stringent requirements shall apply.
- (b) Notwithstanding paragraph (a), in the event that this Contract is funded, in whole or part, through funding provided by the federal government, all contract terms mandated for inclusion by the federal government shall be deemed to supersede any other conflicting or inconsistent provision of the Contract documents.

4. REQUIREMENTS CONTRACT

- (a) This is a requirements Contract requesting that the successful bidder provide all of the Authority's requirements. 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) Quantities identified on the Pricing Schedule are estimated only. No maximum or minimum quantities are guaranteed under this Contract or the lease hereunder.

In the event that the Contractor is unable or otherwise fails to provide goods or services hereunder within the time frames required, 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 Authority's right to treat any such failure to meet a required delivery schedule as a material breach of the Contractor's obligations pursuant to the "Termination for Default" article of this Contract.

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 lease hereunder and the Comptroller General of the United States, shall have access and inspection rights described in this article.
- (c) 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.
- (d) 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; (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, the Contractor shall maintain such records 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, then the Contractor shall maintain such records 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 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 can be made. No legal liability on the part of the Authority for any payment may arise until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing, by the Contracting Officer. Any option exercised by the Authority that will be performed, in whole or in part, in a subsequent fiscal year is subject to availability of funds in the subsequent fiscal year and will be governed by the terms of this article.

7. CONTRACTING OFFICERS TECHNICAL REPRESENTATIVE (COTR)

- (a) The work will be conducted under the general direction of the Contracting Officer on behalf of the Authority, who may delegate certain responsibilities to a Contracting Officer's Technical Representative (COTR). While the COTR will be authorized to perform such designated functions, the Authority will not be responsible for actions of the COTR or any other Authority representative which exceeds 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 and the lease hereunder.

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 and lease 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 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 the 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 base period of performance of this Contract is one (1) year commencing on the date of award. Authorization for funding beyond the first base year will be at the Authority's discretion, subject to availability.

Additionally, this Contract includes two (2) one (1) year optional performance periods. The Authority may exercise an option(s) by written notice to the Contractor prior to commencement of the option period. The Authority shall give the Contractor preliminary notice of its intent to exercise an option at least thirty (30) days before the Contract expires. The preliminary notice does not commit the Authority to an exercising optional performance term.

2. LIQUIDATED DAMAGES FOR DELAY- N/A

3. EXTENSIONS OF TIME/FORCE MAJEURE

- (a) For purposes of this article, the term "force majeure" shall mean an unforeseen event or circumstance, beyond the control of, and not occasioned by the fault or neglect of, the Contractor or the Authority, that gives rise to a delay in the progress or completion 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 this Contract by the neglect or failure of the Authority or by a force majeure event, then the time for completion and/or the affected delivery dates shall be extended by the Contracting Officer, in the following circumstances:
 - (1) The cause of the delay arises after the award of this 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 Contract will be actually and necessarily delayed;
 - (3) The delay cannot be avoided or mitigated by the exercise of all precautions, efforts and measures reasonably available to the Contractor, whether before or after the occurrence of the cause of delay; and
 - (4) The Contractor makes a written request and provides other information to the Contracting Officer as described in paragraph (f) below.
- (c) In the event that the Contractor will be delayed at any time or for any period by two (2) or more of the above-mentioned causes, the Contractor shall not be entitled to a separate extension for each one of these causes, but only shall be entitled to one (1) period of extension for the cumulative effects of the delay.

- (d) The Contracting Officer may rescind or shorten any extension previously granted.
- (e) However, the Contracting Officer will not rescind or shorten any extension previously granted, if the Contractor acted in reliance upon the extension and if, in his or her judgment, such extension was based on information that, although later found to have been erroneous, was submitted in good faith by the Contractor.
- (f) The request for an extension of time pursuant to paragraph (a) shall be made within ten (10) days after the Contractor knows or should know any cause for which it may claim an excusable delay. The Contractor shall provide any actual or potential basis for an extension of time, describing, as fully as then practicable, the nature and projected duration of the delay and its effect on the completion of the lease. Within thirty (30) days of its receipt of all such information, the Authority shall advise the Contractor of its decision on such requested extension. If 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 when it expects to render such decision.
- (g) In no event shall a delay in Contract performance 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 under this Contract. In no event shall a subcontractor at any tier be deemed a party outside of the control of the Contractor for purposes hereof.

4. AUTHORITY DELAY OF WORK

- (a) If the performance of all or any part of the Contract is delayed or interrupted in a material manner or extent by the Authority's act or omission 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 caused by such delay or interruption and the Contract hereunder 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. No adjustment shall be made under this article or otherwise under this Contract for any delay or interruption to the extent that performance was or could have been delayed or interrupted by any other cause, including, without limitation: (i) the fault or negligence of the Contractor or any subcontractor; (ii) the fault or negligence of a third party ; (iii) an act constituting a force majeure event pursuant to this Contract, 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.
- (c) 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 applicable 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 and in no event later than thirty (30) days after such termination. Such claim shall be accompanied by appropriate documentation, 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 practicable for the Contractor to fully determine the impact within such thirty (30) day period, the claim shall be accompanied by such supporting documentation as is then reasonably available to the Contractor along with 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 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 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 may 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 provided under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Authority during performance in the manner and in accordance with the time periods set forth in the provisions of the “AUDIT AND INSPECTION OF RECORDS” article of this Contract.
- (b) The Authority has the right to inspect services called for by this Contract, at all times and places reasonably practicable during the term of the Contract. The Authority shall perform inspections and tests in a manner that will not unduly delay the work.
- (c) If the Authority performs inspections the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without cost, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.
- (d) If any of the services performed do not conform to Contract requirements, the Authority may require the Contractor to perform the services again in conformity with Contract requirements, without additional cost. When the defects in performance cannot reasonably be corrected by such further performance, the Authority may:
 - (1) Direct the Contractor to take necessary action to ensure that future performance conforms to Contract requirements; and/or
 - (2) Reduce the Contract price to reflect the reduced value of the services performed.
- (e) If the Contractor fails to comply with the provisions of paragraph (d), the Authority may:
 - (1) By contract or otherwise, perform the services itself 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 herein shall preclude the Contracting Officer from implementing a price reduction for the reduced value of nonconforming services ultimately corrected in conformity with the Contract requirements.

2. INSPECTION OF SUPPLIES

- (a) The Contractor shall maintain an inspection system acceptable to the Authority covering the safety protective garments and accessories provided pursuant to this Contract and shall tender to the Authority for acceptance, only supplies that have been inspected in accordance with the inspection system and found by the Contractor to be in conformity with Contract requirements. As part of the system, the Contractor shall prepare records evidencing the nature and result of all inspections. These records shall be made available to the Authority during the term of this Contract and thereafter in accordance with 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 this Contract. 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 garments and accessories provided pursuant to the Contract to the extent practicable, at all places and times, The Authority may perform inspections and tests in a manner that will not unduly delay the Contract. The Authority assumes no contractual obligation to perform any inspection. The Authority's failure to perform any inspection or test does not relieve the Contractor of any obligation under this Contract.
- (c) If the Authority performs inspection(s) on the premises of the Contractor or of 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.

3. ACCEPTANCE OF SUPPLIES

- (a) The Authority shall accept or reject the garments and related safety apparel as promptly as practicable after delivery, unless otherwise provided in this Contract. In no event shall the Authority's failure to inspect and/or accept or reject the garments relieve the Contractor from responsibility, nor impose liability upon the Authority, for nonconforming protective garments pursuant to this Contract.
- (b) Acceptance by the Authority shall be deemed conclusive, except for latent defects, fraud, willful misconduct or gross mistakes amounting to fraud as otherwise provided in this 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 garments and accessories 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 may be agreed upon between the parties. The Contracting Officer may reduce the Contract price, if the Contractor fails to meet such delivery schedule.

4. NEW MATERIAL [SUPPLIES]

Unless this Contract specifies otherwise, the Contractor represents that any garments and accessories 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). The Contracting Officer's authorization for the use of used 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. WARRANTY

- (a) Notwithstanding anything to the contrary otherwise set forth in this Contract, the garments and other safety apparel supplied hereunder shall be unconditionally warranted against failures or defects through their lifespan and will be repaired or replaced, as needed, at Contractor's expense.

- (b) In the event that any garments/safety apparel covered by this warranty provision fail during the warranty period, the Contractor shall repair or replace them within thirty (48) hours, without cost or expense to the Authority.
- (c) Should the Contractor fail to repair or replace any garments/safety apparel in accordance with the terms of this warranty, or if immediate replacement is necessary to maintain WMATA's operations, 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 reasonably deems appropriate, at the Contractor's expense.
- (d) Any warranty work shall be accomplished with minimum disruption to the Authority's operations and its maintenance and service facilities.
- (e) 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

7. F.O.B. DESTINATION – N/A

8. QUALITY ASSURANCE/QUALITY CONTROL

The Contractor shall be responsible for quality assurance and for assuring that the supplies and services provided under the Contract conform to the requirements of this Contract. The Contractor shall maintain an effective and economical quality control program in conjunction with other Contractor functions necessary to satisfy the requirements of the Contract. The quality control program shall establish and implement procedures to ensure that only acceptable garments/safety apparel and related services are tendered to the Authority for acceptance, and shall demonstrate both recognition of the Contract's quality requirements methods.

CHAPTER IV—CHANGES/ PRICING ADJUSTMENTS

1. CHANGE ORDERS

- (a) The Contracting Officer may at any time, by a written order, direct and implement change orders, within the general scope of this Contract, including but not limited to, one (1) or more of the following:
 - (1) Nature and/or extent of services to be performed or supplies to be furnished under this Contract;
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.) under this Contract; or
 - (3) Place of performance of the services under the Contract.
- (b) If, in the judgment of the Contracting Officer, any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the 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 the 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 and/or time required for performance. In any instance where it is not reasonably practicable for the Contractor to fully determine or project the impact within such thirty (30) day period, the claim shall be accompanied by such supporting documentation as is then reasonably available to the Contractor, along with 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 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 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, he or she shall have the right to prescribe the manner of property disposition.
- (e) The Contractor shall promptly notify the Contracting Officer of matters, whether implemented as a change order or otherwise, that the Contractor asserts may reasonably result in either a change in the Contract price or the time required for performance of this Contract. The Contractor 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) In no event shall the Contractor be entitled to payment for change orders, additional or extra supplies or services or other modifications to any term of this Contract, unless authorized in writing by the Contracting Officer.

2. PRICING OF ADJUSTMENTS

- (a) 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, 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 this article is 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 in advance by the Contracting Officer, the Contractor shall furnish to him or her a proposed price adjustment, in advance of performing 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. Such 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 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 with a base sum in excess of \$1,000,000. In addition to the records required pursuant to paragraph (b) above, in the event pricing of an adjustment under this Contract is not agreed upon prior to the commencement of work, the Contractor and any subcontractor engaged in the work shall maintain accounts and original cost records segregated and identified by job order or other appropriate accounting categories approved by the Contracting Officer for all incurred, segregable costs related to the work for which the pricing adjustment is requested. The Contractor shall maintain accounts and records that segregate and account for the costs of all work associated with that part of the project for which the pricing adjustment is requested. The Contractor shall allocate the costs so accumulated between: (1) work required under the base Contract; (2) work requested to be reimbursed under the pricing adjustment; and (3) work claimed or determined to be related to other actual or proposed adjustments, including but not limited to, changes orders, differing site conditions, and the like. The accounts and records so established shall accumulate such costs under

logical cost groups, such as material, labor, equipment, subcontracts, field overhead and the like. The Contractor shall record these costs on a form approved by the Contracting Officer.

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

CHAPTER V – INVOICES/PAYMENTS/ DEDUCTIONS

1. BILLING AND PAYMENT

- (a) The Authority shall pay and the Contractor shall accept the amounts set forth in the Price Schedule as full compensation for all costs and expenses of providing the safety apparel and accessories and providing related services in accordance with the Contract, including, but not limited to, all labor and material required to be furnished all overhead, expenses, fees and profits, including the cost of providing storage yards or facilities, all risks and obligations set forth in the Contract; any applicable fees or taxes; and all expenses due to any unforeseen difficulties encountered.
- (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, lease/payment terms, total invoice amount, "remit to" address, purchase order number, description of each item being invoiced, quantity, unit item cost, extended cost by item, contact name and email address. Final invoices must clearly be marked "Final" and cite the amount of the Contract, amount previously paid, and the balance due.
- (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, 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, negotiated in connection with 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 to, based upon accurate and complete data, the Authority shall be entitled to an adjustment in an amount equal to such overpayment. The right granted the Authority hereunder shall be in addition to any other rights it may have under this Contract, the lease hereunder, 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 this Contract 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 may agree. The order shall be specifically identified as a "STOP WORK ORDER" ("SWO") issued under this article. Upon receipt of the SWO, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Contract 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 within any extension 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 to the delivery schedule or price, or both, and modify the Contract in writing accordingly, if, in the judgment of the Contracting Officer or as otherwise determined:
 - (1) The SWO results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract hereunder; 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 claim submitted at any time before final payment.
- (c) If an SWO is not cancelled and the supplies or services are terminated for the convenience of the Authority, the Contracting Officer shall allow reasonable costs, if any, resulting from the SWO in arriving at the termination settlement pursuant to this Contract.

2. TERMINATION FOR DEFAULT

- (a) The Contractor shall be in default, if it breaches of any of its obligations under this Contract deemed material by the Contracting Officer. In addition to those instances specifically referred to in the Contract, the Contractor shall be in default in the following circumstances:
 - (i) It fails to begin, or abandons, this Contract in accordance with the contractual requirements;

- (ii) It fails to deliver the safety apparel and/or accessories or perform the related services within the time specified in the Contract or any extension approved by the Contracting Officer;
 - (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 hereunder 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 hereof (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 terminated. The Authority shall have the right to take any action necessary to complete this Contract, including performing the work itself, or contracting with another party to do so. In the event that the Contract 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 this Contract, including, without limitation, labor, materials, plant costs, tooling, 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 part of this Contract that was not 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 deliver to the Authority, as directed by the Contracting Officer (1) any apparel and accessories (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) 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 be converted to a termination for convenience and the rights and obligations of the parties shall be determined in accordance with the "TERMINATION FOR CONVENIENCE" article of this Contract.

- (g) Any dispute regarding 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 be otherwise subject to further review under this Contract or otherwise. The pendency of any dispute shall not constitute a basis for the delay or suspension of, or otherwise affect, the Authority's right to proceed in accordance with this article, including its right to complete the remaining portion of this Contract as above described, or its right to insist that the Contractor complete any portion of Contract that was not terminated.

- (g) The rights and remedies of the Authority in this article are in addition to any other rights and remedies provided under this Contract, at law or in equity.

3. TERMINATION FOR CONVENIENCE

- (a) The Authority may terminate performance of this Contract, in whole, or in part, if the Contracting Officer determines that a termination is in the Authority's interest. The Contracting Officer shall terminate by delivering to the Contractor, a "Notice of Termination" specifying the extent of termination and the 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, subleases or orders for materials, services, or facilities, except as necessary to complete the remaining portion of the Contract;
 - (4) Terminate all subcontracts to the extent that they relate to the work terminated;
 - (5) Assign to the Authority, as directed by the Contracting Officer, all right(s), of the Contractor under the subcontracts terminated. The Authority shall have the right to settle or pay any termination costs arising out of the subcontracts and have no further liability to the Contractor 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, deliver to the Authority:
 - (1) Parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
 - (2) Completed or partially completed plans, drawings, information and other property that, if the Contract had been completed, would have been required to be furnished to the Authority.

- (8) Take any action that may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the Authority has or may acquire an interest;
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (b) (7). The Contractor is not required to extend credit to any purchaser and 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, but not later than twenty (20) business days following the Authority's issuance of a Notice of Termination pursuant to paragraph (a), the Contractor shall submit a Termination Settlement Proposal (TSP) to the Contracting Officer, in the form 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 TSP pursuant to paragraph (d), the parties shall agree upon the whole or any part of the amount to be paid or remaining to be paid as a result of the termination. The amount may include a reasonable allowance for profit on work completed. In no event shall the total amount to be paid to the Contractor pursuant to this article exceed the total Contract price as reduced by (1) payments previously made and (2) the Contract price of the remaining work, not terminated.
- (f) If the parties 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 thereto, but excluding any costs attributable to items compensated or to be paid for under subparagraph (f)(1);

- (ii) The costs of settling and paying termination costs under terminated subcontracts that are properly chargeable to the terminated portion of this Contract, if not excluded in subparagraph (f)(2)(i); and
 - (iii) A sum, representing profit on the items described in subparagraph (f)(2)(i) 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 this entire Contract had it been completed, the Contracting Officer shall allow no profit under this subparagraph and shall reduce the settlement to reflect the projected rate of loss.
- (3) The reasonable indirect costs of settlement of the work terminated, including:
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (g) Except for normal spoilage, and except to the extent that the Authority expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f), the fair value, as determined by the Contracting Officer, of property that is unavailable or damaged so that it is 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, in no event shall the Authority be obligated to pay interest, however represented on all or part of any claim.
- (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). The Contractor's failure to submit the TSP within the time provided in paragraph (d), or to timely request an extension thereof, shall constitute a waiver of its right to appeal the Contracting Officer's final decision pursuant to the "Disputes" article and/or waiver of any otherwise applicable contractual, legal or equitable remedy.
- (j) In determining any sum due to the Contractor under this article, there shall be deducted:
 - (1) All unliquidated advances or other payments to the Contractor under the terminated portion of this Contract;
 - (2) The value, as determined or reasonably projected by the Contracting Officer, of any claim that the Authority has against the Contractor under this Contract, including any third-party claim, if the Contracting Officer is not satisfied that sufficient insurance coverage is in place; and

- (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other items 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 this Contract hereunder at the remaining price inequitable, the Contractor may file a proposal with the Contracting Officer for an adjustment of the price(s) for the continued portion of this Contract, which proposal shall be submitted within ninety (90) days from the effective date of termination, unless extended in writing by the Contracting Officer. The Contractor's proposal 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, the lease hereunder 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) The Contractor shall not transfer any of its rights and obligations under this Contract to third parties, without the prior consent of the Authority. The Authority may recognize a third party as successor in interest to the Contract in the event of a transfer of all or substantially all of the assets of the Contractor, a division of the Contractor involved in the performance of the Contract, or a parent company providing a performance guarantee under this Contract, (i.e., sales of assets, transfer of assets pursuant to merger or consolidation, or incorporation of a proprietorship or partnership). Such recognition of the transfer shall be within the discretion of the Contracting Officer after review of the facts and circumstances surrounding each request. At the discretion of the Contracting Officer, 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 the Contracting Officer was empowered to conduct a responsibility determination as part of the original solicitation for this Contract. Should the Contracting Officer, for any reason, not recognize such a successor in interest, 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 and the Authority may thereupon terminate this Contract in accordance with the "TERMINATION FOR DEFAULT" article set forth in this 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) 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 Contracting Officer's decision 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 must indicate that an appeal is intended and must reference the decision and Contract number. The decision of the Board of Directors or its duly authorized representative for the determination of such appeals shall be final and conclusive unless in proceedings initiated by either party for review of such decision in a court or board of competent jurisdiction, it determines that the decision was 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 under this article, the appellant 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 this Contract, in accordance with the Contracting Officer's decision. The Armed Services Board of Contract Appeals (ASBCA) is the authorized representative of the Board of Directors for final decisions on 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 this Contract shall be construed as making final, the decisions of the Board of Directors or its representative on questions of law.

CHAPTER VII – INDEMNIFICATION/INSURANCE/RISK OF LOSS

INDEMNIFICATION

1. Contractor shall indemnify, defend and hold harmless the Authority, its directors, officers, employees and agents, from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, and for loss or damage to any property, including the property of the Contractor and the Authority, occurring in connection with, or in any way arising out of the use, occupancy and performance of the work and/or any acts in connection with activities to be performed under this Contract, unless the loss or damage is due to the sole negligence of the Authority. Nothing in the preceding sentence shall be deemed to relieve Contractor from ultimate liability for any of its obligations under this Contract.
2. Contractor shall indemnify, defend and hold harmless the Authority, its directors, officers, employees and agents, against any and all claims, liabilities, losses, demands, damages, penalties, costs, charges, remedial costs, environmental claims, fees or other expenses including attorneys' fees, related to, arising from or attributable to any effluent or other hazardous waste, residue, contaminated soil or other similar material discharged from, removed from, or introduced on, about or under the job site. The foregoing indemnity does not apply to loss or damage due to preexisting conditions, whether known or unknown.
3. If any action or proceeding relating to this indemnification is brought against the Authority, then upon written notice to the Contractor, it 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 under this indemnity at Contractor's sole cost and expense.
4. Contractor understands and agrees that it is Contractor's responsibility to provide indemnification to the Authority pursuant to this section. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the failure of Contractor's insurance to fully fund any indemnification shall not relieve the Contractor of any obligation hereunder.

TITLE AND RISK OF LOSS

- (a) Title to the safety apparel and accessories shall remain in the Contractor. Unless this Contract specifically provides for earlier passage of title to other 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 of the safety apparel or accessories provided in kits to the Authority, other than normal wear and tear, WMATA will be limited to the depreciated value of the safety apparel or accessories, up to the depreciated value of an individual kit. The depreciation shall start at the time of award and run through the period of performance of this Contract. At the end of the performance period for this

Contract, WMATA will return to the Contractor any unused safety apparel or accessories.

INSURANCE REQUIREMENTS

Minimum Insurance Requirements

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

General Insurance Requirements

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

Workers' Compensation and Employer's Liability Insurance:

Required Minimum Limits of Coverage:

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

Required Minimum Coverage(s):

- 1) Workers' compensation statutory coverage must be provided on an "all states" basis.
- 2) Contractor and subcontractors at any tier performing work within five hundred (500) feet of navigable water must have their workers' compensation policies endorsed to provide coverage for both Jones Act liability and Longshore and Harbor Workers' Compensation Act liability.

Commercial General Liability Insurance:

Required Minimum Limits of Coverage:

\$2,000,000	Each Occurrence Limit
\$4,000,000	General Aggregate Limit
\$2,000,000	Products and Completed Operations Limit

Required Minimum Coverage(s):

- 1) Commercial General Liability (CGL) coverage form shall be ISO Occurrence Form CG0001 (12/04) or its equivalent. Equivalency determinations shall be made in WMATA's sole and unreviewable discretion.
- 2) Required minimum limits of coverage may be achieved through a combination of the aforementioned CGL coverage form and umbrella/excess liability coverage form(s), provided that the umbrella/excess liability coverage form(s) provide the same or broader coverage than the prescribed CGL coverage form.
- 3) Policies shall be endorsed with Additional Insured Endorsements in compliance with the "Additional Insured" section below. Commercial general liability and umbrella/excess liability forms must provide defense coverage for additional insureds. The additional insured endorsement shall include products and completed operations coverage with no limitation on when claims can be made. The coverage provided by the additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured Form CG 20 10 11 85 or CG 20 26 11 85, as determined by WMATA.
- 4) Policies shall be endorsed with Waiver of Subrogation Endorsements in compliance with the "Waiver of Subrogation" section below.
- 5) The definition of "Insured Contract" shall be modified to provide coverage for construction or demolition operations that are within fifty (50) feet of a railroad, and sidetrack agreements.
- 6) Defense costs (allocated loss adjustment expenses) must be included and in excess of the policy limits for all primary liability and umbrella excess liability policies.
- 7) Policies shall be endorsed with ISO endorsement CG 25 03 03 97; "Designated Construction Project(s) General Aggregate Limit." Designate "any and all construction projects" as the designated construction project.

- 8) Policies shall be endorsed with ISO endorsement CG 25 04 03 97; "Designated Location General Aggregate Limit." Designate "any and all locations" as the designated location.

Business Automobile Liability

Required Minimum Limits of Coverage:

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

- 1) Business automobile liability insurance shall be written on ISO Business Auto Coverage Form CA 00 01 03 06, or its equivalent. Equivalency determinations shall be made in WMATA's sole and unreviewable discretion.
- 2) Policies shall be endorsed with Additional Insured Endorsement(s) in compliance with the "Additional Insured" Section below.
- 3) Policies shall be endorsed with Waiver of Subrogation Endorsements in compliance with the "Waiver of Subrogation" Section below.
- 4) Business automobile liability minimum combined single limit requirements may be obtained through the combination of a primary business auto liability policy and an umbrella/excess liability policy provided that the umbrella/excess liability policy complies with items 1 through 3 above.

Additional Insured(s)

Contractor and subcontractors at every tier are required to add WMATA and WMATA Board of Directors as additional insureds on all insurance policies that they purchase, including excess liability policies, with the exception of workers' compensation and professional liability insurance policies.

- 1) Coverage provided to any additional insured shall be primary and noncontributory to any other insurance available to the additional insured, including coverage afforded to WMATA as an additional insured by subcontractors, and from other third parties.
- 2) Coverage provided to any additional insured shall be for claims arising out of both ongoing operations and products and completed operations hazards.
- 3) Coverage available to any additional insured under the products and completed operations hazards can only be limited to the applicable statute of repose in the jurisdiction(s) where this Contract's scope of work takes place.
- 4) The coverage provided by the additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured Form CG 20 10 11 85 or CG 20 26 11 85, as determined by WMATA.

Waiver of Subrogation

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

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

Certificate of Insurance (COI)

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

The cert holder box should read:

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

Additionally;

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

CHAPTER VIII – INTELLECTUAL PROPERTY RIGHTS

1. **PATENT INDEMNITY - N/A**
2. **SET-OFF N/A**
3. **RIGHTS IN TECHNICAL DATA – GENERAL – N/A**
4. **RIGHTS IN TECHNICAL DATA – UNLIMITED N/A**
5. **NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT [SUPPLIES] N/A**

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, and D.C. law, the contractor, sub-recipient, or subcontractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, religion, 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 federal government may issue.
- (b) Equal Employment Opportunity: The following equal employment opportunity requirements apply to this Contract, and the lease hereunder:
 - (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. Part 60 *et. seq.*, [implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 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 the Contract. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor, or subcontractor agrees to comply with any implementing requirements the federal government may issue.
 - (2) Age: In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and federal transit law at 49 U.S.C. §5332, the Contractor agrees to refrain from discrimination against present and

prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements the federal government may issue.

- (3) Disabilities: In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the Contractor agrees that it will comply with the requirements of U. S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements that the federal government may issue.
- (c) The Contractor also agrees to include all of these requirements in each subcontract financed, in whole or in part, with assistance provided by the federal government, modified only if necessary to identify the affected parties.
- (d) Failure by the Contractor, sub-recipient, or subcontractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Authority deems appropriate.

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

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

- (a) Overtime requirements. No Contractor, or subcontractor working on 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 work week in which 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 for all such hours worked in excess of forty (40) hours in such work week.
- (b) Violation. Liability for Unpaid Wages - Liquidated damages. In the event of any violation of the provisions of paragraph (a), the Contractor and/or any subcontractor responsible therefore shall be liable to any affected employee for his or her unpaid wages. In addition, such Contractor or subcontractor shall be liable to the Authority for liquidated damages. Such liquidated damages shall be computed with respect to each individual employee employed in violation of the provision of paragraph (a) in the sum of \$10 for each calendar day on which such employee was permitted to be employed on such work in excess of his or her standard work week of forty (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 he or she may determine to be necessary to satisfy any of their liabilities 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 C.F.R. § 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 manufacturing 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 C.F.R. Part 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may be hereafter, be in effect.
- (b) All employees whose work relates to this Contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 C.F.R. § 50-202.2). Learners, student learners, apprentices, and certain handicapped workers may be employed at less than the prescribed minimum wage (See 41 C.F.R. § 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 have been pardoned or who have served their terms; or
 - (3) 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 local union central bodies or similar labor union organizations have been consulted;
 - (iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts or services;

- (iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
- (v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

5. COVENANT AGAINST CONTINGENT FEES

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

If fraud is suspected, the Authority's only remedy until final resolution by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector General (OIG), the Department of Transportation's Office of Inspector General (DOT-OIG), the Inspectors General of any federal, state or local government agency providing funding under this Contract and/or appropriate federal, state and/or local law enforcement authorities.

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 and sub-lessees 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 C.F.R. Part 15, and with 49 U.S.C. § 114(s) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520.

8. LAWS AND REGULATIONS

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

9. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA N/A

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:
 - (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 this Living Wage article 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 this Contract. Include a similar provision in affected subcontracts that requires the parties 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 extension, that one (1) or more of the exemptions in paragraph (d) below applies.
- (c) The Contractor shall not split or subdivide a contract to pay an employee through a third party, or treat an employee as a subcontractor or independent contractor to avoid compliance with the Living Wage Policy.
- (d) Exemptions to the Living Wage Policy 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 policies. 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 Policy shall result in the Authority's right to exercise available contract remedies, including termination.

11. METRIC SYSTEM

To the extent the federal government directs, the Contractor agrees to use the metric system of measurement in its 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 proceeding arising from such inquiry or review.
- (c) The Contractor and its subcontractors shall not interfere with or deny the right of any employee or independent contractor of either the Contractor or any of its subcontractors to make a report under paragraph (a). The Contractor and its subcontractors shall not recommend, take or threaten to take any action having a negative or adverse impact on any employee or independent contractor of either the Contractor or any of its subcontractors because he or she:
- (1) made or is perceived to have made a report under paragraph (a);
 - (2) sought a remedy under applicable law after making a report under paragraph

- (a);
- (3) participated in or cooperated with an inquiry or review by an authorized official of WMATA, or by the federal government or any other governmental entity with jurisdiction over WMATA, regarding a matter that would constitute a report under paragraph (a) or a violation of this or any whistleblower provision of this Contract, or with an enforcement or judicial proceeding arising from such inquiry or review;
 - (4) refused to obey an order that would violate law; or
 - (5) refused to work or authorize work when a hazardous safety or security condition presents an imminent danger of death or serious injury, there was no reasonable alternative to refusal, there was not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, notified the Contractor or subcontractor of the condition and of the intent not to perform or authorize work.
 - (6) 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.

The Contractor and its subcontractors shall comply with the National Transit Systems Security Act (NTSSA) 6 U.S.C. §1142, which prohibits discharging, demoting, suspending, reprimanding or in any other way discriminating against an employee as a reprisal for the employee lawfully and in good faith—

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

- (e) The Contractor shall notify the Authority of any instance, related to this Contract of a report under subparagraph (e)(1) or refusal under sub-paragraphs (e)(2), (3) or (5).
- (f) The enforcement, filing and investigation of complaints, and remedies under this section shall be governed by the NTSSA, applicable federal regulations and federal law.
- (g) 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.
- (h) 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

14. EMPLOYMENT RESTRICTION WARRANTY

- (a) The Contractor warrants that it will not offer employment to, solicit or discuss the interest of prospective employment of, or otherwise engage in substantive employment related discussions or communications with, any present or former Board member or employee of the Authority who has been involved, directly or indirectly, in any matter of financial interest to the Contractor until at least two (2) years after the officer or employee has ceased involvement in or responsibility for the matter. Nor shall the Contractor knowingly engage in communications of the nature described above with any immediate family member or member of the household of any Authority employee during the period in which such employee is involved in any such matter of financial interest to the Contractor.
- (b) If a waiver is granted, or if a former Board member or employee of the Authority is eventually hired, the Contractor shall ensure that the former Board member or employee is not involved in negotiating or otherwise dealing with the Authority on any particular matter over which such Board member or employee had responsibility during his or her period of employment at Authority.
- (c) Should the Contractor fail to comply with the provisions hereof, and no fraud is suspected, the Contracting Officer shall have the right to withhold payment under this Contract in an amount not to exceed two percent (2%) of the total Contract amount as liquidated damages to the Authority, such withholding to be in addition to any other withholding or right of the Authority under this Contract. Any objections or appeal shall be settled in accordance with the "DISPUTES" article of this Contract. If fraud is suspected, the Authority's only remedy until final resolution by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector General (OIG), the Department of Transportation's Office of Inspector General (DOT-OIG), the Inspectors General of any federal, state or local government agency providing funding under this Contract or the lease hereunder, and/or appropriate federal, state and/or local law enforcement authorities.

15. GRATUITIES

- (a) In connection with performance of this Contract, or any changes or modifications relative thereto, and/or the lease hereunder, 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, to any Board Member or employee of the Authority; or to any Director, Officer, employee or agent of any of the Authority's agents, consultants, representatives or other persons deemed to be acting for or on behalf of the Authority with a view toward securing a contract or securing favorable treatment with respect thereto, is expressly forbidden. The terms of this "Gratuities" article shall be strictly construed and enforced in the event of violations hereof.
- (b) Reported instances of the giving or offering to give gratuities within the context of this "Gratuities" article will be investigated by the Board of Directors or its duly authorized representative. A preliminary investigation will be made to determine whether there is probable cause to suspect that a violation of this article has been committed. If such probable cause is found to exist, the Board of Directors, or its duly authorized representative, shall formally notify WMATA's Office of Inspector General (OIG), the Department of Transportation's Office of Inspector General (DOT-OIG), the Inspectors General of any federal, state or local government agency providing funding under this Contract or the lease hereunder, and/or appropriate federal, state and/or local law enforcement authorities.
- (c) The rights and remedies of the Authority provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

16. OFFICIALS NOT TO BENEFIT

- (a) No member of or delegate to Congress, resident commissioner, or member of a state or local public body shall be admitted to any share or part of this Contract, or to any benefit that may arise therefrom during his or her tenure or for two (2) years thereafter. This provision shall not be construed to extend to any interest in an entity that is awarded this Contract that is placed in a blind trust in accordance with the rules and regulations of the U.S. Office of Government Ethics (OGE).
- (b) Enforcement of this article shall be consistent with 18 U.S.C. §431.

17. ORGANIZATIONAL CONFLICT OF INTEREST

- (a) An organizational conflict of interest (OCI) exists when the nature of the work to be performed under a proposed contract or a subcontract may, without some restriction on future activities result in an unfair competitive advantage to the Contractor or a subcontractor; because of (1) unequal access to information, (2) biased ground rules or (3) impaired objectivity. An unequal access to information OCI may exist if in performing a contract, a contractor obtains access to non-public information that provides a competitive advantage to it in a later competition. A biased ground rules OCI may exist if the contractor has a role in setting rules for a source selection in which the contractor will compete. An impaired objectivity OCI may exist if, in performing a contract, a contractor is called upon to evaluate an offer from or performance by itself or an affiliated entity.

- (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 OCI. 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 stating whether: (1) no mitigation is required; (2) the conflict cannot be mitigated; or (3) the conflict can be mitigated and he or 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 being terminated.
- (d) Should the Contractor identify or become aware of a conflict during the term of this Contract, including any extension thereof that it could not reasonably anticipate prior to award, it shall notify the Contracting Officer in accordance with paragraph (b) above, or request an exception to the restriction with supporting rationale. The Contracting Officer shall consider the Contractor's proposed measures to mitigate or eliminate the conflict, or the request for an exception.
- (e) If the proposed measures are not determined to be feasible or are otherwise not acceptable to the Contracting Officer, the Contracting Officer may terminate the Contract. If the Contracting Officer does not grant a request for an exception, and the Contract is not terminated for convenience, the Contractor shall be notified in writing and be given ten (10) days from the date of the written notification to take all necessary actions to comply with this clause.
- (f) If the proposed measures are determined to be 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 obligations under this Contract and the duties and obligations imposed on the Contractor under another contractual or other relationship.
- (g) If the Contractor fails to comply with the terms of this clause, and no fraud is suspected, the Contracting Officer, may withhold payments due under this Contract until such time as the Contractor is in compliance or, should the noncompliance remain uncorrected at the expiration of ten (10) days from written notice from the Contracting Officer as provided in subparagraph (d)(2), terminate the contract for default pursuant to this Contract.
- (h) If fraud is suspected, the Authority's only remedy prior to a final determination by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any state or federal agency providing funding under this Contract and/or appropriate federal, state and/or local law enforcement authorities.
- (i) 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.

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

18. CONTRACTOR PERSONNEL

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

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 that end, to take all reasonable steps to ensure that statements, claims and submissions made pursuant to the Contract are provided in good faith and with a reasonable belief as to their truthfulness, accuracy and completeness.
- (b) In the event that it is finally determined 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 knowingly 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 or lease hereunder shall be deemed material, if it impacted or could reasonably have been intended to impact the disposition of any claim, dispute, proposed or implemented change order, proposed pricing or schedule adjustment of any nature, or other substantive issue directly affecting the rights of the parties under the Contract.
- (c) The Authority's only remedy until final resolution by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector General (OIG), the Department of Transportation's Office of Inspector General (DOT-OIG), the Inspectors General of any federal, state or local government agency providing funding under this Contract and/or appropriate federal, state and/or local law enforcement authorities.
- (d) 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 this Contract. This article shall not 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 and/or lease 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 such federal excise tax or duty that was otherwise 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 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 this Contract was executed by the Authority. As to additional supplies or services procured by modification to this Contract, hereunder 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, the Contractor certified that none of the taxes as to which the Authority is exempt were included in its bid price(s) or the final Contract price. In the event that the Authority learns that, notwithstanding this certification, any taxes to which the Authority is exempt are included in the final Contract price, the Authority shall be entitled to a reduction in the Contract price reflecting such amount and a refund of monies paid related to such taxes, plus applicable interest.

3. PUBLIC COMMUNICATION

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

4. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

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

5. SEVERABILITY

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

6. SURVIVAL

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

7. ALL NECESSARY PROVISIONS DEEMED INCLUDED

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

CHAPTER XI-WMATA POLICIES

1. SAFETY REQUIREMENTS

- (a) The Contractor shall be responsible for ensuring compliance with the most stringent provisions of the applicable statutes and regulations of the District of Columbia, State of Maryland, Commonwealth of Virginia or political subdivision in which the work is being performed, as well as the Department of Labor OSHA standards pertaining to the safe performance of the work.
- (b) Further, the Contractor shall ensure that all methods of performing the work do not involve danger to the personnel employed thereon, the public and private property, whether or not these methods are cited or indicated in this Contract. 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 Contracting Officer.

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. Contractor employees and candidates who pass the background screenings are eligible to enter WMATA's property once WMATA issues them a contractor's badge. Contractor employees and candidates who do not authorize background screenings or whose background screenings are unsatisfactory will not be granted contractors' 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, the Contractor represents that: (1) it has established a zero tolerance policy for acts of workplace violence by its employees and subcontractors at any tier, and (2) Neither it nor its subcontractors will retaliate against their employees or independent contractors for cooperating with investigations.



MID-ATLANTIC PURCHASING TEAM RIDER CLAUSE

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

Extension to Other Jurisdictions

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

Inclusion of Governmental & Nonprofit Participants (Optional Clause)

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

Notification and Reporting

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

Contract Agreement

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

Mid-Atlantic Purchasing Team:

____ Alexandria Public Schools
____ Alexandria Sanitation Authority
____ Arlington County, Virginia
____ Arlington County Public Schools
____ Bladensburg, Maryland
____ Bowie, Maryland
____ BRPC
____ Charles County Public Schools
____ City of Fredericksburg
____ College Park, Maryland
____ District of Columbia Government
____ District of Columbia Public Schools
____ District of Columbia Water & Sewer Auth.
____ Fairfax, Virginia
____ Fairfax County, Virginia
____ Fairfax County Water Authority
____ Falls Church, Virginia
____ Fauquier County Schools & Government

____ Gaithersburg, Maryland
____ Greenbelt, Maryland
____ Herndon, Virginia
____ Leesburg, Virginia
____ Loudoun County, Virginia
____ Loudoun County Public Schools
____ Loudoun County Water Authority
____ Manassas, Virginia
____ City of Manassas Public Schools
____ Manassas Park, Virginia
____ Maryland-National Capital Park & Planning Comm.
____ Maryland Department of Transportation
____ Metropolitan Washington Airports Authority
____ Metropolitan Washington Council of Governments
____ Montgomery College
____ Montgomery County, Maryland
____ Montgomery County Public Schools

____ Northern Virginia Community College
____ Prince George's Community College
____ Prince George's County, Maryland

____ Prince George's Public Schools
____ Prince William County, Virginia
____ Prince William County Public Schools
____ Prince William County Service Authority
____ Rockville, Maryland
____ Spotsylvania County
____ Spotsylvania County Government & Schools
____ Stafford County, Virginia
____ Takoma Park, Maryland
____ Upper Occoquan Service Authority
____ Vienna, Virginia
____ Washington Metropolitan Area Transit Authority
____ Washington Suburban Sanitary Commission
____ Winchester, Virginia
____ Winchester Public Schools

____ Frederick, Maryland
____ Frederick County, Maryland

TECHNICAL

SPECIFICATIONS & SCOPE OF SERVICES

Scope of Work

Safety Protective Apparel

Flame Resistant Apparel and Accessories

Washington Metro Transit Authority

12/31/2015*



Background/Contract Responsibilities

OSHA mandates that employers provide and maintain safety/protective wear for employees in accordance with regulations at 29 C.F.R. Part 1910, Subparts S and I.

Washington Metro Transit Authority (WMATA) currently provides flame resistant (FR) Arc Flash safety protective suits/kits to employees at various locations in the Washington Metropolitan Area utilizing a decentralized process. This has caused a lack of consistency in appropriate garment types and inconsistent quality. WMATA has also lost any pricing leverage it might have gained through bulk purchasing and/or leasing.

WMATA's Office of System Maintenance- Power Division requires the services of a qualified and experienced company to effectively manage a rental program for flame resistant clothing in compliance with 29 C.F.R. Part 1910, Subparts S and I. Services include supplying, and servicing flame resistant safety apparel and accessories as specified herein. The Contractor also must be experienced in appropriately laundering protective wear in accordance with industry standards. Laundry services will include pick-up and delivery of apparel, as needed.

To be eligible for award consideration, bidders must demonstrate their company's experience and capability to successfully fulfill Contract requirements. As a part of this Invitation for Bids (IFB), companies must also complete and return the Pre- Award Evaluation Section. This section will be used to assess Company's ability to meet and maintain Contract requirements. **NOTE:** Failure to complete and return requested sections (including Schedule of Prices) will result in Company being ineligible for award consideration.

Scope of Work:

Where the term Contractor is referenced it denotes Successful Bidder.

Where "Brand Name" is specified in this document it is used to denote minimum quality standards desired and does not restrict Bidders to that specified brand: However, any other Brand name being offered must meet minimum criterions of "Specified Brand". Additionally Bidder must include descriptive data on brand being offered if proposing an alternative brand. Bidders are advised that any brand offered must be OSHA 29 CFR 1910 Subparts S and I certified: Bidders will be responsible for verifying certification.

Contractor's Responsibilities include the following:

The Contractor must comply with OSHA 29 CFR 1910 Subparts S and I requirements in managing a successful rental/lease program that supplies appropriate personal protective safety apparel & accessories: Requirements also include conducting regular inspections of apparel; repairing/replacing and/or upgrading apparel as needed; provide proper laundering services for apparel and accessories as needed in compliance with Industry Standards.

The Contractor shall provide an Account Manager to oversee Contract compliance and management oversight and maintain efficiency of service operations throughout contract performance term all WMATA service locations.

The Contractor will provide measuring and tailoring services for WMATA's employees; this includes fitting new employees.

Delivery of garments and any service request will be provided no later than seven (7) week days from notice of request.

Contractor will deliver to specified locations no later than seven (7) week days after notice, applicable apparel in accordance with requirements and OSHA regulations at 29 C.F.R. Part 1910, Subparts S and I. At all times throughout the Contract and the lease thereunder, Contractor will maintain ownership of the apparel and provide sufficient quantities for WMATA's personnel.

Contractor also shall provide electrical gear bags and Class O and 4 electrical gloves with leather protection and bags Electrical Gloves shall be replaced twice yearly (every 6 months). Damaged gloves will be replaced immediately and must be tested at the time of replacement. If any gloves become damaged before the six (6) months are up, the Contractor will provide a new pair of gloves.

The Contractor will provide Ultra Soft Hoods (Balaclava) and standard electrical gear bags for all power personnel.

Contractor will provide electrical rated anti-fog face shields with hard hats and chin guards for all power personnel.

Contractor must provide e-commerce to increase purchasing efficiencies.

Contractor's unit price quoted includes all necessary costs in providing services/supplies; including but not limited supplying Arc Flash PPE & accessories (with delivery); laundry services (scheduled pick-ups and deliveries); measurement/repair of apparel; apparel upgrades; adjustments for changes in sizes; travel, overhead and other related contract requirements.

The Contractor will provide a LIGHT WEIGHT Multi-Layer *Kevlar/Nomex Coat*.

Personal Protected Wear will be provided in two (2) kits each kit described as following:

KITs WILL BE IDENTIFIED BY SERIALS NUMBERS

1ST KIT Requirement Garment

- Flash suit bib pants (AR)
- Flash suit jacket (AR)
- Flash suit hood (AR)
- Flash Face Shield
- Hard Hat
- Goggles (SR)- one pair
- Hearing protection device

2ND KIT (PPE)

- Electrical Gear Bag
- Electrical Gloves, Class O- w/ Leather Protection and bag
- Electrical Gloves, Class 4 w/ Leather Protection and bag

Technology

The Contractor will provide the following:

- A web-based customer portal for safety product requests to include arc flash kits and arc rated gloves.

- A secured website for WMATA order personnel.

- Provide bar coding technology to track safety arc suits within WMATA's facilities for repairs and replacements.

- Provide hand-held devices for route representatives to make changes and track safety quality of apparel and accessories.

Ordering process

WMATA personnel will be able to order new arc rated safety suits through a safety sales representative, through an online system, or via email to a safety sales representative.

The contractor will confirm WMATA's request, in writing within twenty four (24) hours from receipt.

- Contractor will provide tracking information to WMATA regarding order status and inventory location (s).

- Contractor's average turnaround time will not exceed one (1) week from notice for arc-rated garments/kits.

- Contractor has capability that will allow WMATA to place orders online for service/supplies.

Invoicing/Billing

- Contractor has a direct site to view and access invoices and statements online.

- Contractor will provide consolidated monthly invoices paper or electronically.

Reporting and Information Systems

- Contractor's assigned account manager will provide monthly customized reports to WMATA at no addition cost.

Quality Control and Performance Measurement

- At Contractor's facility, the Contractor will separate and count soiled apparel, weigh and measure for washing, each garment type, ensuring that OSHA regulations at 29 C.F.R. Part 1910 Subparts S and I are followed.

Contractor will proactively inspect, repair, and replace as needed each arc-rated suit, and do a final count prior to delivery for the following week.

Contractor's product warranty is guaranteed through lifespan of all safety arc-rated suits and will be repaired or replaced as needed at contractor's expense.

Process for Account Management

Contractor will provide services as requested to **specified** locations using a centralized process to maintain quality for safety arc-suits throughout WMATA.

Contractor will provide weekly documentation showing what safety wear is being picked-up/delivered for laundry, repair or upgrade.

Implementation/Transition Plan

Contractor will schedule employee fitting events at each site for the specific arc-rated safety suits.

Contractor is responsibility for transferring suits of different ratings to employees as required by 29 C.F.R. Part 1910, Subparts S and I standards for regional specifications.