



Invitation For Bid

[Non-Federal]

Netscout

IFB No.: CQ16077

Date: March 2, 2016

**BIDS DUE: March 30, 2016
AT 2:00 PM EST**

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INTRODUCTORY INFORMATION

SOLICITATION CERTIFICATIONS PAGE


IFB No. CQ16077

APPROVED FOR RELEASE



Al Pegram Date
Portfolio Manager/Office Designee

3-2-16



Thomas E. Savoie
Contract Manager

3/2/16
_____ Date



COUN

8 March 2016
_____ Date

END OF SECTION

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT **IFB No. CQ16077**

DATE: March 2, 2016

SUBJECT: Invitation for Bid (IFB) No. CQ16077 – Netscout Infinistream

Washington Metropolitan Area Transit Authority (WMATA) is seeking bids from **qualified Netscout Authorized Resellers/Partners or Netscout to provide Netscout hardware and software including Maintenance and Support services 24 hour x 7 days/week x 355/ or 356 days/year.** NOTE: The IFB contains a zero (0%) percent DBE Goal requirement.

Washington Metropolitan Area Transportation Authority ("WMATA"), has deployed a Carrier class network that supports all of its operational and administrative voice and data network requirements. The network has over 4000 network elements. WMATA along with numerous other agencies, is constantly under attack by hackers and must ensure that its network is well protected. In addition, with such a large network, operational anomalies are inevitable. As a result, WMATA has a need to perform real-time analysis of all traffic carried on its network. The tool that will best satisfy WMATA's requirements is the Netscout's Infinistream.

A pre-bid conference will not be held. Your bid must be submitted in accordance with IFB terms and delivered to WMATA's, Office of Procurement and Materials, Attn: Benjamin T. Kpadeh, Ref. No IFB No. CQ16077, 600 Fifth Street, N.W., Room 3C-02, Washington, DC 20001. **Bids must be received before or no later than 2:00 P.M. EST (US & Canada) on March 30 2016.**

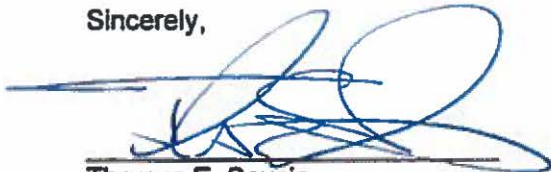
If you have any questions, Technical, Contractual or Administrative please email them to the Contract Administrator, Benjamin T. Kpadeh at bkpadeh@wmata.com no later **than 11:00 AM EST (US & Canada), on March 15, 2016.** WMATA will provide written answers, by email to all those who obtain the IFB and provide their email addresses.

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

Required bid documents:

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

Sincerely,



Thomas E. Savoie
Contract Manager

**NOTICE TO BIDDERS
IMPORTANT
PLEASE READ CAREFULLY**

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

1. Have you checked your bid? Are all items included and checked for math errors?
2. If Amendments are included, have you acknowledged and recorded the number of Amendments on the bid envelope and bid form?
3. Have you signed and submitted the bid form Solicitation, Offer & Award page(s)?
4. Have you properly completed and checked the appropriate box for each Certification and Representation? Have you included the Representations and Certifications with your bid?
5. Have you completed and included pre-award data?
6. Have you complied with the Appendix C requirements?
7. The Contractor's pricing, if offered to other jurisdictions, will be the same regardless of quantities ordered and the Authority makes no representations regarding the quantities that may be ordered by any such jurisdictions.
8. The bid envelope must be marked with solicitation number and addressed to the Contract Administrator, Benjamin T. Kpadeh.
9. Copy(ies) of required Certificate(s) of Insurance must be included.

NOTICE TO ALL VENDORS

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

New Vendor Registration.

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

Forgot User Id/Password.

Registered Vendor Benefits:

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

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

TECHNICAL SPECIFICATIONS

SCOPE OF WORK (SOW)
NETSCOUT

Introduction

Washington Metropolitan Area Transportation Authority (“WMATA”) has deployed a Carrier class network that supports all of its operational and administrative voice and data network requirements. The network has over 4000 network elements. WMATA, along with numerous other agencies is constantly under attack by hackers and must ensure that its network is well protected. In addition, with such a large network, operational anomalies are inevitable. As a result, WMATA has a need to perform real-time analysis of all traffic carried on its network. The tool that will best satisfy WMATA’s requirements is the Netscout’s Infinistream.

Project Scope

The scope of this requirement will include:

- a. Shipment of all hardware and software to WMATA’s headquarter location:
Attn.: Mr. Al Pegram, Washington Metropolitan Areas Transit Authority (WMATA),
Jackson Graham Building (JGB), 600 5th Street, NW, Washington DC, 20001.
- b. The installation, configuration and testing of the Netscout application in WMATA’s Headquarter Data Center located in the Jackson Graham Building (JGB).
- c. Training and Knowledge Transfer

Vendor Requirements

- a. Vendor shall provide a dedicated project manager
- b. Vendor shall ensure all equipment and materials needed are delivered and logged
- c. Vendor shall install, configure and test the application
- d. Vendors shall provide a recommended training/knowledge transfer plan.

WMATA Requirements

- a. WMATA shall provide a dedicated project manager
- b. WMATA shall provide escort and access to all necessary computer resources
- c. WMATA shall secure an appropriate training environment
- d. WMATA shall ensure that required subject matters experts are available to assist the vendor as needed.

Warranty

Vendor is required to provide one (1) full year maintenance and technical support. The full system outage maintenance response time shall be within four (4) hours and repair within twenty-four (24) hours.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT IFB No. CQ16077

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SOLICITATION, OFFER AND AWARD

CONTRACT NO.	SOLICITATION NO. IFB No. CQ16015	DATE ISSUED	ADDRESS OFFER TO OFFICE OF PROCUREMENT Office of Procurement 600 Fifth Street NW Washington, DC 20001
	<input checked="checked" type="checkbox"/> ADVERTISED <input type="checkbox"/> NEGOTIATED		

SOLICITATION

Sealed offer in original and TWO (2) copies for furnishing the supplies or services in the schedules will be received at Authority until 2:00 P.M. EST (US & Canada) local time March 30, 2016.
 (Hour) (Date)

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

All offers are subject to the following:

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

Bidder's Phone Number _____ **Bidder's Fax Number** _____

SCHEDULE					
ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	See Schedule of Prices				\$

DUN & BRADSTREET ID NUMBER: _____

OFFEROR

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

AWARD (To be completed by The Authority)

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

ITEM NO.	QUANTITY	UNIT	UNIT PRICE

The total amount of this award is \$ _____

Name of Contracting Officer (Print of Type)

WASHINGTON METROPOLITAN TRANSIT AUTHORITY

AWARD DATE

SOLICITATION, OFFER AND AWARD

SCHEDULE OF PRICE

Product Description	QTY	Unit Price	Extended Price
nGenius InfiniStream, 4-Port 10 Gigabit Configurable (SFP+), 12TB (Expandable)	1		
Master Care Support – 4595/DS	1		
SFP + MM, 10GB SR, 850nm, LC	4		
Extended Storage Unit (ESU) for InfiniStream, 48TB	1		
Master Care Support – ESU-ZS	1		
Two-day Virtual Classroom Training (Class conducted over 4 half days)	10		
		Total	

 Authorized Signature

 Print Name

 Title

 Company Name

 Phone Number

 Email Address

 Date

**SOLICITATION, OFFER AND AWARD
CONTINUATION SHEET
SCHEDULE OF PRICE
ACKNOWLEDGMENT OF AMENDMENTS**

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

Amendment Number____, dated_____

Amendment Number____, dated_____

Amendment Number____, dated_____

Amendment Number____, dated_____

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

DIRECTIONS FOR SUBMITTING BID:

1. Read and comply with the Solicitation Instructions. This form is to be submitted with the Bid Schedule. Attached certification and Appendix C (Small Business & Local Preference Program – SBLPP) data must be completed and returned with the bid forms.
2. Representations and Certifications
3. Envelopes containing bids and related required documents must be sealed, marked and addressed as follows:
4. Certificate of Insurance

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY
BID UNDER SOLICITATION CQ16077
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. EST (US & CANADA) ON DAY OF BID CLOSING, MARCH 30, 2016. BIDS HAND CARRIED BETWEEN 1:00 P.M. AND 2:00 P.M. SHOULD BE PRESENTED TO THE CONTRACT ADMINISTRATOR, BENJAMIN T. KPADEH.

SOLICITATION INSTRUCTIONS

INVITATION FOR BID
SOLICITATION INSTRUCTIONS

1. INTRODUCTION

Washington Metropolitan Area Transportation Authority (“WMATA”) has deployed a Carrier class network that supports all of its operational and administrative voice and data network requirements. The network has over 4000 network elements. WMATA, along with numerous other agencies is constantly under attack by hackers and must ensure that its network is well protected. In addition, with such a large network, operational anomalies are inevitable. As a result, WMATA has a need to perform real-time analysis of all traffic carried on its network. The tool that will best satisfy WMATA’s requirements is the Netscout’s Infinistream.

- b. As this is a low bid solicitation, award of a Contract hereunder shall be to the lowest priced, responsible bidder whose bid is responsive to, and meets all requirements of, the solicitation.
- c. The Authority contemplates award of a firm fixed price contract.

2. GOODS TO BE FURNISHED/SERVICES TO BE PERFORMED

Bidders are advised that:

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

3. COMMUNICATIONS WITH THE AUTHORITY

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

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY
BID UNDER SOLICITATION CQ16077
OFFICE OF PROCUREMENT, ATTN.: BENJAMIN KPADEH
600 FIFTH STREET N.W.
WASHINGTON, DC 20001

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

4. EXPLANATIONS TO BIDDERS

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

5. PRE-BID MEETING

THERE WILL BE NO PRE-BID MEETING OR CONFERENCE.

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

6. AMENDMENTS TO IFB

- a. The Authority reserves the right to revise or amend the terms of this IFB, the proposed Contract terms and conditions, the scope of work and/or drawings prior to the date set for the opening of bids. Such revisions and amendments, if any, will be announced by amendment(s) to this Invitation for Bid. Written copies of such amendment(s) as may be issued will be made available to all prospective bidders.
- b. If, in the judgment of the Authority, any such amendment(s) would require significant changes in quantities and/or bid price, the date set for the opening of bids may be postponed by such number of days as, in the opinion of the Authority, will enable bidders to revise their bids. In such cases, the Amendment will include an announcement of the new date for the opening of bids.

7. ACKNOWLEDGMENT OF AMENDMENTS

Bidders are required to acknowledge receipt of all amendments to this IFB on the Amendment Acknowledgement Form prior to opening of bids. Failure to acknowledge all amendments may cause the bid to be considered not responsive to the solicitation, which would require rejection of the bid.

8. PREPARATION OF BIDS

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

- f. Unless specifically called for in the Price Schedule, alternate bids will not be considered.

9. SUBMITTAL OF BIDS

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

10. RESPONSIVE BIDS

- a. Bidders are advised that a bid that is at variance or noncompliant with any provision of this solicitation, including a qualified or conditional bid, may be rejected as nonresponsive.
- b. The Authority may reject a bid as nonresponsive if, in the judgment of the Authority, the prices bid are materially unbalanced. A bid is materially unbalanced when it is based on prices that are significantly understated for one (1) or more elements of work and significantly overstated for other element(s) of work.
- c. Notwithstanding anything to the contrary contained herein, the Authority reserves the right to waive minor errors or omissions with respect to a bid and to deem such bid responsive.

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

- a. Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it--
 - (1) Was sent by registered or certified U.S. or Canadian mail not later than the fifth day before the date specified for receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th);
 - (2) Was sent by first class mail and it is determined by the Authority that the late receipt was due solely to mishandling by the Authority, after its timely delivery on Authority premises;

- (3) Was sent by U.S. Postal Service Express Mail Next Day Service not later than 5:00 p.m. at the place of mailing at least two (2) business days prior to the date specified for receipt of bids. The term "business days" excludes weekends and U.S. federal holidays; or
- (4) Is the only bid received.
- b. Any modification or withdrawal of a bid is subject to the same conditions as set forth in subparagraphs (a)(1), (2), and (3) above.
- c. The only acceptable evidence to establish the time of receipt by the Authority is the time/date stamp of that event on the bid wrapper or other documentary evidence of receipt maintained by the Authority.
- d. Notwithstanding 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.
- e. Bids may be withdrawn by written notice received by the Authority before the opening of bids. Bids may be withdrawn in person by a bidder, or an authorized representative of the bidder, if the representative's identity is established to the satisfaction of the Authority and the representative signs a receipt for the return of the bid, before the opening of bids. The attempted withdrawal of a bid, received subsequent to the bid opening and during the acceptance period set forth in paragraph 12, will not be honored and will be without effect.

12. BID ACCEPTANCE PERIOD AND BIDDER'S DEFAULT

- a. The acceptance period for this solicitation is ninety (90) calendar days.
- b. By submission of its bid, the bidder agrees that it 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 accept and/or proceed to execute a Contract from WMATA in accordance with its bid during the acceptance period shall constitute a bidder's default.
- c. In the event of a bidder's default, the bidder shall be liable to WMATA for all associated damages and costs, including without limitation, WMATA's "cost to cover", i.e. the difference between the 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

NOT APPLICABLE TO THIS SOLICITATION

- a. This solicitation requires submission of a Bid Guarantee to secure compliance with the Bidder's obligation to execute and furnish such documents as may be required in the solicitation and accept and proceed to execute a contract upon acceptance by the Authority of its Bid during the Acceptance Period.
- b. The Bid Guarantee shall be in the nature of a Bid Bond in the form annexed hereto as Appendix N/A, or in a postal money order, certified check, cashier's check, or irrevocable letter of credit in a form and from an institution acceptable to the Authority, and shall be provided in an amount equal to five percent (5%) of the total sum bid.
- c. The Bid Guarantee, other than a Bid Bond, shall be returned to unsuccessful Bidders as soon as practicable upon the opening of Bids and to the Bidder to whom a Contract hereunder is tendered as soon as practicable upon its furnishing of such documents as are required by the solicitation and acceptance of the proffered contract.

14. BID MISTAKE

- a. A bidder who seeks to withdraw its bid subsequent to bid opening due to a claimed mistake or error in preparation shall notify the Authority in writing immediately upon realizing the mistake and in no event later than two (2) days following bid opening, setting forth the details of, and explanation for, the claimed mistake. The Authority shall evaluate the claimed mistake and determine whether the bidder will be permitted to withdraw its bid.
- b. In the event of an apparent discrepancy between any unit price and its associated extended price, the unit price will be presumed to be correct. The Authority may proceed to award a Contract to an otherwise low bidder based upon the unit price, subject to the additional terms of this paragraph.
- c. A bidder claiming a mistake shall, if so requested by the Contracting Officer, appear before one or more designated representative(s) of the Authority to provide testimony and/or documentation, that may include the Bidder's computation sheets and calculations, to assist in the Authority's determination.
- d. Nothing contained herein shall be deemed to preclude the Authority from allowing a bidder to cure a deficiency in an otherwise responsive bid where the Authority determines that such deficiency is in the nature of a minor informality or irregularity.

15. REPRESENTATIONS, CERTIFICATIONS, AND ACKNOWLEDGMENTS

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

16. LAWS AND REGULATIONS

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

17. ROYALTY INFORMATION

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

18. REQUIREMENT FOR COST DATA FOR CONTRACT AWARD

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

19. PRE-AWARD INFORMATION/BIDDER RESPONSIBILITY

- a. In order to be eligible for award, the low Bidder will be required to demonstrate its ability to perform services contained in the solicitation, in a timely manner, to the complete satisfaction of the Authority. Failure on the part of the low bidder to so demonstrate that it maintains the requisite integrity, overall technical capability and financial resources to perform the Contract in a satisfactory and timely manner

may result in a rejection of the low bidder as not responsible. In such event, the second lowest bidder will be required to demonstrate its responsibility, a process that will continue until a bidder successfully demonstrates that it is responsible for purposes of this solicitation.

- b. To assist in the Authority's evaluation of its responsibility for purposes of award of a Contract hereunder, the apparent lowest responsive bidder shall furnish the following when requested by the Contracting Officer:
- (1) A completed and signed Pre-Award Evaluation Data form (copy attached), including the required financial statements;
 - (2) Disadvantaged or Small Business Enterprise data as set forth in Appendix B (if applicable).

20. PRE-AWARD MEETING

The Authority reserves the right to require that a pre-award meeting be held with the apparent low Bidder prior to award of a Contract in order to assist the Authority in determining the Bidder's responsibility for purposes of award.

21. SITE VISIT/INSPECTION OF BIDDER'S FACILITIES

NOT APPLICABLE TO THIS SOLICITATION – SITE VISIT IS NOT REQUIRED

Bidders must provide and maintain sufficient facilities that will allow them to adequately perform contract functions as specified herein. WMATA may make site visits prior to contract award to examine the Bidder's facilities. This will include N/A and also to verify that necessary equipment, supplies, etc. are readily available.

22. BASIS FOR AWARD

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

23. CONTRACT AWARD

A written award 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. It has been the practice of the District of Columbia to apply the Authority's tax exempt status to certain purchases of materials required under Authority construction contracts and acquired by contractors for physical incorporation into the project work. This has not been the practice in either Maryland or Virginia. The Authority does not represent or warrant that the District of Columbia practice applies to this project or, if it does, that it will continue in effect during the term of this project. It is the responsibility of the Contractor to determine its liability for any and all taxes applicable to this project. Assessment or payment of taxes by the

Contractor, including taxes resulting from changes in existing laws or the application thereof or of new or additional taxes, shall not constitute the basis for an increase in the Contract price, except as otherwise allowed under the article, "Federal, State And Local Taxes", of this Contract.

- c. The Authority's tax exempt numbers are as follows: District of Columbia -- 5611-0082187-001; Maryland -- 30072210; Virginia -- 5280-0067
- d. By submission of its bid, the bidder certifies that none of the taxes to which the Authority is exempt are included in its bid price(s).

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. PERFORMANCE AND PAYMENT BONDS

NOT APPLICABLE TO THIS SOLICITATION – NOT REQUIRED

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

REPRESENTATIONS AND CERTIFICATIONS
(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 to be 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.: _____

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

3. SMALL BUSINESS & LOCAL PREFERENCE PROGRAM (SBLPP)

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

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

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 director, officer or employee of the Authority with the view toward securing favorable treatment in the awarding, amending, or the making of any determination with respect to the performing of the Contract.

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

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

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

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, national origin, sex, age, disability or sexual preference in the performance of this Contract. The offeror is required to insert the substance of this clause in all subcontracts and purchase orders. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in its

termination 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.

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

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

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

- (c) The certification required by subparagraphs (a) and (b) above shall be included in all subcontracts. The prime Contractor shall furnish copies of certifications to the Contracting Officer and retain a copy for inspection upon 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

PRE-AWARD EVALUATION DATA
PROJECT DESCRIPTION:

1. Name of Firm: _____

2. Address: _____

3. Individual Partnership Corporation Joint Venture
4. Date Organized _____.
State in which incorporated _____.
5. Names and Addresses of Officers or Partners:
 - a. _____
 - b. _____
 - c. _____
 - d. _____
 - e. _____
 - f. _____
6. How long has your firm been in business under its present name? _____
7. Attach as SCHEDULE ONE (1), a list of current contracts, that demonstrate your firm's proficiency, each with contract amount, name of contracting party, type of work and percentage of completion.
8. Attached as SCHEDULE TWO (2), a list of similar contracts, each with contract amount, name of contracting party, and character or type of work for similar contracts completed in the last two (2) years.
9. In the last two (2) years, has your firm ever been denied an award where it was low bidder/offer? If the answer is YES, attach as SCHEDULE THREE (3), the full particulars regarding each occurrence.
10. Has your firm ever failed to complete any Contract, , on which it was the low bidder?
If the answer is YES, attach as SCHEDULE FOUR (4), the full particulars regarding each occurrence.
11. Financial resources available as working capital for the Contract:

TERMS AND CONDITIONS

CHAPTER I – GENERAL PROVISIONS

1. AGREEMENT

The work to be performed under this Contract may be briefly described as a contractor providing Netscout hardware and software including Maintenance and Support services 24 hour x 7 days/week x 355/ or 356 days/year for one (1) year. The Contractor agrees to perform the work in accordance with requirements and terms and conditions hereinafter set forth in the Contract documents. In consideration for the complete, satisfactory and proper performance thereof by the Contractor, the Authority agrees to pay to the Contractor, and the Contractor agrees to accept as full compensation 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 documents.

2. ARRANGEMENT OF CONTRACTUAL PROVISIONS

For ease of reference, the provisions of these Contract documents are divided into chapters, articles, paragraphs and subparagraphs. While the chapters and articles are titled, it is understood that both the use of such titles and the manner and overall arrangement of the contractual provisions within the Contract documents are intended solely for the convenience of the parties and are without independent contractual or legal significance.

3. ORDER OF PRECEDENCE

- (a) Any inconsistency in the Contract Documents shall be resolved by giving precedence in the following order: (a) terms and conditions (c) the specifications or scope of work; (d) drawings, if any; (e) other documents, exhibits, and attachments generated by the Authority as part of the Contract documents; (f) the technical proposal, if any, and other submissions of the Contractor generated as part of the Contract documents. In the event of a conflict within or between provisions entitled to equal precedence pursuant to the foregoing, the more stringent requirement shall apply.
- (b) Notwithstanding paragraph (a), in the event that this Contract is funded in whole or part 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

NOT APPLICABLE TO THIS SOLICITATION

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

a material breach of the Contractor's obligations pursuant to the provisions of the TERMINATION FOR DEFAULT article hereof, or any other right to which the Authority may be entitled pursuant to this Contract or at law or equity.

5. AUDIT, AVAILABILITY, AND INSPECTION OF RECORDS

- (a) Authorized persons. The Contracting Officer and his or her representatives, including representatives of the Authority's governing jurisdictions and any other federal, state, or local entity providing funding for this Contract and the Comptroller General of the United States, shall have access and inspection rights described in this article
- (b) Examination of costs. The Contractor shall maintain, and the Contracting Officer shall have the right to examine and audit, all records sufficient to properly reflect all costs incurred or anticipated to be incurred directly or indirectly in performance of this Contract. This right of examination shall include inspection at all reasonable times of the Contractor's facilities engaged in performing this Contract.
- (c) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this Contract, the Contracting Officer shall have the right to examine and audit all of the Contractor's records related to: (1) any bid or proposal for the Contract, subcontract, or modification; (2) any clarifications or discussions conducted on the bid or proposal; (3) pricing of the contract, subcontract or modification; or (4) performance of the contract, subcontract or modification.
- (d) Availability. The accounts, records and cost information required to be originated under this Contract, together with all other accounts, records and cost information related to this Contract, shall be maintained and made available by the Contractor and subcontractor(s):
 - (1) At the office of the Contractor or subcontractor(s) at all reasonable times for inspection, audit, reproduction or such other purposes as may be required by the Contracting Officer or by anyone authorized to have access to the records by the Contracting Officer or pursuant to any other provision of this Contract; and
 - (2) Except to the extent otherwise expressly set forth in this Contract, until three (3) years from the date of final payment under this Contract; except that: (i) If the Contract is completely or partially terminated, for a period of three (3) years from either the date of any resulting final settlement or the date of final payment, whichever is later; and (ii) If a pricing adjustment is involved in any dispute or litigation related to this Contract, for a period equal to the later of three (3) years from the date of final payment or one (1) year following the final disposition of the dispute or litigation.
- (e) Subcontracts. The Contractor shall insert a provision containing all the terms of this article, including this paragraph, in all subcontracts that exceed \$100,000.

6. AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR

Funds are not guaranteed for performance under this Contract beyond the current fiscal year that ends on June 30, 2016. The Authority's obligation for performance of this Contract beyond that date is contingent upon the availability of funds from which payment for Contract purposes can be made. No legal liability on the part of the Authority for any payment may arise for performance under this Contract until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing, by the Contracting Officer. Any option exercised by the Authority that will be performed, in whole or in part, in a subsequent fiscal year is subject to availability of funds in the subsequent fiscal year and will be governed by the terms of this article.

7. CONTRACTING OFFICER'S 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 employee or representative that exceed his or her authority. The Contractor will be furnished, upon written request, a copy of the delegation, if any, to a COTR for this Contract.

A COTR may take the following actions:

- (1) Act as the principal point of contact with the Contractor. The COTR shall submit a copy of each item of incoming correspondence and a copy of any enclosures to the Contract Administrator;
- (2) Approve in writing the Contractor's progress schedule and submittals when required;
- (3) Inspect the work for compliance with the Contract;
- (4) Review and approve invoices and payment estimates. Forward invoices and receipts to accounting. Bring to the attention of the Contracting Officer any significant discrepancies in, or disputes concerning, Contractor invoices or payments. In those cases requiring release of final retained percentages of payment, the COTR will make his or her recommendations in writing to the Contracting Officer;
- (5) Coordinate correspondence with the Contract Administrator, if its importance significantly impacts the contractual terms and obligations;
- (6) Evaluate the Contractor's technical letters and proposals for the Contracting Officer;

- (7) Advise the Contracting Officer of potential problems that may affect Contract performance;
 - (8) Advise the Contracting Officer whenever the COTR has reason to believe that the Contractual not-to-exceed amount will be exceeded;
 - (9) Prepare the Authority's estimate for proposed Contract modifications. Participate in negotiations of modifications;
 - (10) Approve, in writing, the Contractor's progress schedule, when required.
 - (11) Receive from the Contractor, monthly, if applicable, DBE status reports and forward them to the Office of Procurement and Materials, DBE Branch;
 - (12) Receive from the Contractor, certified payroll reports and prepare a log sheet indicating the following: (1) name of the Contractor and subcontractor; (2) the Contract number; (3) the certified payroll number (number for the payroll for the project starting with the number 1); (4) the time frame of the payroll period (i.e. 1/21/11-2/3/11); (5) the Statement of Compliance date (first page of the report); and (6) the date the report was received by WMATA;
 - (13) Maintain a comprehensive file record of documents and correspondence concerning Contract activities and actions;
 - (14) Provide the Contract Administrator with a written notification after all supplies/services are 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 which are reserved for only the Contracting Officer. They are:
- (1) Approval of contract modification proposals and/or other unilateral actions.
 - (2) Issuance of written orders to stop and/or resume work under article entitled, "Stop Work Orders."
 - (3) Negotiation with the Contractor for adjustment of contract price and/or time.
 - (4) Rendering final decisions under the "Disputes" article.
 - (5) Issuing Termination Notices pursuant to the terms of this Contract.
- c. The presence or absence of the COTR or his or her inspectors shall not relieve the Contractor from any requirements of this Contract.

CHAPTER II – TIME/DELAYS/LIQUIDATED DAMAGES

1. PERIOD OF PERFORMANCE

The term of this contract is a Contract Period commencing on the date of award for one (1) year period.

2. LIQUIDATED DAMAGES FOR DELAY

NOT APPLICABLE TO THIS SOLICITATION

- (a) Time is of the essence to this Contract. In the event of a delay in delivery of any Work under this Contract beyond the period of performance as set forth in the provisions of the PERIOD OF PERFORMANCE article of the Contract or beyond the period to which such time may be extended by the Authority as herein provided, the Authority shall be paid damages for such delay. Inasmuch as the amount of such damages and the loss to the Authority will be extremely difficult to ascertain, it is hereby expressly agreed that such damages will be liquidated and paid as follows:
- (b) The liquidated damages for each and every day (per Day), of unexcused delay, the sum of zero dollars (\$0.00) which sum is hereby agreed upon not as a penalty but as liquidated damages.
- (c) The Authority shall have the right to deduct such liquidated damage assessments from any monies due or which may thereafter become due to the Contractor under this Contract; and in case the amount which may become due hereunder shall be less than liquidated damages due to the Authority, the Contractor shall pay the difference upon demand by the Authority.

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 (including subcontractors at any tier) or the Authority, which event gives rise to a delay in the progress or completion of the work of the Contract, including, without limitation, acts of God, acts of war or insurrection, unusually severe weather, fires, floods, strikes, freight embargoes or other events or circumstances of like nature.
- (b) Notwithstanding the provisions of the LIQUIDATED DAMAGES article of this Contract, if the Contractor is delayed at any time during the progress of the work by the neglect or failure of the Authority or by a force majeure event, then the time for completion and/or affected delivery date(s) shall be extended by the Contracting Officer, in the following circumstances:
 - (1) The cause of the delay arises after the award of the Contract and neither was nor could have been anticipated by the Contractor by reasonable investigation before such award;

- (2) The Contractor demonstrates to the Contracting Officer that the completion of the work and/or affected delivery(ies) will be actually and necessarily delayed;
 - (3) The delay cannot be avoided or mitigated by the exercise of all precautions, efforts and measures reasonably available to the Contractor, whether before or after the occurrence of the cause 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 the Contractor will be delayed at any time or for any period by two (2) or more of the causes above-mentioned in this article, the Contractor shall not be entitled to a separate extension for each one (1) of the causes, but only shall be entitled to one (1) period of extension for the cumulative effects of the delay.
- (d) (2) The Contracting Officer may rescind or shorten any extension previously granted, if he or she subsequently determines that any information the Contractor provided in support of a request for an extension of time was erroneous, provided that such accurate information, if known, would have resulted in a denial of the request for an excusable delay. Notwithstanding the foregoing, the Contracting Officer will not rescind or shorten any extension previously granted, if the Contractor acted in reliance upon the extension and if, in the judgment of the Contracting Officer, such extension was based on information that, although later found to have been erroneous, was submitted in good faith by the Contractor.
- (e) The request for an extension of time pursuant to paragraph (a) shall be made within ten (10) days after the Contractor knows or should know any cause for which it may claim an excusable delay. The Contractor shall make a written request to the Contracting Officer stating any actual or potential basis for an extension of time, and describing, as fully as then practicable, the nature and projected duration of the delay and its effect on the completion of that part of the work identified in the request. Within thirty (30) days of its receipt of all such information, the Authority shall advise the Contractor of its decision on such requested extension. Where it is not reasonably practicable for the Authority to render such decision in the thirty (30) day period, it shall, prior to the expiration of such period, advise the Contractor that it will require additional time and state the approximate date upon which it expects to render such decision.
- (f) In no event shall a delay in progress or performance of the work occasioned solely by a force majeure event or the acts or omissions of any party outside the control of the Contractor be the basis for a Termination for Default pursuant to article entitled "Termination For Default." In no event shall a subcontractor at any tier be deemed a party outside the control of the Contractor for purposes hereof.

4. AUTHORITY'S DELAY OF WORK

- (a) If the performance of all or any part of the work is delayed or interrupted in a material manner or extent by an act or omission of the Authority in the administration of this Contract, that is not expressly or impliedly authorized by this Contract or by applicable

provisions of law, the Contracting Officer shall make an adjustment (excluding profit) for any increase in the cost of performance of this Contract caused by such delay or interruption and modify the Contract in writing, accordingly. Adjustment shall be made to the delivery or performance dates and any other contractual provision, if compliance was materially affected by such delay or interruption. However, no adjustment shall be made under this article or otherwise under this Contract for any delay or interruption if performance was or would have been delayed or interrupted by any other cause, including, without limitation: (i) the fault or negligence of the Contractor or any subcontractor; (ii) the fault or negligence of a third party to the Contract; (iii) an act constituting a force majeure event; (iv) any other cause for which an adjustment is provided or excluded under any other provision of this Contract or otherwise at law or in equity.

- (b) An adjustment pursuant to paragraph (a) shall not be allowed:
- (1) for any costs incurred more than twenty (20) days before the Contractor notifies the Contracting Officer, in writing, of the 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, specifically identifying and supporting the nature and extent of the claimed impact upon the cost and/or time required for performance. In any instance where it is not reasonably practical for the Contractor to fully determine or project the impact within such thirty (30) day period, the claim shall be accompanied by such supporting documentation as reasonably available to the Contractor as well as a statement of the anticipated time frame in which the Contractor expects to provide the additional materials. The Contracting Officer shall maintain the right throughout the process to request the preparation and/or submission of such additional materials as he or she shall reasonably require in consideration of the claim and shall be under no obligation to conclude his or her consideration of the claim prior to receipt and review of all relevant materials. Any adjustment to the Contract price pursuant to this article must be agreed upon or otherwise determined prior to final payment.

5. NOTICE TO THE AUTHORITY OF LABOR DISPUTES

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

CHAPTER III – ACCEPTANCE/INSPECTIONS/DEFICIENCIES

1. INSPECTION OF SERVICES – NOT APPLICABLE (N/A)

- (a) The Contractor shall provide and maintain an inspection system acceptable to the Authority covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Authority during Contract performance 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 and test all services under this Contract, at all times and places reasonably practicable during the term of the Contract. The Authority shall perform inspection and tests in a manner that will not unduly delay the work.
- (c) If 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.
- (d) If the Contractor fails to comply with the provisions of paragraph (c), the Authority may:
 - (1) By Contract or otherwise, perform the Services and charge to the Contractor any cost incurred by the Authority; and/ or
 - (2) In the event that the Contracting Officer deems such failure to comply a material breach, terminate the Contract.
- (f) Nothing contained herein shall be deemed to preclude the Contracting Officer from implementing a price reduction arising from the reduced value to the Authority of Services ultimately corrected in conformity with the Contract requirements for the period of their non-conformity.

2. INSPECTION OF SUPPLIES

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

3. ACCEPTANCE OF SUPPLIES

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

between the parties; provided, that the Contracting Officer may effectuate an adjustment reducing the contract price if the Contractor fails to meet such delivery schedule; or

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

4. NEW MATERIAL [SUPPLIES]

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

5. CORRECTION OF DEFICIENCIES & WARRANTY

- (a) Notwithstanding anything to the contrary otherwise set forth in this Contract, all workmanship, parts and materials furnished for all the work shall be unconditionally warranted against failures or defects for a period of one (1) year after the item supplied is accepted, or placed in service, by the Authority, whichever is earlier. The Contractor shall accept the Authority's records with respect to the date the item was placed in service.
- (b) In the event that any work covered by the warranty provisions fails during the warranty period, the Contractor shall repair or replace the work within five (5) days without cost or expense to the Authority.
- (c) This warranty will not apply to the extent that such failure is caused by user abuse.
- (d) Should the Contractor fail to repair or replace any part or do any work in accordance with the terms of the warranty, or if immediate replacement or work is necessary to maintain operation of the item supplied, the Authority shall have the right to cause such replacement to be made, utilizing its own forces and/or those of third parties as the Authority shall reasonably deem appropriate. Such work will be done at the expense of the Contractor.
- (e) Each piece of equipment, component or part thereof that is replaced, repaired, adjusted or serviced in any manner during the warranty period shall be reported to the

Contracting Officer on forms supplied by the Authority. Each report shall indicate in detail all repairs, adjustments and servicing to each and every component, unit or parts thereof.

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

6. FIRST ARTICLE INSPECTION

NOT APPLICABLE TO THIS SOLICITATION

- (a) If required by the technical specifications, the Contractor shall deliver one (1) unit to the Authority for first article (pre-production sample) tests. The shipping documentation shall contain this contract number and the Lot/Item identification. The Characteristics that the first article must meet and the testing requirements are specified in the technical specifications.
- (b) Within 10 days after the Authority receives the first article, the Contracting Officer shall notify the Contractor, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of conditional approval or approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite the reasons for the disapproval.
- (c) If the first article is disapproved, the Contractor, upon Authority request, shall submit an additional first article for testing. After each request, the Contractor shall make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the Contractor. The Contractor shall furnish any additional first article to the Authority under the terms and conditions and within the time specified by the Authority. . The Authority reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule or for any additional costs to the Authority related to these tests.

- (d) Unless otherwise provided in the Contract, the Contractor—
 - (1) May deliver the approved first article as a part of the contract quantity, provided it meets all contract requirements for acceptance and was not damaged or impaired in testing; and
 - (2) Shall remove and dispose of any first article from the Authority test facility at the Contractor's expense.

- (e) The Contractor is responsible for providing operating and maintenance instructions, spare parts support, and repair of the first article during any first article test.

- (f) The Authority will inspect the first article (pre-production sample) in accordance with the contract requirements. A written report will be forwarded to the Contractor in accordance with (b) above.

7. QUALITY ASSURANCE/QUALITY CONTROL

The Contractor shall be responsible for quality assurance and for assuring that the work conforms to the requirements of the Contract documents. The Contractor shall maintain an effective and economical quality control program planned and developed in conjunction with other Contractor functions necessary to satisfy the Contract's requirements. The quality control program shall establish and implement procedures to ensure that only acceptable Services are tendered to the Authority for acceptance, and shall demonstrate both recognition of the quality requirements of the Contract and an organized approach to satisfy these requirements. The program shall ensure that quality requirements are determined and satisfied throughout all phases of Contract performance.

CHAPTER IV—CHANGES/ PRICING ADJUSTMENTS

1. CHANGE ORDERS

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

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

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

2. PRICING OF ADJUSTMENTS

- (a) The parties agree that, notwithstanding any interpretation of Contract cost principles to the contrary, the Authority will not be liable for interest, however represented, on or as a part of any claim, request, bid or adjustment, including equitable adjustments, whether arising under the Contract or otherwise.
- (b) As part of its proposal for any Contract modification requiring a price adjustment involving an aggregate increase or decrease in excess of \$100,000, the Contractor shall submit to the Contracting Officer, either actually or by specific identification in writing, cost or pricing data under the conditions described in this paragraph. The Contractor must 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 that are less than \$100,000.
- (c) The Contractor shall ensure that the substantive terms of this article are included in all subcontracts at any tier, if the value of the subcontracted work exceeds \$100,000.

3. ACCOUNTING AND RECORD KEEPING FOR ADJUSTMENTS

- (a) **Applicability.** This article shall apply to any adjustment in the price of this Contract initiated by the Contractor or the Authority.
- (b) **Forward Price Adjustments.** Unless waived in writing in advance by the Contracting Officer, the Contractor shall furnish to the Contracting Officer, a proposed price adjustment in advance of performance of any work for which a price adjustment is requested. The Contractor shall generate such records as are necessary to substantiate all elements of the proposed adjustment. 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 between the Contractor and the Contracting Officer prior to the commencement of work for which the pricing adjustment is requested, the Contractor and any subcontractor engaged in work for which the pricing adjustment is requested, shall maintain accounts and original cost records specifically

segregated and identified by job order or other appropriate accounting 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 and shall allocate the costs so accumulated between: (1) work required under the base Contract; (2) work requested to be reimbursed under the pricing adjustment; and (3) work claimed or determined to be related to other actual or proposed adjustments, including but not limited to, changes orders, differing site conditions, and the like. The accounts and records so established shall accumulate such costs under logical costs groups, such as material, labor, equipment, subcontracts, field overhead and the like. The Contractor shall record these costs on a form approved by the Contracting Officer.

- (d) Access to Records. As a condition to the Authority's obligation to consider any claim for a potential price adjustment under any provision of this Contract, the Contractor shall grant the Authority access to review and ascertain the validity of the accounting records being maintained for segregation of costs, including base cost records, and to audit any such costs as are deemed appropriate by the Contracting Officer.

- (e) Limitation on Pricing Adjustment. In the event the Contractor or any subcontractor fails to generate, maintain, or make available, any records required under the Contract, in addition to any and all additional rights to which the Authority may be entitled, the Contracting Officer shall determine whether such failure is willful, deliberate or otherwise precipitated by bad faith on the part of the Contractor, in which event the Contractor shall not be entitled to any price adjustment for the Work in question. Where the Contracting Officer determines that the failure was not the result of the Contractor's bad faith, the Contractor Officer shall determine the reasonable direct cost of the work for which records are not available, and add a single mark-up for indirect expenses not to exceed ten percent (10%) of the direct costs based on:
 - (1) An audit of any records of the Contractor or subcontractor made available to the Authority; and/or
 - (2) An Authority estimate as adopted or modified by the Contracting Officer.

- (f) In no event shall the Contractor and/or subcontractor be allowed any profit on claimed work for which records are not made available in accordance with its obligations under this article and otherwise in the Contract.

- (g) Flow-down clause. The Contractor shall ensure the inclusion of all the provisions of this Article in all subcontracts issued under this Contract, modified as necessary, for proper identification of the contracting parties and the Contracting 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 completing the work in accordance with the Contract, including, but not limited to, all labor and material required to be done or furnished under this Contract; all overhead, expenses, fees and profits including the cost of providing storage yards or facilities; all risks and obligations set forth in the Contract; any applicable fees or taxes; and all expenses due to any unforeseen difficulty encountered in the prosecution of the work.
- (b) Payments will be made following acceptance of the Services 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 (1) 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 service, invoice date, payment terms, total invoice amount, "remit to" address, purchase order number, freight terms, description of each item being invoiced, quantity, unit item cost, extended cost by item, and contact name and email address. Final invoices must clearly be marked "Final" and cite the amount of the Contract, amount previously paid, and the balance due totals.
- (d) The Authority shall remit payment, generally within thirty (30) days of its receipt of an invoice satisfying the requirements of paragraphs (b) and (c), at the prices stated in the Contract for Services rendered and accepted, less any applicable deductions.

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

With respect to any modification, change order, or otherwise, to this Contract that involves aggregate increases and/or decreases in costs plus applicable profit in excess of \$100,000, if the Contracting Officer determines that any price, including profit or fee, previously negotiated in connection with any such modification was based upon cost or pricing data furnished by the Contractor (including any prospective or actual subcontractor at any tier) that was not complete, accurate or current, such that the amount paid the Contractor for such price

adjustment was greater than the amount that the Contractor would have been entitled based upon accurate and complete data, the Authority shall be entitled to an adjustment in an amount equal to such overpayment, if no fraud is suspected. The right granted the Authority hereunder shall be in addition to any other or additional rights it may have under this Contract, at law or in equity.

3. SUBCONTRACTOR PAYMENTS

- (a) The Contractor shall, under this Contract, establish procedures to ensure timely payment of amounts due pursuant to the terms of its subcontracts. The Contractor shall pay each subcontractor for satisfactory performance of its contract, or any billable portion thereof, no later than ten (10) days from the date of the Contractor's receipt of payment from the Authority for work by that subcontractor. The Contractor shall also release, within ten (10) days of satisfactory completion of all work required by the subcontractor, any retention withheld from the subcontractor.
- (b) The Contractor shall certify on each payment request to the Authority that payment has been or will be made to all subcontractors in accordance with paragraph (a) above.. The Contractor shall notify the Contracting Officer or other delegated Authority representative with each payment request, of any situation in which scheduled subcontractor payments have not been made.
- (c) In the event of a claim by any subcontractor that the Contractor has failed to comply with the terms of this Article, the Contractor agrees to fully cooperate in any Authority investigation, and, if deemed appropriate by the Authority, to implement appropriate remedial measures to ensure future compliance.
- (d) The Contractor agrees that the Authority may provide information 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 it be deemed to create a contractual relationship between the Authority and any subcontractor, to make the subcontractor an intended beneficiary of this Contract or to alter or affect traditional concepts of privity of contract.

4. GARNISHMENT OF PAYMENTS

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

CHAPTER VI – CONTRACT TERMINATION/STOP WORK ORDERS/DISPUTES

1. STOP WORK ORDERS

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part of the work for a period of up to ninety (90) days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a “Stop Work Order” (“SWO”) issued under this article. Upon receipt of the SWO, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the SWO during the period of work stoppage. Within a period of ninety (90) days after an SWO is delivered to the Contractor, or within any extension of that period to which the parties agree, the Contracting Officer shall either:
 - (1) Cancel the SWO; or
 - (2) Terminate the work covered by the SWO as provided under this Contract, as appropriate.
- (b) If a SWO is cancelled or its initial period or any extension thereof expires, the Contractor shall resume work. An equitable adjustment shall be made in the delivery schedule or Contract price, or both, and the Contract modified in writing accordingly, if, in the judgment of the Contracting Officer or as otherwise determined:
 - (1) The SWO results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and
 - (2) The Contractor submits a written claim for such adjustment within thirty (30) days after the end of the period of work stoppage. At the sole discretion of the Contracting Officer, the Authority may elect to consider and act upon any such claim submitted at any time before final payment under this Contract.
- (c) If an SWO is not cancelled and the work covered by the Contract is terminated for the convenience of the Authority, the Contracting Officer shall allow reasonable costs, if any, resulting from the SWO in arriving at the termination settlement pursuant to the provisions of the “Termination For Convenience” article of this Contract.
- (d) If an SWO is not cancelled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the SWO. If the Contracting Officer determines that the SWO was precipitated by, or arose from, a material breach of any term or condition of this Contract on the part of the Contractor, such costs shall not be allowed and the rights and obligations of the parties shall be subject in all respects to the “Termination for Default” article of this Contract.

2. TERMINATION FOR DEFAULT

- (a) The Contractor shall be in default if it commits a breach of any of its obligations under this Contract deemed material by the Contracting Officer. Without limiting the generality of the foregoing and in addition to those instances specifically referred to in the Contract, the Contractor shall be in default in the following circumstances:
- (i) It fails to begin, or abandons, the work of the Contract in accordance with the Contractual requirements;
 - (ii) It fails to perform the Services within the time specified in the Contract or any extension approved by the Contracting Officer;
 - (iii) It fails to progress the work in a manner deemed unreasonable or unnecessary by the Contracting Officer so as to endanger performance of the Contract; or
 - (iv) In the view of the Contracting Officer, the Contractor is willfully violating any of the provisions or obligations of the Contract or is not executing such provisions or obligations reasonably and in good faith.
- (b) In the event of a material breach by the Contractor pursuant to paragraph (a), the Contracting Officer is authorized to direct a written notice to the Contractor, specifying the nature of the breach and providing that, if the Contractor fails to cure such failure(s) within ten (10) days (or such additional time as authorized by the Contracting Officer), the Authority shall terminate the Contract, in whole or 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 so terminated. The Authority shall thereupon have the right to take any action necessary to complete the work, including performing the work itself, or contracting with another party to do so. In the event the work is completed directly by the Authority or by a third party, the Contractor shall be liable for the additional costs and expenses necessary to complete the work, including, without limitation, labor, materials, plant costs, tools, equipment, supplies and property. The costs and expenses so charged may be deducted by the Authority and paid out of any monies otherwise payable to the Contractor. Nothing contained herein shall be deemed to relieve the Contractor of its continuing obligation to perform any portion of the work of the Contract 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 shall pay for completed services rendered and accepted in accordance with the terms of the Contract, as well as actions reasonably taken by the Contractor at the direction of the Contracting Officer . . The Authority may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Authority against loss because of outstanding or claimed liens, or other pending or anticipated claims under the Contract.

- (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 thereupon be deemed a termination for convenience and the rights and obligations of the parties shall be determined in accordance with the provisions of the "Termination For Convenience" article of this Contract.
- (g) Any dispute or failure of the parties to agree with respect to any issue arising under this article shall be subject to review and adjudication in accordance with the provisions of the "Disputes" article of this Contract. In no event shall the Authority's issuance of a Notice to Cure pursuant to paragraph (b) be the basis of a dispute pursuant to the "Disputes" article 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 right of the Authority to proceed in accordance with the provisions of this Article, including without limitation, its right to complete the work as above described, or the obligation of the Contractor to complete any portion of the work that was not terminated.
- (h) 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 work under this Contract in whole, or in part, if the Contracting Officer determines that a termination is in the Authority's interest. The Contracting Officer shall terminate by delivering to the Contractor, a Notice of Termination specifying the extent of termination and its effective date.
- (b) Upon receipt of a Notice of Termination, except as otherwise directed by the Contracting Officer, the Contractor shall immediately proceed as follows:
 - (1) Stop work as specified in the Notice of Termination;
 - (2) Complete performance of the work not terminated;
 - (3) Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the remaining portion of the Contract;
 - (4) Terminate all subcontracts to the extent that they relate to the work terminated;
 - (5) Assign to the Authority, as directed by the Contracting Officer, all right(s), title, and interest of the Contractor under the subcontracts terminated. In such event, the Authority shall have the right to settle or pay any termination costs arising out of the subcontracts and shall have no further liability to the Contractor in connection with the work that was the subject of such subcontracts;
 - (6) With approval of the Contracting Officer, settle all outstanding liabilities and settlement costs arising from the termination of subcontracts;
 - (7) As directed by the Contracting Officer, transfer title and deliver to the Authority:

- (1) Work in process, completed work, and other material produced or acquired for the work terminated; and
 - (2) The completed or partially completed plans, drawings, information and other property that, if the Contract had been completed, would be required to be furnished to the Authority.

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

- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (b)(7). The Contractor (a) is not required to extend credit to any purchaser and (b) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce payments to be made by the Authority under this Contract, credited to the price or cost of the Work, or paid in any other manner directed by the Contracting Officer.

- (c) The Contractor shall submit complete termination inventory schedules not later than one hundred twenty (120) days from the effective date of termination, unless such time is extended in writing by the Contracting Officer.

- (d) As soon as reasonably practicable, and in any event not later than twenty (20) days following the Authority's issuance of a Notice of Termination pursuant to paragraph (a), the Contractor shall submit a proposal to the Contracting Officer in the form he or she prescribes, detailing the costs to which it asserts entitlement pursuant to this article. If the Contractor fails to submit the proposal within the time prescribed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due to the Contractor as a result of the termination and shall pay the amount so determined.

- (e) Following submission of the Contractor's proposal pursuant to paragraph (d), the parties shall agree upon the whole or any part of the amount to be paid or remaining to be paid as a result of the termination. The amount may include a reasonable allowance for profit on work completed. However, in no event shall the total amount to be paid the Contractor pursuant to this article exceed the total Contract price as reduced by (1) payments previously made and (2) the Contract price of the remaining work not terminated.

- (f) If the parties fail to agree on the whole amount to be paid because of the termination, the Contracting Officer shall pay to 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 services accepted by the Authority not previously paid for, adjusted for any saving of charges.

- (2) The total of:
 - (i) The costs incurred prior to termination in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any costs attributable to items compensated or to be paid for under subparagraph (f)(1);
 - (ii) The cost of settling and paying termination costs under terminated subcontracts that are properly chargeable to the terminated portion of the Contract, if not excluded in subparagraph (f)(2)(i); and
 - (iii) A sum, representing profit on the items described in subparagraph (f)(2)(i) determined by the Contracting Officer pursuant to Section 49.202 of the Federal Acquisition Regulation (FAR), in effect on the date of this Contract, to be fair and reasonable. If it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the Contracting Officer shall allow no profit under this subparagraph and shall reduce the settlement to reflect the projected rate of loss.

- (3) The reasonable indirect costs of settlement of the work terminated, including:
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposal(s);
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary.

- (g) 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.

- (h) The Contractor shall have the right of appeal, under the "Disputes" article, from any determination made by the Contracting Officer under paragraphs (d) or (f), except that a failure on the part of the Contractor to submit the termination settlement proposal within the time provided in paragraph (d), or to timely request an extension thereof, shall constitute a waiver of its right to appeal the Contracting Officer's determination pursuant to the Disputes article or any otherwise applicable contractual, legal or equitable remedy.

- (i) In determining any sum due the Contractor under this article, there shall be deducted:
 - (1) All unliquidated advances or other payments to the Contractor under the terminated portion of the Contract;
 - (2) The value, as determined or reasonably projected by the Contracting Officer, of any claim that the Authority has against the Contractor under this Contract, including any third party 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 the Contract at the remaining Contract price inequitable, the Contractor may file a proposal with the Contracting Officer for an adjustment of the price(s) for the continued portion of the Contract. Such proposal shall be submitted within ninety (90) days from the effective date of termination, unless extended in writing by the Contracting Officer, and shall be accompanied by appropriate supporting documentation of the claimed inequity.

- (l) The Contractor's responsibilities and obligations under this Article shall apply and remain in full force and effect notwithstanding the pendency of any dispute or other delay relating to determination of the appropriate price adjustment or any other issue arising from the termination for convenience.

- (m) Unless otherwise provided in this Contract or by statute, the Contractor and all subcontractors whose work is encompassed in the termination settlement shall maintain all records and documents relating to the terminated portion of this Contract for three (3) years after final settlement. This includes all books and other evidence bearing on the costs and expenses of the Contractor under this Contract. The Contractor shall make these records and documents available to the Authority, its governing jurisdictions and any other federal, state, or local entities providing funding for this Contract, and to the Comptroller General of the United States, or the agents or representatives of any of them, at the Contractor's office, at all reasonable times, without any direct charge.

4. ASSIGNMENT

- (a) Except as otherwise provided in this article, the Contractor shall not transfer any of its rights and obligations under this Contract to third parties without the prior 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). Recognition of the transfer shall be within the discretion of the Contracting Officer after review of the facts and circumstances surrounding each request. At the discretion of the Contracting Officer, he or she may conduct an evaluation of the successor party's capability to perform the Contract in the same manner and to the same extent that he or she was empowered to conduct a responsibility determination as part of the original solicitation for this Contract. Should the Contracting Officer, for any reason, not recognize such a successor in interest, it may terminate this Contract.

- (b) Any attempt to transfer by assignment not authorized by the Contracting Officer shall constitute a material breach of this Contract on the part of the Contractor and the Authority may thereupon terminate the 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 the Contractor under this Contract to a bank, trust company or other financing institution, including any federal lending agency, upon written notice of such assignment to the Authority.

5. DISPUTES

- (a) Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under or related to this Contract that is not disposed of by agreement, shall be decided by the Contracting Officer, who shall reduce his/her decision to writing and mail or otherwise furnish a copy to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within thirty (30) calendar days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer, a written notice of appeal addressed to the Authority's Board of Directors. Such notice should indicate that an appeal is intended and should reference the decision and the Contract number. The decision of the Board of Directors or its duly authorized representative for the determination of such appeals shall be final and conclusive unless in proceedings initiated by either party for review of such decision in a court of competent jurisdiction, the court determines the decision to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this article, the Contractor, or the Authority, as the case may be, shall be afforded an opportunity to be heard and offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of this Contract in accordance with the Contracting Officer's decision. The Armed Services Board of Contract Appeals is the authorized representative of the Board of Directors for final decisions on an appeal.
- (b) This "Disputes" article does not preclude consideration of questions of law in connection with decisions provided for in paragraph (a) above. Nothing in the Contract, however, shall be construed as making final the decisions of the Board of Directors or its representative on a question of law.

CHAPTER VII – INDEMNIFICATION/INSURANCE/RISK OF LOSS

Indemnification

1. Contractor shall indemnify, defend and hold harmless the Authority, its directors, officers, employees and agents, from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, and for loss or damage to any property, including the property of the Contractor and the Authority, occurring in connection with, or in any way arising out of the use, occupancy and performance of the work and/or any acts in connection with activities to be performed under this contract, unless the loss or damage is due to the sole negligence of the Authority. Nothing in the preceding sentence shall be deemed to relieve Contractor from ultimate liability for any obligation of Contractor under this Contract.

2. Contractor shall indemnify, defend and hold harmless the Authority, its directors, officers, employees and agents, against any and all claims, liabilities, losses, demands, damages, penalties, costs, charges, remedial costs, environmental claims, fees or other expenses including attorneys' fees, related to, arising from or attributable to any effluent or other hazardous waste, residue, contaminated soil or other similar material discharged from, removed from, or introduced on, about or under the job site; provided, however, that the foregoing indemnity does not apply to loss or damage due to preexisting conditions, whether known or unknown.

3. If any action or proceeding relating to the indemnification required is brought against the Authority, then upon written notice from the Authority to the Contractor, the Contractor shall, at the Contractor's expense, resist or defend such action or proceeding by counsel approved by the Authority in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same. The Authority reserves the right to use its own counsel under this indemnity at Contractor's sole cost and expense.

4. Contractor understands and agrees that it is Contractor's responsibility to provide indemnification to the Authority pursuant to this Section. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the failure of Contractor's insurance to fully fund any indemnification shall not relieve the Contractor of any obligation assumed under this indemnification.

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 their sole cost and expense the minimum required insurance as follows:

General Insurance Requirements

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

Workers' Compensation and Employer's Liability

Required Minimum Limits of Coverage:

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

Required Minimum Coverage(s):

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

Commercial General Liability

Required Minimum Limits of Coverage:

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

Required Minimum Coverage(s):

- 1) Commercial General Liability (CGL) coverage form shall be ISO Occurrence Form CG0001 (12/04) or its equivalent. Equivalency determination shall be made in WMATA's sole and unreviewable discretion.
- 2) Required minimum limits of coverage may be achieved through a combination of the aforementioned CGL coverage form and Umbrella Excess Liability coverage form(s), provided that the umbrella excess liability coverage form(s) provide the same or broader coverage than the prescribed CGL coverage form.
- 3) Policy shall be endorsed with Additional Insured Endorsement(s) in compliance with the "Additional Insured" Section below. Commercial General Liability and Umbrella Excess Liability forms must provide defense coverage for additional insureds.
- 4) Policy shall be endorsed with a Waiver of Subrogation Endorsement(s) in compliance with the "Waiver of Subrogation" Section below.
- 5) Defense Costs (Allocated Loss Adjustment Expense) must be included and in excess of the policy limits for all Primary Liability and Umbrella Excess Liability Policies.
- 6) Policy shall be endorsed with ISO endorsement CG 25 04 03 97; "Designated Location General Aggregate Limit", and designate "Any and all locations" as the Designated Location.

Business Auto Liability

Required Minimum Limits of Coverage:

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

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

Technology Errors and Omissions Insurance with minimum limits of \$2,000,000 to cover liabilities arising from errors, omissions, or negligent acts in rendering or failing to render computer or information technology services and technology products and all other related services. This insurance should also include, but not be limited to, coverage for training services relating to computer software or hardware; management, repair and maintenance of computer products, networks and systems.

Additional Insured(s)

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

- 1) Coverage provided to any Additional Insured shall be primary and non-contributory to any other insurance available to the Additional Insured, including coverage afforded to the WMATA as an additional insured by Sub-contractors, and from other third parties.
- 2) Coverage provided to any Additional Insured shall be for claims arising out of both ongoing operations and products and completed operations hazard.
- 3) Coverage available to any Additional Insured under the products and completed operations hazard can only be limited to the applicable statute of repose in the jurisdiction(s) where the contract scope of work takes place. 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) Coverage available to the additional insureds shall not be limited to the minimum limits of coverage outlined in this document.

Waiver of Subrogation

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

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

Certificate of Insurance (COI)

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

The cert holder box should read:

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

Additionally;

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

CHAPTER VIII – INTELLECTUAL PROPERTY RIGHTS

1. PATENT INDEMNITY

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

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

2. WITHHOLD/SET-OFF

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

3. RIGHTS IN TECHNICAL DATA – UNLIMITED

- (a) The term technical data as used in this article means technical writings, computer software, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether or not copyrighted, that are specified to be delivered pursuant to this Contract. The term does not include financial reports, cost analyses, and other information incidental to Contract administration. Computer software as used in this article means computer programs, computer databases, and documentation thereof.
- (b) The Authority or any third party designated by the Authority to assist it in the administration of this Contract or the inspection or verification of the services or product produced under this Contract, shall have the right to use, duplicate or disclose

technical data, including computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so:

- (1) Any manuals, instructional materials prepared for installation, operation, maintenance or training purposes;
 - (2) Technical data pertaining to end items, components or processes that were prepared for the purpose of identifying sources, sizes, configurations, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data; e.g., specification control drawings, catalog sheets, outline drawings. Except for the computer software, it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulae, and flow charts of the software);
 - (3) Other technical data that was, or is normally furnished without restriction by the Contractor or subcontractor;
 - (4) Other specifically described technical data that the parties have agreed will be furnished without restriction;
 - (5) All computer software regardless of whether it is technical data as defined in this Article, including the source code, algorithms, processes, formulae, and flow charts, that are developed or materially modified by the Contractor for the Authority or for which the Authority is required by federal law or regulation to provide a royalty-free, irrevocable and nonexclusive license to the federal government.
- (c) The Authority shall have the right to use, duplicate, or disclose technical data other than that defined in paragraph (a), in whole or in part, except that such technical data shall not, without the written permission of the party furnishing such technical data, be
- (1) Released or disclosed, in whole or in part, outside the Authority,
 - (2) Used, in whole or in part, by the Authority for manufacture, or
 - (3) Used by a party other than the Authority except for: (i) emergency repair or overhaul, (ii) where the item or process concerned is not otherwise reasonably available to the Authority to enable timely performance of the work, or (iii) administration of this Contract or the inspection or verification of the product or services produced under this Contract, where the third party has a written Contract with the Authority to perform these efforts. In all cases described in this subsection, the release or disclosure outside of the Authority shall be subject to a written prohibition against further use, release or disclosure by the party receiving the technical data.
- (d) Technical data provided in accordance with the provisions of paragraph (c) shall be identified by a legend that suitably recites the aforesaid limitation. Nothing herein shall impair the right of the Authority to use similar or identical data acquired from other sources.
- (e) Where any item is purchased as a separate line item in the Contract, that purchase includes all integral parts of that item, including any computer software, source codes, algorithms, processes, formulae, and flow charts. As such, the Authority has full rights to use, duplicate or disclose any or all parts of the item, including computer software,

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

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

5. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT [SUPPLIES]

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

- (c) The substance of this Article shall be included in all subcontracts.

CHAPTER IX – ADDITIONAL COVENANTS/LEGAL REQUIREMENTS

1. NONDISCRIMINATION ASSURANCE

- (a) Nondiscrimination Assurance: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000 (d), section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the American with Disabilities Act of 1990, 42 U.S.C. §12132, federal transit law at 49 U.S.C. §5332, 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, national origin, sex, age, or 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.
 - (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's (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, " 41 C.F.R. Parts 60 *et. seq.*, [implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. §2000(e) note], and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect activities undertaken in the course of this Contract. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements that the 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 that 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's,

"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, that may result in the termination of this contract or such other remedy as the Authority deems appropriate.

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

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

- (a) Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work that may require or involve the employment of laborers, mechanics, apprentices, trainees, watchmen, and guards, shall require or permit any such employee in any workweek in which he or she is employed on such work, to work in excess of forty (40) hours on work subject to the Contract Work Hours and Safety Standards Act unless such laborer, mechanic, apprentice, trainee, watchman, or guard receives compensation at a rate not less than one and one half (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 any subcontractor responsible therefore shall be liable to any affected employee for his or her unpaid wages. In addition, such Contractor and subcontractor shall be liable to the Authority for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, apprentice, trainee, watchman or guard employed in violation of paragraph (a), in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of his 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 may be administratively determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).
- (d) Subcontracts. The Contractor shall insert paragraphs (a) through (d) of this article in all subcontracts and shall require their inclusion in all subcontracts at any tier.

- (e) Records. The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three (3) years from the completion of this Contract.

5. CONVICT LABOR

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

6. COVENANT AGAINST CONTINGENT FEES

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

7. SEAT BELT USE POLICY

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

8. SENSITIVE SECURITY INFORMATION

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

9. LAWS AND REGULATIONS

The Contractor shall be responsible to fully inform itself of the requirements for and to comply with any applicable State of Maryland, Commonwealth of Virginia, District of Columbia, federal and local laws and regulations governing the 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 to be serviced.

10. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

- (a) The Contractor agrees to submit a Material Safety Data Sheet (Department of Labor Form OSHA-20), as prescribed in Federal Standard No. 313B, for all hazardous material five (5) days before delivery of the material, whether or not listed in Appendix A of the Standard. This obligation applies to all materials delivered under this Contract that involve exposure to hazardous materials or items containing these materials.
- (b) "Hazardous material," as used in this Article, is as defined in Federal Standard No. 313B, in effect on the date of this Contract.
- (c) Neither the requirements of this Article nor any act or failure to act by the Authority shall relieve the Contractor of any responsibility or liability for the safety of Authority, Contractor, or subcontractor personnel or property.
- (d) Nothing contained in this Article shall relieve the Contractor from complying with applicable federal, state, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous materials.
- (e) The Authority's rights in data furnished under this Contract with respect to hazardous materials are as follows:
 - (1) To use, duplicate and disclose any data to which this article is applicable. The purposes of this right are to (i) apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of

hazardous material (ii) obtain medical treatment for those affected by the material; and (iii) have others use, duplicate, and disclose the data for the Authority for these purposes.

- (2) To use, duplicate, and disclose data furnished under this article, in accordance with subparagraph (e)(1) above, in precedence over any other provision of this Contract providing for rights in data.
- (3) The Authority is not precluded from using similar or identical data acquired from other sources.
- (4) The data shall not be duplicated, disclosed, or released outside the Authority, in whole or in part, for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this Article applies -

"This is furnished under Authority Contract No. CQ15244 and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of the Authority. This legend shall be marked on any reproduction of this data."
(End of legend)

- (5) That the Contractor shall not place the above legend or any other restrictive legend on any data that (i) the Contractor or any subcontractor previously delivered to the Authority without limitations; or (ii) should be delivered without limitations under the conditions specified in the article entitled "Rights in Technical Data."
- (f) The Contractor shall insert this Article, including this paragraph, with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase designations or purchase orders) under this Contract involving hazardous material.

11. LIVING WAGE

The Authority's Living Wage Policy and implementing regulations apply with respect to all contracts for services (including construction) awarded in an amount that exceeds \$100,000 in a 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 the Living Wage provision in all subcontracts that exceed \$15,000 in a twelve (12) month period awarded under this Contract;
 - (3) Maintain payroll records, in accordance with the retention and examination of records requirements in the terms and conditions, and include

- a similar provision in affected subcontracts that requires the subcontractor to maintain its payroll records for the same length of time; and
- (4) Certify with each monthly invoice, that the Authority's Living Wage Rate was paid to affected employees, or if applicable, certify prior to Contract award or Contract extension, if any, that one or more of the exemptions in paragraph (d) below applies.
 - (c) The Contractor shall not split or subdivide a contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor to avoid compliance with the Living Wage provisions.
 - (d) Exemptions to the Living Wage provisions include:
 - (1) Contracts and agreements subject to higher wage rates required federal law or collective bargaining agreements;
 - (2) Contracts or agreements for regulated utilities;
 - (3) Emergency services to prevent or respond to a disaster or imminent threat to public health and safety;
 - (4) Contractor employees who work less than full-time; and
 - (5) Contractors who employ fewer than ten (10) employees.
 - (e) The Authority may adjust the Living Wage Rate effective in January of each year. The adjustment will reflect the average Living Wage Rate among Metro's Compact jurisdictions with Living Wage provisions. If, after contract award, the living wage rate increases, the Contractor is entitled to an equitable adjustment to the contract price in the amount of the increase for employees who are affected by the escalated wage.
 - (f) Failure to comply with the Authority's Living Wage provisions shall result in the Authority's right to exercise available contract remedies, including contract termination..

12. METRIC SYSTEM

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

13. WHISTLEBLOWER PROTECTION

- (a) The Contractor and its subcontractors shall encourage their employees and independent contractors to report information without fear of actual or threatened discrimination, retaliation or reprisal that they in good faith reasonably believe is evidence of gross mismanagement; gross misuse or waste of public resources or

funds; fraud; violation of law; abuse of authority in connection with the conduct of WMATA operations or contracts; or a substantial and specific danger to health, security or safety. The Contractor and its subcontractors shall notify their employees that they may make reports under this paragraph to:

- (1) WMATA's Office of Inspector General (OIG), in person, in writing, through the OIG Hotline (888-234-2374) or email wmata-oig-hotline@verizon.net or by any other reasonable means;
 - (2) WMATA's Metro Transit Policy Department (MTPD), in person, by telephone (202-962-2121) or by any other reasonable means, or to the OIG, if the information constitutes a potential violation of criminal law;
 - (3) WMATA's Chief Safety Officer, in person, in writing, through the SAFE Hotline (202-249-7233) or email safety@wmata.com, or by any other reasonable means; or
 - (4) Any other official, office or agency within or outside WMATA that the employee or independent contractor reasonably believes has the authority to act on the matter.
- (b) The Contractor, its employees, independent contractors and subcontractors shall cooperate with any inquiry or review by an authorized official of WMATA, or by the federal government or any other governmental entity with jurisdiction over WMATA, regarding a matter that would constitute a report under paragraph (a) or a violation of this or any whistleblower provision of this Contract, and with any enforcement or judicial proceeding arising from such inquiry or review.
- (c) The Contractor and its subcontractors shall not interfere with or deny the right of any employee or independent contractor of either the Contractor or any of its subcontractors to make a report under paragraph (a). The Contractor and its subcontractors shall not recommend, take or threaten to take any action having a negative or adverse impact on any employee or independent contractor of either the Contractor or any of its subcontractors because he or she:
- (1) made or is perceived to have made a report under paragraph (a);
 - (2) sought a remedy under applicable law after making a report under paragraph (a);
 - (3) participated in or cooperated with an inquiry or review by an authorized official of WMATA, or by the federal government or any other governmental entity with jurisdiction over WMATA, regarding a matter that would constitute a report under paragraph (a) or a violation of this or any whistleblower provision of this Contract, or with an enforcement or judicial proceeding arising from such inquiry or review;
 - (4) refused to obey an order that would violate law; or
 - (5) refused to work or authorize work when a hazardous safety or security condition presents an imminent danger of death or serious injury, there was no reasonable alternative to refusal, there was not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, notified the Contractor or subcontractor of the condition and of the intent not to perform or authorize work.

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

- (e) The Contractor and its subcontractors shall comply with the National Transit Systems Security Act (NTSSA), that prohibits discharging, demoting, suspending, reprimanding or in any other way discriminating against an employee as a reprisal for the employee lawfully and in good faith—
 - (1) reporting a hazardous safety or security condition;
 - (2) refusing to work when a hazardous safety or security condition presents 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 he or she is 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 laws;
 - (6) cooperating with a safety or security investigation by the U.S. Secretary of Transportation, U.S. Secretary of Homeland Security or the National Transportation Safety Board;
 - (7) furnishing information to law enforcement agencies relating to an accident or incident resulting in damage to property, injury or death; or
 - (8) filing a complaint under the NTSSA or testifying regarding such complaint.

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

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

- (h) This Article shall be interpreted in accordance with the NTSSA. If any provision is found to be in conflict with the NTSSA, the NTSSA shall govern.

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

14. DRUG AND ALCOHOL TESTING- NOT APPLICABLE

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

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

(d) The contractor further agrees to submit quarterly management reports summarizing test results to the MCM and the Contracting Officer by the 15th of the month following the end of each quarter.

15. EMPLOYMENT RESTRICTION WARRANTY

- (a) The Contractor warrants that it will not offer employment to, solicit or discuss the interest of prospective employment with, or otherwise engage in substantive employment related discussions or communications with, any present or former officer or employee of the Authority who has been involved, directly or indirectly, in any matter of financial interest to the Contractor until at least one (1) year after the officer or employee has ceased involvement in or responsibility for the matter. Nor shall the Contractor knowingly engage in communications of the nature described above with any immediate family member or member of the household of any Authority

employee during the period in which such employee is involved in any such matter of financial interest to the Contractor.

If a waiver is granted, or if a former employee of the Authority is eventually hired, the Contractor shall ensure that the former employee is not involved in negotiating or otherwise dealing with the Authority on any particular matter over which such employee had responsibility during his or her period of employment at Authority.

16. GRATUITIES

- (a) In connection with performance of work required under this Contract, or any changes or modifications relative thereto, the giving of or offering to give gratuities (in the form of entertainment, gifts or otherwise) by the Contractor, or any agent, representative or other person deemed to be acting on behalf of the Contractor, or any supplier or subcontractor furnishing material to or performing work under this Contractor, or any agent, representative or other person deemed to be acting on behalf of such supplier or subcontractor, to any director, officer or employee of the Authority; or to any Director, Officer, employee or agent of any of the Authority's agents, consultants, representatives or other persons deemed to be acting for or on behalf of the Authority with a view toward securing a Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such Contract is expressly forbidden. The terms of this GRATUITIES Article shall be strictly construed and enforced in the event of violations hereof.
- (b) Reported instances of the giving or offering to give gratuities within the context of this GRATUITIES Article will be investigated by the Board of Directors or its duly authorized representative. A preliminary investigation will be made to determine whether there is probable cause to suspect that a violation of this Article has been committed. If such probable cause is found to exist, the Board of Directors, or its duly authorized representative, shall formally notify WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT OIG), and/or any federal, state or local law enforcement authorities.
- (e) The rights and remedies of the Authority provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

17. OFFICIALS NOT TO BENEFIT

- (a) No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Contract, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this Contract, if made with a corporation for its general benefit.
- (b) No member, officer or employee of the Authority or of a local public body during his or her tenure or one (1) year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.
- (c) Enforcement of this Article shall be consistent with 18 U.S.C. § 431.

18. ORGANIZATIONAL CONFLICT OF INTEREST

- (a) An organizational conflict of interest exists when the nature of the work to be performed under a proposed Contract or subcontract may, without some restriction on future activities (1) result in an unfair competitive advantage to the Contractor or subcontractor; or (2) impair the Contractor's objectivity in performing the contracted work. Most typically this would arise when a Contractor prepares a design or specification for work that is to be procured competitively. It may also arise when a Contractor or one of its affiliates would have an economic interest in the outcome of a contract or project. Conflicts of interest may be either real or apparent.
- (b) In the event that the Contractor believes that it or any of its potential subcontractors may have an organizational conflict of interest, it shall notify the Contracting Officer, in writing, within five (5) work days after it becomes aware of the potential or actual organizational conflict of interest. The written notification shall identify the nature and circumstances of the perceived conflict and propose appropriate measures to eliminate or mitigate the situation. The Contracting Officer will review the circumstances and the proposed mitigation plan and notify the Contractor accordingly, determining that: (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 of the Contract, that it could not reasonably have anticipated prior to award, it shall notify the Contracting Officer in accordance with paragraph (b) above, or request an exception to the restriction with supporting rationale. The Contracting Officer shall consider the Contractor's proposed measures to mitigate or eliminate the conflict, or the request for an exception.
- (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; or
- (f) If the request for an exception is not granted by the Contracting Officer, and the Contract is not terminated, the Contractor shall be notified in writing and be given ten (10) days from the date of the written notification to take all necessary action to comply with the requirements of this article.
- (g) If the proposed measures are determined acceptable to the Contracting Officer, the Contracting Officer may grant a specific exception to this restriction, when in the Contracting Officer's judgment, the exception will not create a conflict between the Contractor's duties and obligations under this Contract and the duties and obligations imposed on the Contractor under the contractual or other relationship.
 - (1)
 - (2) The Contractor, in performing this Contract, shall avoid any conduct that might result in or give the appearance of creating for directors, officers, or employees of the Authority in their relationship with the Contractor, any conflicts of interest or favoritism and/or the appearance thereof and shall avoid any conduct that might

result in a director, officer, or employee failing to adhere to the Standards of Conduct adopted by the Authority's Board of Directors.

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

19. CONTRACTOR PERSONNEL

- (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 work is deemed contrary to the Authority's best interests. 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 the work.
- (b) Contractor personnel required to work on WMATA property must obtain a WMATA vendors' badge and successfully complete the mandatory safety training that must be renewed yearly. 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.

20. FALSE STATEMENTS, CLAIMS OR SUBMISSIONS

- (a) The Contractor acknowledges its responsibility to undertaken its obligations under this publicly funded Contract with full integrity and, to that end, to take all reasonable steps to ensure that statements, claims and submissions made pursuant to this 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 shall be deemed material if it impacted or could reasonably have been intended to impact the disposition of any claim, dispute, proposed or implemented change order, proposed pricing or schedule adjustment of any nature, or other substantive issue directly affecting the rights of the parties under the Contract.
- (c) Where the Authority believes that there are reasonable grounds to conclude that the Contractor engaged in one or more violations of paragraph (b), it shall so notify the Contractor in writing, describing the nature of the potential violation(s). The Contractor shall thereupon have thirty (30) days following its receipt of such notification to provide its written response. The Authority shall be authorized to initiate suit in a court of competent jurisdiction, asserting the Contractor's violation(s) of paragraph (b) of this Article and the Authority's consequent entitlement to monetary relief. Claims relating

to an alleged violation of this article shall be subject exclusively to judicial adjudication and shall not be subject to the "Disputes" article of this Contract or other administrative disposition.

- (d) The rights of the Authority set forth in this Article are in addition to any such additional contractual, legal or equitable rights that may arise upon the Contractor's submission of a knowingly false claim or statement, including without limitation the Authority's right to terminate the Contract. Nor shall the provisions of this Article serve in any respect to limit, waive or modify any liability, civil or criminal, of the Contractor or any of its officers, agents or employees which such conduct may precipitate.

CHAPTER X – MISCELLANEOUS ADDITIONAL PROVISIONS

1. FEDERAL, STATE, AND LOCAL TAXES

- (a) Except as may be otherwise provided in this Contract, the Contract price shall be deemed to include all applicable federal, state and local taxes and duties.
- (b) Notwithstanding paragraph (a), with respect to any federal excise tax or duty on the transactions or property covered by this Contract, if a statute, court decision, written ruling or regulation takes effect after the Contract date, and:
 - (1) Results in the Contractor being required to pay or bear the burden of any such federal excise tax or duty or increase in the rate thereof 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, duty or rate increase was included in the Contract price as a contingency reserve or otherwise; or
 - (2) Results in the Contractor not being required to pay or bear the burden of, or in his obtaining a refund or drawback of, any such federal excise tax or duty that would otherwise have been payable on such transactions or property or which was the basis of an increase in the Contract price, the Contract price shall be decreased by the amount of the relief, refund, or drawback, or that amount shall be paid to the Authority, as directed by the Contracting Officer. The Contract price shall be similarly decreased if the Contractor, through its fault or negligence or its failure to follow instructions of the Contracting Officer, is required to pay or bear the burden of, or does not obtain a refund or drawback of, any such federal excise tax or duty.
- (c) Paragraph (b) above shall not be applicable to social security taxes or to any other employment tax.
- (d) No adjustment of less than \$250 shall be made in the Contract price pursuant to paragraph (b).
- (e) As used in paragraph (b), the term “Contract date” means the date the Contract was executed by the Authority. As to additional supplies or services procured by modification to this Contract, the term “Contract date” means the effective date of such modification.
- (f) The Contractor shall promptly notify the Contracting Officer of matters 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 to which the Authority is exempt were included in its bid price(s) or the final Contract Price. In the event that the Authority learns that, notwithstanding this certification, any taxes to which

the Authority is exempt are included in the final Contract Price, the Authority shall be entitled to a reduction in the Contract price reflecting such amount and a refund of monies paid related to such taxes, plus applicable interest.

3. PUBLIC COMMUNICATION

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

4. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

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

6. SURVIVAL

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

7. ALL NECESSARY PROVISIONS DEEMED INCLUDED

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

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

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 property once WMATA issues them a contractor badge. Contractor employees and candidates who do not authorize background screenings or whose background screenings are unsatisfactory will not be granted contractor badges or access to WMATA property. Successful background checks are valid for one (1) year from the date of inquiry.

3. WORKPLACE VIOLENCE/ZERO TOLERANCE

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



MID-ATLANTIC PURCHASING TEAM RIDER CLAUSE

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

Extension to Other Jurisdictions

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

Inclusion of Governmental & Nonprofit Participants (Optional Clause)

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

Notification and Reporting

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

Contract Agreement

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

Mid-Atlantic Purchasing Team:

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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT IFB No. CQ16077

- ___ Washington Metropolitan Area Transit Authority
- ___ Washington Suburban Sanitary Commission
- ___ Winchester, Virginia
- ___ Winchester Public School

