



# **Invitation For Bid**

**[Federal]**

**[Radiation  
Isotope Identification Device  
(RIID) ]**

**IFB No.: FQ15238/AMB**

**Date: June 29, 2015**

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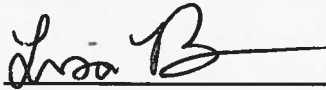
INTRODUCTORY INFORMATION

SOLICITATION CERTIFICATIONS PAGE

(FQ15238/AMB)

(RADIATION ISOTOPE IDENTIFICATION DEVICE)

APPROVED FOR RELEASE



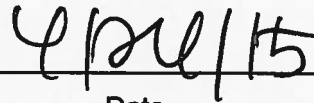
Project Manager/Office Designee



Date



Contracting Officer



Date



COUN



Date

END OF SECTION

DATE: 29 June 2015

SUBJECT: Invitation for Bid (IFB)

Washington Metropolitan Area Transit Authority (WMATA) is seeking bids from qualified firms to provide a quantity of Radiation Isotope Identification Devices (RIIDs). The Metro Transit Police Department (MTPD) Metro Transit Police Department currently has several units with responsibility for CBRNE detection and response, including the Anti-Terrorism Teams, Explosive Ordnance Detection Canine Teams, and Hazardous Devices Unit. MTPD has expanded both the size and capability of the Hazardous Devices Unit to handle the full range of CBRNE threat scenarios. As the unit has expanded, additional tools have been identified as needed for combating specific categories of threats. The product within this solicitation represents the current need to fill identified capability gaps and to provide the unit the tools to be more agile in CBRNE response. MTPD continues to expand the detection activities of the Department to prevent a successful CBRNE attack on the transit system.

NOTE: The IFB contains a zero (0%) percent DBE Goal requirement.

A pre-bid conference will not be held. Your bid must be submitted in accordance with IFB terms and delivered to WMATA's, Office of Procurement and Materials, 600 Fifth Street, N.W., Room 3C02, Washington, DC 20001. Bids must be no later than 2:00 P.M. on **July 15, 2015**.

If you have any questions, Technical, Contractual or Administrative please email them to the Contract Administrator, **Alicia Blanton** at **ablanton@wmata.com** no later than 12:00 PM, July 7, 2015. WMATA will provide written answers, by email to all those who obtain the IFB and provide their email addresses.

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

Required bid documents:

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

Sincerely,

**[Signature on File]**  
\_\_\_\_\_  
Contracting Officer

**NOTICE TO BIDDERS  
IMPORTANT  
PLEASE READ CAREFULLY**

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

1. Have you checked your bid? Are all items included and checked for math errors?
2. If Amendments are included, have you acknowledged and recorded the number of Amendments on the bid envelope and Bid Form?
3. Have you signed and submitted the Bid Form 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 B requirement? Met the required \_\_0\_% DBE goal and completed the appropriate DBE forms for submittal with your bid?
7. Contractor's pricing, if offered to other jurisdictions, will be the same regardless of quantities ordered and that the Authority makes no representations regarding the quantities that may be ordered by any such jurisdictions.
8. Bid envelope must be marked with Solicitation number and addressed to the Contract Administrator (FQ15238/AMB).
9. Copy of Certificate of Insurance



**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](mailto:procurement@wmata.com).

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY  
SUPPLY AND SERVICE CONTRACT IFB# FQ15238/AMB

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

**SOLICITATION, OFFER AND AWARD**

CONTRACT NO.	SOLICITATION NO. IFB# FQ15238/AMB	DATE ISSUED June 29, 2015	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 FOUR (4) copies for furnishing the supplies or services in the schedules will be received at Authority until 2:00 P.M. local time July 15, 2015  
 (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 Price Schedule Sheets				\$
	(See continuation of schedule on page 22)				

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)  Signature <span style="float: right;">Offer Date</span>
<input type="checkbox"/> Check if remittance is different from above — enter such address in Schedule	

**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 PRICES**

ITEM	DESCRIPTION	MAKE	MODEL	QTY	UNIT PRICE	EXTENDED PRICE
1	Radiation Isotope Identification Devices (Base Year)			2		
2	Five (5) Year Warranty and Maintenance (Base Year)			2		
	Total					

ITEM	DESCRIPTION	MAKE	MODEL	QTY	UNIT PRICE	EXTENDED PRICE
1	Radiation Isotope Identification Devices (Option Year One)			18		
2	Five (5) Year Warranty and Maintenance (Option Year One)			18		
	Total					

**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 certifications and Appendix B (DBE) 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 IFB# FQ15238  
OFFICE OF PROCUREMENT  
600 FIFTH STREET  
WASHINGTON, DC 20001

BIDS SHALL BE TIMELY MAILED OR HAND DELIVERED TO REACH WMATA BEFORE 2:00 P.M. (LOCAL TIME) ON DAY OF BID OPENING/CLOSING – JULY 15, 2015. BIDS HAND CARRIED BETWEEN 1:00 P.M. AND 2:00 P.M. SHOULD BE PRESENTED TO THE CONTRACT ADMINISTRATOR, ALICIA BLANTON.

## **SOLICITATION INSTRUCTIONS**

**INVITATION FOR BID**  
**SOLICITATION INSTRUCTIONS**

**1. INTRODUCTION**

- a. The Authority seeks to award a Contract to procure Radiation Isotope Identification Devices (RIIDs) for the Metropolitan Transit Police Department (MTPD). To that end, it is issuing this Invitation For Bid (“IFB”) to solicit Bids from qualified firms and individuals who can satisfy the requirements of the accompanying Contract Documents.
- b. As this is a low bid solicitation, award of a Contract hereunder shall be to the lowest priced, most 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.
- d. This solicitation seeks to award a requirements Contract for the supplies/equipment or services specified, and effective for the period stated herewith. Bidders are advised that the quantities of supplies or services specified in the Price Schedule are estimates only, included for purposes of bid evaluation and in order to provide information to assist the Bidders in formulating their Bids. While they represent the Authority’s best such estimate as of the time of the solicitation, they do not constitute a commitment on the part of the Authority to procure supplies or services at the estimated level.

**2. GOODS TO BE FURNISHED/SERVICES TO BE PERFORMED**

Bidders are advised that:

- a. If “Services” are to be performed pursuant to this Solicitation, they must be provided in all respects as specified in the accompanying Contract Documents and include the services to be furnished, together with any labor, 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 Bidders and award of a contract hereunder must be directed to the Contract Administrator as follows:

**Alicia Blanton**  
**Attn.: FQ15238**  
**600 Fifth Street, N.W.**  
**Washington, DC 20001**  
**Phone: (301) 955-7174**  
**Email: [ablanton@wmata.com](mailto:ablanton@wmata.com)**

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

**4. EXPLANATIONS TO BIDDERS**

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

**5. PRE-BID MEETING (NOT APPLICABLE)**

**6. AMENDMENTS TO IFB**

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

**7. ACKNOWLEDGMENT OF AMENDMENTS**

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

**8. PREPARATION OF BIDS**

- a. Bids shall be submitted on the Price Schedule furnished, or copies thereof, and must be manually signed. If erasures or other changes appear on the forms, such erasures or changes must be initialed by the person signing the Bid.
- b. Bidders shall furnish all information required by this IFB and, in so doing, are expected to examine fully the IFB Documents. Failure to do so will be at the risk of the Bidder.
- c. Discounts for prompt payment will not be considered in the evaluation of bids. However, any offered discount will be included within the award of the Contract and will be taken by the Authority if payment is made within the discount period referenced in the Bid.
- d. The Price Schedule may provide for submittal of a price or prices for one or more items which may be unit prices, lump sum bids, alternate prices, or a combination thereof. The Price Schedule expressly requires that the Bidder bid on all items, failure to do so will render the bid non-responsive.



- e. All Bid prices for the Work shall be deemed to include the cost of all work, labor and materials required by the Contract Documents, including without limitation, delivery charges, insurance, container charges or any other expenses incidental to the Work, as well as expenses associated with compliance with federal, state or local laws or regulatory requirements. All Bid prices are deemed to be F.O.B. delivery point.
- f. Unless specifically called for in the Price Schedule, alternate bids will not be considered.

**9. SUBMITTAL OF BIDS**

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

**10. RESPONSIVE BIDS**

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

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

- a. Any Bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it--
  - (1) Was sent by registered or certified U.S. or Canadian mail not later than the fifth Day before the date specified for receipt of Bids (e.g., a Bid submitted in response to a solicitation requiring receipt of Bids by the 20th of the month must have been mailed by the 15th);

- (2) Was sent by first class mail and it is determined by the Authority that the late receipt was due solely to mishandling by the Authority after its timely delivery on Authority premises;
  - (3) Was sent by U.S. Postal Service Express Mail Next Day Service not later than 5:00 p.m. at the place of mailing at least two business days prior to the date specified for receipt of Bids. The term "business days" excludes weekends and U.S. federal holidays; or
  - (4) Is the only Bid received.
- b. Any modification or withdrawal of a Bid is subject to the same conditions as set forth in subparagraphs (a)(1), (2), and (3) above.
  - c. The only acceptable evidence to establish the time of receipt by the Authority is the time/date stamp of that event on the bid wrapper or other documentary evidence of receipt maintained by the Authority.
  - d. Notwithstanding sub-paragraph "a" above, a late modification of any otherwise successful Bid that makes its terms more favorable to the Authority will be considered at any time it is received and may be accepted.
  - e. Bids may be withdrawn by written notice received by the Authority before the opening of Bids. Bids may be withdrawn in person by a Bidder, or an authorized representative of the Bidder if the representative's identity is established to the satisfaction of the Authority and the representative signs a receipt for the return of the Bid, before the opening of Bids. The attempted withdrawal of a Bid, proffered or received subsequent to the Bid opening and during the Acceptance Period set forth in paragraph 12, will not be honored and will be without effect.

**12. BID ACCEPTANCE PERIOD AND BIDDER'S DEFAULT**

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

**13. BID GUARANTEE (NOT APPLICABLE)**

**14. BID MISTAKE**

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

**15. REPRESENTATIONS, CERTIFICATIONS, AND ACKNOWLEDGMENTS**

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

**16. LAWS AND REGULATIONS**

Bidders are responsible for fully informing themselves with respect to the requirements for, and to comply with, any and all applicable State of Maryland, Commonwealth of Virginia, District of Columbia, Federal and jurisdictional laws and regulations governing

the service to be provided under the Contract. Further, the Bidder to which this Contract is awarded shall be responsible to obtain, at its own cost and expense, any and all licenses/permits required to transact business in any political jurisdictions to be serviced.

**17. ROYALTY INFORMATION (NOT APPLICABLE)**

**18. REQUIREMENT FOR COST DATA FOR CONTRACT AWARD**

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

**19. PRE-AWARD INFORMATION/BIDDER RESPONSIBILITY**

- a. In order to be eligible for award, the low Bidder will be required to demonstrate its ability to perform services contained in the solicitation, in a timely manner, to the complete satisfaction of the Authority. Failure on the part of the low bidder to so demonstrate that it maintains the requisite integrity, overall technical capability and financial resources to perform the Work of the Contract in a satisfactory and timely manner may result in a rejection of the low Bidder as not responsible. In such event, the second lowest Bidder will be required to demonstrate its responsibility, a process which will continue until a Bidder successfully demonstrates that it is responsible for purposes of this Solicitation.
  
- b. To assist in the Authority's evaluation of its responsibility for purposes of award of a Contract hereunder, the apparent lowest responsive Bidder shall 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.

**20. PRE-AWARD MEETING**

The Authority reserves the right to require that a pre-award meeting be held with the apparent low Bidder prior to award of a Contract in order to review the Bidder's understanding of the contract requirements and/or further assist the Authority in

determining the Bidder's responsibility for purposes of award. The Contractor shall be represented at such meeting by individual(s) fully familiar with the contractual requirements including, where so requested by the Authority, representative(s) of one or more major subcontractor(s).

**21. SITE VISIT/INSPECTION OF BIDDER'S FACILITIES (NOT APPLICABLE)**

**22. BASIS FOR AWARD**

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

**23. CONTRACT AWARD**

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

**24. EQUAL EMPLOYMENT OPPORTUNITY**

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

**25. DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS (NOT APPLICABLE)**

**26. OPPORTUNITY FOR DISADVANTAGED BUSINESS ENTERPRISES TO BID (NOT APPLICABLE)**

**27. NOTICE OF PROTEST POLICY**

- a. WMATA policy and procedure for the administrative resolution of protests is set forth in Chapter 17 of the Procurement Policy Manual (PPM). A copy of the PPM is available at [www.wmata.com](http://www.wmata.com).

- b. With respect to federally funded contracts, FTA Circular 4220.1F, Chapter VII-1, addresses Bid Protests. In general, FTA will only review protests submitted by an interested party regarding the alleged failure of the grantee to have a written protest procedure or to follow such procedures and may exercise discretionary jurisdiction over appeals important to its overall transportation program.

**28. WMATA'S TAX EXEMPT STATUS**

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

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

- b. It has been the practice of the District of Columbia to apply the Authority's tax exempt status to certain purchases of materials required under Authority construction contracts and acquired by contractors for physical incorporation into the project work. This has not been the practice in either Maryland or Virginia. The Authority does not represent or warrant that the District of Columbia practice applies to this project or, if it does, that it will continue in effect during the term of this project. It is the responsibility of the Contractor to determine its liability for any and all taxes applicable to this project. Assessment or payment of taxes by the Contractor, including taxes resulting from changes in existing laws or the application thereof or of new or additional taxes, shall not constitute the basis for an increase in the Contract price, except as otherwise allowed under the General Provisions Article, FEDERAL, STATE AND LOCAL TAXES, of this Contract.
- c. The Authority's tax exempt numbers are as follows: District of Columbia -- 5611-0082187-001; Maryland -- 30072210; Virginia -- 5280-0067
- d. By submission of its Bid, the Bidder certifies that none of the taxes as to which the Authority is exempt are included in its bid price(s).

**29. ENGLISH LANGUAGE AND UNITED STATES CURRENCY**

With respect to both this Solicitation and the resultant Contract:

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

- b. All pricing shall be in United States dollars.

**30. BRAND NAME OR EQUAL**

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

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

**31. PERFORMANCE AND PAYMENT BONDS (NOT APPLICABLE)**

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

**REPRESENTATIONS**

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

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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY  
SUPPLY AND SERVICE CONTRACT IFB# FQ15238/AMB

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

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

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

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

\_\_\_\_\_  
Name of Parent Company

\_\_\_\_\_  
Main Office Address (including ZIP Code)

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

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

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

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

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

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

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

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

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

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



"Socially and Economically Disadvantaged Individuals" is defined in Appendix B, Section 4, paragraph I; and

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

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

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

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

- (a) It has a workforce of \_\_\_\_\_ employees.
- (b) It  has developed and has on file, or  has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR Parts 60-1 and 60-2), or
- (c) It  has not previously had contracts subject to the written affirmative action program requirements of the rules and regulations of the Secretary of Labor.

**CERTIFICATIONS**

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

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

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

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

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

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

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

This certification is applicable if the contract will be federally assisted and the offer exceeds \$100,000, or the Contracting Officer believes that orders under an indefinite contract in any year will exceed \$100,000 or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 7413(c)(1)) or the Water Act (33 U.S.C. 1319(c)) and is listed by the U.S. Environmental Protection Agency (EPA) as a violating facility, and the acquisition is not otherwise exempt:

- (a) Any facility to be utilized in the performance of this proposed contract [ ] is, or [ ] is not listed on the EPA list of Violating Facilities;
- (b) Offeror will immediately notify the Contracting Officer, before award, of the receipt of any communications from the Administrator, or a designee of the EPA, indicating that any facility which it proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and
- (c) Offeror will include a certification substantially the same as this certification, including this paragraph, in every non-exempt subcontract.

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

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

- (a) Primary Covered Transactions. This certification applies to the offer submitted in response to this solicitation and will be a continuing requirement throughout the term of any resultant contract.
  - (1) In accordance with the provisions of Appendix A to 49 Code of Federal Regulations (CFR) Part 29, the offeror certifies to the best of its knowledge and belief that it and its principals:
    - (i) are not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
    - (ii) have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
    - (iii) are not currently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(ii) of this Certification; and
    - (iv) have not, within a three-year period preceding this offer, had one or more public transactions (Federal, State, or local) terminated for cause or default.
  - (2) Where the offeror is unable to certify to any of the statements in this certification, the offeror shall attach an explanation to this offer.
- (b) Lower Tier Covered Transactions. This certification applies to a subcontract at any tier expected to equal or exceed \$25,000 and will be a continuing requirement throughout the term of the prime contract.
  - (1) In accordance with the provisions of Appendix B to 49 Code of Federal Regulations (CFR) Part 29, the prospective lower tier subcontractor certifies, by submission of this offer, that neither it nor its principals is currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal or State department or agency.
  - (2) Where the prospective lower tier subcontractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bids.
- (c) The Certification required by subparagraph (b), above, shall be included in all applicable subcontracts and a copy kept on file by the prime contractor. The prime contractor shall be required to furnish copies of certifications to the Contracting Officer upon the Contracting Officer's request.

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

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

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

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

- (a) By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:
  - (1) It does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control, where segregated facilities are maintained.
  - (2) The offeror agrees that a breach of this certification is a violation of the Equal Opportunity Clause in the contract.
  - (3) As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom or otherwise.
  - (4) It further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will:
    - (a) Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;
    - (b) Retain such certifications in its files; and
    - (c) Forward the following notice to such subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

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

**OF NONSEGREGATED FACILITIES**

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

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

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

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

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

- (a) By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that to the best of his or her knowledge or belief:
  - (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities."
  - (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers and that all subrecipients shall certify and disclose accordingly.
- (b) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352, as amended. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**14. BUY AMERICA ACT CERTIFICATION (RC-114, MAY 07)**

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

- (a) By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement it will comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7 Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11.
- (b) An offeror must submit to the Authority the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Offers that are not

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY  
SUPPLY AND SERVICE CONTRACT IFB# FQ15238/AMB

accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors. Mark the applicable certifications below:

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

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

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

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

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

(2) **Certification requirement for procurement of buses, other rolling stock and associated equipment:**

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

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

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

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

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

This certification is applicable to federally assisted contracts.

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

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

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

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

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

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

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

(b) Retain such certifications in its files; and

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

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

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

For purposes of this disclosure, terms in bold are defined by the Code of Ethics for Members of the WMATA Board of Directors a copy of which is available at [www.wmata.com](http://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 your knowledge, information and belief in connection with this procurement:

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

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

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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY  
SUPPLY AND SERVICE CONTRACT IFB# FQ15238/AMB

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

**SIGNATURE BLOCK FOR ALL REPRESENTATIONS AND CERTIFICATIONS**

Name of Offeror: \_\_\_\_\_  
\_\_\_\_\_

Name and Title of Authorized Representative: \_\_\_\_\_  
\_\_\_\_\_

Print and Sign Name

\_\_\_\_\_ Title \_\_\_\_\_ Date

**(RC-116, OCTOBER 08)**

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

1. Name of Firm: \_\_\_\_\_  
\_\_\_\_\_
2. Address: \_\_\_\_\_  
\_\_\_\_\_
3.  Individual  Partnership  Corporation  Joint Venture
4. Date Organized \_\_\_\_\_.  
State in which incorporated \_\_\_\_\_.
5. Names and Addresses of Officers or Partners:
  - a. \_\_\_\_\_
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_
  - d. \_\_\_\_\_
  - e. \_\_\_\_\_
  - f. \_\_\_\_\_
6. How long has your firm been in business under its present name? \_\_\_\_\_
7. Attach as SCHEDULE ONE a list of current contracts, which demonstrates your proficiency, each with contract amount, name of contracting party, type of work and percentage of completion.
8. Attached as SCHEDULE TWO a list of similar contracts, each with contract amount, name of contracting party, and character or type of work for similar contract completed in the last two (2) years.
9. In the last two (2) years, have you ever been denied an award where you were low bidder/offer? If the answer is YES, attach as SCHEDULE THREE the full particulars regarding each occurrence.
10. Have you ever failed to complete any contract, other than current, on which you were the low bidder?  
  
If the answer is YES, attach as SCHEDULE FOUR, 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 briefly be described as providing Storage File Cabinets, including all necessary or incidental work, labor and materials. The Contractor agrees to perform the Work in accordance with requirements and terms and conditions hereinafter set forth in the Contract Documents. In consideration for the complete, satisfactory and proper performance thereof by the Contractor, the Authority agrees to pay to the Contractor, and the Contractor agrees to accept as full compensation therefor, the sums of money set forth in the Price Schedule at the time 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; (b) the specifications or scope of work; (c) drawings, if any; (d) other documents, exhibits, and attachments generated by the Authority as part of the Contract Documents; (e) the technical proposal, if any, and other submissions of the Contractor generated as part of the Contract Documents. In the event of a conflict within or between provisions entitled to equal precedence pursuant to the foregoing, the more stringent requirement shall apply.
- (b) Notwithstanding paragraph (a), in the event that this Contract is funded in whole or part through funding provided by the Federal Government, all contract terms mandated for inclusion by the Federal Government shall be deemed to supersede any other conflicting or inconsistent provision of the Contract Documents.

**4. REQUIREMENTS CONTRACT (NOT APPLICABLE)**

**5. AUDIT, AVAILABILITY, AND INSPECTION OF RECORDS**

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

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

**6. AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR**

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

**7. CONTRACTING OFFICERS TECHNICAL REPRESENTATIVE (COTR)**

- (a) The Work will be conducted under the general direction of the Contracting Officer on behalf of the Authority, who may delegate certain responsibilities to a Contracting Officer's Technical Representative (COTR). While the COTR will be thereupon authorized to perform such designated functions, the Authority will not be responsible for actions of the COTR or any other Authority employee or representative which exceeds his or her authority.
- (b) The Contractor will be furnished, upon written request, a copy of the delegation, if any, to a COTR for this Contract.

**CHAPTER II – TIME/DELAYS/LIQUIDATED DAMAGES**

**1. PERIOD OF PERFORMANCE**

The period of performance is 60 Days commencing on the date of award.

The Authority has the unilateral right to extend the contract by exercising up to one (1) 12 month Option Period (as applicable) subject to all terms and conditions herein.

The Authority may exercise the option(s) (if any) by written notice to the Contractor prior to commencement of the option period; provided, that the Authority shall give the contractor a preliminary notice of its intent to extend at least 30 days before the contract expires. The preliminary notice does not commit the Authority to an extension.

**2. LIQUIDATED DAMAGES FOR DELAY**

(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 one hundred dollars (\$100.00) 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 the 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, then the time for completion and/or affected delivery date(s) shall be extended by the Contracting Officer, subject to the following conditions:

- (1) The cause of the delay arises after the award of the Contract and neither was nor could have been anticipated by the Contractor by reasonable investigation before such award;
  - (2) The Contractor demonstrates to the Contracting Officer that the completion of the Work and/or affected delivery(s) will be actually and necessarily delayed;
  - (3) The delay cannot be avoided or mitigated by the exercise of all precautions, efforts and measures reasonably available to the Contractor, whether before or after the occurrence of the cause of delay; and
  - (4) The Contractor makes written request and provides other information to the Contracting Officer as described in paragraph (f) below.
- (c) In the event the Contractor shall be delayed at any time or for any period by two or more of the causes above-mentioned in this Article, the Contractor shall not be entitled to a separate extension for each one of the causes but only one period of extension shall be granted for the cumulative effects of the delay.
- (d) Any reference in this Article to the Contractor shall be deemed to include Suppliers and Subcontractors at any tier, whether or not in privity of contract with the Contractor.
- (e) The Contracting Officer may rescind or shorten any extension previously granted, if the Contracting Officer subsequently determines that any information provided by the Contractor in support of a request for an extension of time was erroneous; provided that such accurate information, if known, would have resulted in a denial of the request for an excusable delay. Notwithstanding the foregoing, the Contracting Officer will not rescind or shorten any extension previously granted if the Contractor acted in reliance upon the granting of such extension and if, in the judgment of the Contracting Officer, such extension was based on information which, although later found to have been erroneous, was submitted in good faith by the Contractor.
- (f) The request for an extension of time pursuant to paragraph (a) shall be made within ten (10) days after the Contractor knows or should know any cause for which it may claim an excusable delay and shall provide any actual or potential basis for an extension of time, identifying such cause and describing, as fully as then practicable, the nature and projected duration of the delay and its effect on the completion of that part of the Work identified in the request. Within thirty (30) days of its receipt of all such information, the Authority shall advise the Contractor of its decision on such requested extension; except that, where it is not reasonably practicable for the Authority to render such decision in the thirty (30) day period, it shall, prior to the expiration of such period, advise the Contractor that it will require additional time and the approximate date upon which it expects to render such decision.
- (g) In no event shall a delay in progress or performance of the Work occasioned solely by a Force Majeure or the acts or omissions of any party outside the control of the Contractor be the basis for a Termination for Default pursuant to Article titled TERMINATION FOR DEFAULT; except that in no event shall a subcontractor at any tier be deemed a party outside the control of the Contractor for purposes hereof.

**4. AUTHORITY DELAY OF WORK**

- (a) If the performance of all or any part of the Work is delayed or interrupted in a material manner or extent by an act or omission of the Authority in the administration of this Contract, which act or omission is not expressly or impliedly authorized by this Contract or by applicable provisions of law, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this Contract caused by such delay or interruption and the Contract modified in writing accordingly. Adjustment shall be made also in the delivery or performance dates and any other contractual provision, as to which compliance was materially affected by such delay or interruption. However, no adjustment shall be made under this Article or otherwise under this Contract for any delay or interruption to the extent that performance was or would have been delayed or interrupted by any other cause, including, without limitation: (i) the fault or negligence of the Contractor or any subcontractor; (ii) the fault or negligence of a third party to the Contract; (iii) an act constituting a Force Majeure pursuant to Article titled EXTENSIONS OF TIME/FORCE MAJEURE; or (iv) any other cause for which an adjustment is provided or excluded under any other provision of this Contract or otherwise at law.
- (b) An adjustment pursuant to paragraph (a) shall not be allowed:
- (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the applicable act or omission claimed; and
  - (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption and in no event later than 30 days after such termination. Such claim shall be accompanied by appropriate documentation, specifically identifying and supporting the nature and extent of the claimed impact upon the cost and/or time required for performance; except that, in any instance in which it is not reasonably practical for the Contractor to fully determine or project such impact within such 30 day period, the claim shall be accompanied by such supporting documentation as is then reasonably available to the Contractor as well as the anticipated time frame in which the Contractor projects to provide the additional materials. The Contracting Officer shall maintain the right throughout the process to request the preparation and/or submission of such additional materials as it shall reasonably require in consideration of the claim and shall be under no obligation to conclude its consideration of the claim prior to receipt and review of all relevant materials. Any adjustment to the contract price pursuant to this Article must be agreed upon or otherwise determined prior to Final Payment

**5. NOTICE TO THE AUTHORITY OF LABOR DISPUTES**

- (a) Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.



- (b) The Contractor agrees to insert the substance of this Article, including this paragraph (b), in any subcontract hereunder as to which a labor dispute may delay the timely performance of this Contract.

**CHAPTER III – ACCEPTANCE/INSPECTIONS/DEFICIENCIES**

**1. INSPECTION OF SERVICES (NOT APPLICABLE)**

**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) The warranty will not apply to the extent that such failure is caused by user abuse.

- (d) Should the Contractor shall fail to repair or replace any part or do any Work in accordance with the terms of the warranty, or if immediate replacement or Work is necessary to maintain operation of the item supplied, the Authority shall have the right to cause such replacement to be made, utilizing its own forces and/or those of third parties as the Authority shall reasonably deem appropriate, such work being at the expense of the Contractor.
- (e) Each piece of equipment, component or part thereof that is replaced, repaired, adjusted or serviced in any manner under the terms of warranty by the Contractor during the warranty period shall be reported to the Contracting Officer on forms supplied by the Authority. Each report shall indicate in detail all repairs, adjustments and servicing to each and every component, unit or parts thereof.
- (f) Any warranty or retrofit work shall be accomplished with minimum disruption to Authority operations and its maintenance and service facilities. The Authority shall at its sole discretion determine the availability of facilities for warranty or retrofit work.
- (g) The Contractor shall make available adequate service facilities, including spare parts, for all the items supplied. Trained technical service personnel shall be available to the Authority sufficient to meet 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 equity.

**6. FIRST ARTICLE INSPECTION (NOT APPLICABLE)**

**7. F.O.B. DESTINATION**

- (a) Unless otherwise specified, the Contractor shall furnish all supplies to be delivered under this Contract "F.O.B. Destination". As used herein, "F.O.B. Destination" means:
  - (1) Free of expense to WMATA on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and
  - (2) Supplies shall be delivered to the destination consignee's warehouse unloading platform, or receiving dock, at the expense of the Contractor.

WMATA shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of WMATA acting in its contractual capacity. If the Contractor uses a rail carrier or freight forwarder for less than carload shipments, the Contractor shall assure that the carrier will furnish tailgate delivery if transfer to truck is required to complete delivery to consignee.

- (b) The Contractor shall:
- (1) Pack and mark the shipment to comply with contract specification;
  - (2) In the absence of specifications, prepare the shipment in conformance with carrier requirements;
  - (3) Prepare and distribute commercial bills of lading;
  - (4) Deliver the shipment in good order and condition to the point of delivery specified in the contract;
  - (5) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the Contract;
  - (6) Furnish a delivery schedule and designate the mode of delivering carrier; and
  - (7) Pay and bear all charges to the specified point of delivery.

**8. QUALITY ASSURANCE/QUALITY CONTROL**

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

**CHAPTER IV—CHANGES/ PRICING ADJUSTMENTS**

**1. CHANGE ORDERS**

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

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

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

## **2. PRICING OF ADJUSTMENTS**

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

## **3. ACCOUNTING AND RECORD KEEPING FOR ADJUSTMENTS**

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

value of the adjustment, arise in connection with a Contract with a base sum in excess of \$1,000,000. In addition to the records required pursuant to paragraph (b) above, in the event pricing of an adjustment under this Contract is not agreed upon between the Contractor and the Contracting Officer prior to the commencement of work for which the pricing adjustment is requested, the Contractor and any subcontractor engaged in work for which the pricing adjustment is requested, shall maintain accounts and original cost records specifically segregated and identified by job order or other appropriate accounting procedures approved by the Contracting Officer of all incurred segregable costs related to the work for which the pricing adjustment is requested. The Contractor shall maintain accounts and records which segregate and account for the costs of all work associated with that part of the project for which the pricing adjustment is requested and shall allocate the costs so accumulated between: (1) work required under the base Contract; (2) work requested to be reimbursed under the pricing adjustment; and (3) work claimed or determined to be related to other actual or proposed adjustments, including but not limited to, changes orders, differing site conditions, and the like. The accounts and records so established shall accumulate such costs under logical costs groups, such as material, labor, equipment, subcontracts, field overhead and the like. The Contractor shall record these costs on a form approved by the Contracting Officer.

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



**CHAPTER V – INVOICES/PAYMENTS/ DEDUCTIONS**

**1. BILLING AND PAYMENT**

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

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

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

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

**3. SUBCONTRACTOR PAYMENTS**

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

**4. GARNISHMENT OF PAYMENTS**

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

**CHAPTER VI – CONTRACT TERMINATION/STOP WORK ORDERS/DISPUTES**

**1. STOP WORK ORDERS**

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

**2. TERMINATION FOR DEFAULT**

- (a) The Contractor shall be in default if it commits a breach of any of its obligations under the Contract deemed material by the Contracting Officer. Without limiting the generality of the foregoing and in addition to those instances specifically referred to in the Contract, the Contractor shall be in default in the following circumstances:
- (i) It fails to begin, or abandons, the Work of the Contract in accordance with the contractual requirements;
  - (ii) It fails to deliver the Supplies or perform the Services within the time specified in the Contract or any extension approved by the Contracting Officer;
  - (iii) It fails to progress the Work in a manner deemed unreasonable or unnecessary by the Contracting Officer or so as to endanger performance of the Contract; or
  - (iv) In the view of the Contracting Officer, the Contractor is willfully violating any of the provisions or obligations of the Contract or is not executing such provisions or obligations reasonably and in good faith.
- (b) In the event of a material breach by the Contractor pursuant to paragraph (a), the Contracting Officer is authorized to direct a written notice to the Contractor, specifying the nature of the breach and providing that, if the Contractor fails to cure such failure(s) within ten days (or such additional time as authorized by the Contracting Officer), the Authority shall proceed to terminate the Contract, in whole or designated part, for default in accordance with the provisions hereof (a "Notice to Cure"). Should the Contractor fail to cure the breach to the satisfaction of the Contracting Officer within the ten day period, or such additional period as may be designated in the Notice to Cure, the Authority may thereupon, immediately upon conclusion of such period or at any reasonable time thereafter, terminate the Contract, in whole or part, by written notice to the Contractor.
- (c) Upon receipt of a notice of default, the Contractor shall immediately cease performance of the Work so terminated. The Authority shall thereupon have the right to take any action necessary to complete the Work, including performing the Work itself, or contracting with another party to do so. In the event the Work is completed directly by the Authority or by a third party, the Contractor shall be liable for the additional costs and expenses necessary to complete the Work, including, without limitation, labor, materials, plant, 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 which has not been terminated.
- (d) The Authority may, in its sole discretion, waive a default by the Contractor, but such waiver and/or failure by the Authority to take action in respect to any default shall not be deemed a waiver of any subsequent default.
- (e) Upon any termination for default, the Authority may require the Contractor to transfer title and deliver to the Authority, as directed by the Contracting Officer of (1) any completed Supplies, and (2) partially completed Supplies, components (including data and intellectual property) and contract rights that the Contractor has specifically

produced or acquired for the terminated portion of this Contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Authority has an interest.

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

**3. TERMINATION FOR CONVENIENCE**

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

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

available, the amount, if any, due the Contractor as a result of the termination and shall pay the amount determined.

- (e) Following submission of the Contractor's proposal pursuant to paragraph (d), the parties shall seek to agree upon the whole or any part of the amount to be paid or remaining to be paid as a result of the termination. The amount may include a reasonable allowance for profit on work completed. However, in no event shall the total amount to be paid the Contractor pursuant to this Article exceed the total contract price as reduced by (1) payments previously made and (2) the contract price of the remaining work not terminated.
- (f) If the parties fail to agree on the whole amount to be paid because of the termination, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed upon under paragraph (e):
  - (1) The contract price for completed Supplies or Services accepted by the Authority (or sold or acquired under paragraph (b)(9)) not previously paid for, adjusted for any saving of freight and other charges.
  - (2) The total of:
    - (i) The costs incurred prior to termination in the performance of the Work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any costs attributable to items compensated or to be paid for under sub-paragraph (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 sub-paragraph (f)(2)(i); and
    - (iii) A sum, representing profit on the items described in sub-paragraph (f)(2)(i) determined by the Contracting Officer pursuant to Section 49.202 of the Federal Acquisition Regulation, in effect on the date of this Contract, to be fair and reasonable; however if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the Contracting Officer shall allow no profit under this sub-paragraph and shall reduce the settlement to reflect the projected rate of loss.
  - (3) The reasonable indirect costs of settlement of the work terminated, including:
    - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals;
    - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
    - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

- (g) Except for normal spoilage, and except to the extent that the Authority expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f), the fair value, as determined by the Contracting Officer, of property that is unavailable or damaged so as to become undeliverable to the Authority or to a third party.
- (h) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this Article.
- (i) The Contractor shall have the right of appeal, under the DISPUTES Article, from any determination made by the Contracting Officer under paragraphs (d) or (f), except that a failure on the part of the Contractor to submit the termination settlement proposal within the time provided in paragraph (d), or timely request an extension thereof, shall constitute a waiver of its right to appeal the determination of the Contracting Officer pursuant to the Disputes Article or any otherwise applicable contractual, legal or equitable remedy.
- (j) In determining any sum due the Contractor under this Article, there shall be deducted:
  - (1) All un-liquidated 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 which the Authority has against the Contractor under this Contract, including any third-party claim as to which the Contracting Officer is not satisfied that sufficient insurance coverage is in place; and
  - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other items procured by the Contractor or sold under the provisions of this Article and not recovered by or credited to the Authority.
- (k) If the termination is partial and the Contractor asserts that the partial termination has rendered enforcement of the remainder of the Contract at the remaining Contract price inequitable, the Contractor may file a proposal with the Contracting Officer for an adjustment of the price(s) of the continued portion of the Contract, which proposal shall be submitted within 90 days from the effective date of termination, unless extended in writing by the Contracting Officer, and shall be accompanied by appropriate supporting documentation of the claimed inequity.
- (l) The Contractor's responsibilities and obligations under this Article shall apply and remain in full force and effect notwithstanding the pendency of any dispute or other delay relating to determination of the appropriate price adjustment or any other issue arising from the termination for convenience.
- (m) Unless otherwise provided in this Contract or by statute, the Contractor and all subcontractors whose work is encompassed in the termination settlement shall maintain all records and documents relating to the terminated portion of this Contract



for three (3) years after final settlement. This includes all books and other evidence bearing on the costs and expenses of the Contractor under this Contract. The Contractor shall make these records and documents available to the Authority, its governing jurisdictions and any other federal, state, or local entities providing funding for this Contract, and to the Comptroller General of the United States, or the agents or representatives of any of them, at the Contractor's office, at all reasonable times, without any direct charge.

**4. ASSIGNMENT**

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

**5. DISPUTES**

- (a) Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under or related to this Contract which is not disposed of by agreement, shall be decided by the Contracting Officer, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within thirty (30) calendar days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written notice of appeal addressed to the Authority Board of

Directors. Such notice should indicate that an appeal is intended and should reference the decision and contract number. The decision of the Board of Directors or its duly authorized representative for the determination of such appeals shall be final and conclusive unless in proceedings initiated by either party for review of such decision in a court of competent jurisdiction, the court determines the decision to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or is not supported by substantial evidence. In connection with any appeal proceeding under this Article, the Contractor, or the Authority, as the case may be, shall be afforded an opportunity to be heard and offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Contracting Officer's decision. The Armed Services Board of Contract Appeals is the authorized representative of the Board of Directors for final decisions on an appeal.

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

**CHAPTER VII – INDEMNIFICATION/INSURANCE/RISK OF LOSS**

**1. INDEMNIFICATION**

- (a) The Contractor shall indemnify, defend and hold harmless the Authority, its directors, officers, employees and agents, from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, and for loss or damage to any property, including the property of the Contractor and the Authority, occurring in connection with, or in any way arising out of the use, occupancy and performance of the Work and/or any acts, known or unknown, in connection with activities to be performed under this contract, *unless* the loss or damage is due to the sole negligence of the Authority. Nothing in the preceding sentence shall be deemed to relieve the Contractor from ultimate liability for any obligation under this Contract.
- (b) The Contractor shall indemnify, defend and hold harmless the Authority its directors, officers, employees and agents against any and all claims, liabilities, losses, demands, damages, penalties, costs, charges, remedial costs, environmental claims, fees or other expenses including attorneys' fees, related to, arising from or attributable to any effluent or other hazardous waste, residue, contaminated soil or other similar material discharged from, removed from, or introduced on, about or under the job site, unless the loss or damage is due to the sole negligence of the Authority.
- (c) If any action or proceeding relating to the indemnification required is brought against the Authority, then upon written notice from the Authority to the Contractor, the Contractor shall, at 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, at the Authority's sole cost and expense without waiving or impairing the Contractor's right to indemnification hereunder.
- (d) The Contractor understands and agrees that it is Contractor's responsibility to provide indemnification to the Authority pursuant to this Article. The provision of insurance, while anticipated to provide a funding source for this indemnification, is independent of this indemnification obligation and the failure of Contractor's insurance to fully fund any indemnification shall not relieve the Contractor of any obligation assumed under this indemnification.

**2. INSURANCE REQUIREMENTS**

**1. General Insurance Requirements**

Contractor shall procure, at its sole cost and expense the insurance outlined in this Section as follows:

- 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, without interruption. The coverages shall be maintained in force and effect for 3 years after final completion and acceptance of the Work, with the exception of Professional Liability. Professional Liability insurance requirements are outlined in Article 6.
- 2) The insurance coverage and limits of insurance outlined in this Section 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), including all endorsement(s), within 5 business days of such request.
- 4) Insurance Policies must be written on admitted paper, (unless otherwise indicated herein) with an insurance company acceptable to WMATA.
- 5) Unless otherwise noted, "Claims Made" insurance policies are not acceptable.
- 6) Any insurance policy utilizing a Self-Insured Retention (SIR) requires approval from WMATA.
- 7) Contractor is required to incorporate these minimum Insurance Requirements into contract requirements of all Subcontractors of every tier.

**2. Workers' Compensation and Employer's Liability**

Required Minimum Limits of Coverage:

Workers' Compensation	Statutory	
Employers' Liability	\$100,000	Each Accident
	\$500,000	Disease Policy Limit
	\$100,000	Disease Each Employee

Required Minimum Coverage(s):

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

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

**3. Commercial General Liability**

Required Minimum Limits of Coverage:

\$50,000,000	Each Occurrence Limit
\$100,000,000	General Aggregate Limit
\$50,000,000	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" Article 9 of this Section. 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" Article 10 of this Section.
- 5) The definition of "Insured Contract" shall be modified to provide coverage for contractual liability for contracts for construction or demolition operations that are within 50 feet of a railroad, and sidetrack agreements.
- 6) Defense Costs (Allocated Loss Adjustment Expense) must be included and in excess of the policy limits for all primary and Umbrella Excess Policies.
- 7) Policy shall be endorsed with ISO endorsement CG 25 03 03 97; "Designated Construction Project(s) General Aggregate Limit", and designate "Any and all construction projects" as the designated Construction project.
- 8) Policy shall be endorsed with ISO endorsement CG 25 04 03 97; "Designated Location General Aggregate Limit", and designate "Any and all locations" as the designated location.
- 9) The Additional Insured Endorsement shall include Products and Completed Operations Coverage with no limitation on when claims can be made.

- 10) Coverage afforded is not limited to the minimum limits of insurance. Additional insured coverage shall be afforded on all liability insurance maintained by contractor.

**4. Railroad Protective Liability Insurance (RRP)**

For work within 50 feet of WMATA railroad tracks or work within WMATA rail stations, Railroad Protective Liability Insurance is required with the following minimum limits of coverage:

\$xxx	Each Occurrence Limit
\$xxx	Aggregate Limit

Required Minimum Coverage(s):

- 1) Railroad Protective Liability (RRP) policy on a policy form that is acceptable to WMATA, issued by an insurance company that is acceptable to WMATA.
- 2) WMATA shall be the first Named Insured.
- 3) Cost of RRP shall be the sole responsibility of Contractor.
- 4) The "Wet Ink" original RRP policy shall be sent to WMATA at following address:

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

WMATA Blanket RRP Program Option

WMATA may offer to waive the requirement for the Contractor to procure RRP if 1) the work qualifies for coverage under WMATA's blanket RRP program, and 2) the Contractor prepays the RRP waiver fee which shall be determined by the rate schedule promulgated by the insurer in effect as of the effective date of this Contract. Contractor shall be advised of, and pay the applicable waiver fee, or procure a standalone RRP policy on WMATA's behalf if Contractor decides against the WMATA Blanket RRP Program option.

**5. Business Auto Liability**

Required Minimum Limits of Coverage:

\$5,000,000	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" Article 9 of this Section.
- 3) Policy shall be endorsed with a Waiver of Subrogation Endorsement(s) in compliance with the "Waiver of Subrogation" Article 10 of this Section.
- 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.

**6. Professional Liability Insurance**

Should Contractor, any Subcontractor of any tier or any supplier, be required by this contract to provide design services or the services of a professional engineer, including, but not limited to stamping, sealing, or certifying blueprints or other construction-related documents, Contractor, Subcontractors of every tier and suppliers are required to maintain Professional Liability Insurance as follows:

- 1) Minimum Policy Limits of \$5,000,000, each claim.
- 2) Actual coverage or tail coverage must be purchased and maintained for a period of time equal to the statute of repose.
- 3) Coverage can be written on an "Occurrence" or "Claims Made" Basis.
- 4) Coverage can be written on 'Non-Admitted" paper.

**7. Pollution Liability Insurance**

Should Contractor, any Subcontractor, of any tier, or any supplier, be required by this contract to perform demolition of any pre-existing structures, moving, removal, or handling of any hazardous materials, Contractor is required to maintain Pollution Liability Coverage as follows:

- 1) Minimum Policy Limits of \$N/A, each claim.
- 2) Coverage can be written on an "Occurrence" or "Claims Made" Basis.
- 3) Coverage can be written on 'Non-Admitted" paper.
- 4) Policy shall be endorsed with Additional Insured Endorsement(s) in compliance with the "Additional Insured" Article of this Section 9.

- 5) Policy shall be endorsed with a Waiver of Subrogation Endorsement(s) in compliance with the Waiver of Subrogation” Article of this Section 10.

**8. Builders’ Risk [NOT NEEDED ON SUPPLY/SERVICE CONTRACTS/]**

Contractor shall purchase and maintain at its cost a builders “all risk” insurance policy for the project covering work at the at the project site. Contractors of every tier will be insured under this policy, but only to the extent that the policy’s coverages and exclusions allow. Cost associated with any changes will not be recognized as a change order.

**9. Additional Insured(s)**

Contractor and Subcontractors 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 Subcontractors of every tier, with the exceptions 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.
- 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 where the contract scope of work takes place.
- 4) Coverage available to the additional insureds is not limited to the minimum limits of coverage outlined in this document.

**10. Waiver of Subrogation**

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

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

**11. Certificate of Insurance (COI)**

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

Additionally;



- 1) Satisfactory COI delineating all required insurance coverage requirements under this Section shall be delivered before the execution of this Contract by WMATA.
- 2) Failure to provide satisfactory evidence of all required insurance may result in Contractor and/or subcontractors of every tier being denied access to work locations, including, but not limited to WMATA properties.
- 3) COI reflect total limits of insurance purchased by Contractor for the types of insurance required under this Contract.
- 4) Proposed material modifications to insurance required under this Section must be received by WMATA at least 30 days prior to the effective date of the proposed modifications to such insurance.
- 5) WMATA's receipt of copies of any COI, policy endorsements or policies does not relieve Contractor of the obligation to remain in compliance with the requirements of this Section at all times. Contractor's failure to so comply, and to continuously comply with these insurance requirements shall constitute a material breach of this Contract.
- 6) The ACORD COI shall specifically delineate the following:
  - a. Who is an Additional Insured under the policies delineated in this Section.
  - b. That each additional insured(s) as required under this Section is an additional insured on a primary and non-contributory basis.
  - c. That each additional insured(s) is an additional insured for ongoing operations of the Contractor in addition to the products and completed operations coverage.
  - d. That coverage providing a waiver of subrogation to each Additional Insured is compliant with the Waiver of Subrogation article of this Section.
  - e. That the issuing insurance company will mail written notice of cancellation of any of the required insurance policies to WMATA within 30 days of Cancellation. Use of "will endeavor to" as respects this requirement is not acceptable and must be deleted. Such notice shall be sent to:

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

**3. TITLE AND RISK OF LOSS**

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

**CHAPTER VIII – INTELLECTUAL PROPERTY RIGHTS**

**1. PATENT INDEMNITY**

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

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

**2. WITHHOLD/SET-OFF**

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

**3. RIGHTS IN TECHNICAL DATA- GENERAL**

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

- (b) The Authority shall have the right to use, duplicate, or disclose technical data, which includes computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so, which is contained in or derived from:
  - (1) Any manuals, instructional materials prepared for installation, operation, maintenance or training purposes;
  - (2) Technical data pertaining to end items, components or processes which were prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data; e.g., specification control drawings, catalog sheets, outline drawing; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software);
  - (3) Other technical data which has been, or is normally furnished without restriction by the Contractor or subcontractor; or
  - (4) Other specifically described technical data which the parties have agreed will be furnished without restriction.
  
- (c) The Authority shall have the right to use, duplicate, or disclose technical data other than that defined in paragraph (a) in whole or in part, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be:
  - (1) Released or disclosed in whole or in part outside the Authority;
  - (2) Used in whole or in part by the Authority for manufacture; or
  - (3) Used by a party other than the Authority, except for emergency repair or overhaul work performed by or for the Authority where the item or process concerned is not otherwise reasonably available to enable timely performance of the work; provided, that the release or disclosure thereof outside the Authority shall be made subject to a prohibition against further use, release or disclosure.
  
- (d) Technical data provided in accordance with the provisions of paragraph (b) shall be identified by a legend which suitably recites the aforesaid limitation. Nothing herein shall impair the right of the Authority to use similar or identical data acquired from other sources.
  
- (e) Material covered by copyright:
  - (1) The Contractor agrees to and does hereby grant to the Authority, and to its officers, agents and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Authority purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all technical data now or hereafter covered by copyright.

- (2) No such copyrighted matter shall be included in technical data 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 delivered hereunder.
- (f) 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.
- (g) Any dispute under this Article shall be subject to the Disputes article of this contract.
- (h) Notwithstanding any other payment provision in this Contract, the Contracting Officer may retain from payment up to 10 percent of the contract price until final delivery and acceptance of the technical data defined in this Article and as required to be furnished by the Contract Documents

**4. RIGHTS IN TECHNICAL DATA – UNLIMITED (NOT APPLICABLE)**

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

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

**CHAPTER IX – ADDITIONAL COVENANTS/LEGAL REQUIREMENTS**

**1. NONDISCRIMINATION ASSURANCE**

- (a) Nondiscrimination Assurance: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the American with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit law at 49 U.S.C. §5332, the contractor, sub-recipient, or subcontractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the contractor, sub-recipient, or subcontractor agrees to comply with applicable Federal implementing regulations and other implementing regulations that FTA may issue.
  
- (b) Equal Employment Opportunity: The following equal employment opportunity requirements apply to this contract.
  - (1) Race, Color, Creed, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49 U.S.C. §5332, the Contractor agrees to comply with all applicable equal opportunity requirements of the U. S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, " 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Contract. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
  
  - (2) Age: In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §623 and Federal transit law at 49 U.S.C. §5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
  
  - (3) Disabilities: In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the Contractor agrees that it will comply

with the requirements of U. S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- (c) The Contractor also agrees to include all of these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.
- (d) Failure by the contractor, sub-recipient, or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Authority deems appropriate.

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

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

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

- (d) Subcontracts. The Contractor shall insert paragraphs (a) through (d) of this Article in all subcontracts and shall require their inclusion in all subcontracts of any tier.
- (e) Records. The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three (3) years from the completion of this Contract.

**3. WALSH-HEALEY PUBLIC CONTRACTS ACT**

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

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

**4. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS**

If this Contract is for the construction, alteration, or repair of a public building or public works, it is subject to the Davis-Bacon and Related Acts. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**5. CONVICT LABOR**

- (a) Except as provided in paragraph (b) , the Contractor shall not employ in the performance of this Contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam or the U.S. Virgin Islands.
- (b) The Contractor is not prohibited from employing persons:
  - (1) On parole or probation to work at paid employment during the term of their sentence;
  - (2) Who have been pardoned or who have served their terms; or
  - (3) Confined for violation of the laws of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—



- (i) The worker is paid or is in an approved work or training program on a voluntary basis;
- (ii) Representatives of local union central bodies or similar labor union organizations have been consulted;
- (iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts or services;
- (iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
- (v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

**6. COVENANT AGAINST CONTINGENT FEES**

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

**7. SEAT BELT USE POLICY**

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

**8. SENSITIVE SECURITY INFORMATION**

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

**9. LAWS AND REGULATIONS**

The Contractor shall be responsible to fully inform itself of the requirements for and to comply with any applicable State of Maryland, Commonwealth of Virginia, District of Columbia, Federal and jurisdictional laws and regulations governing the service to be provided under the contract.

Further, the Contractor shall be responsible to obtain, at its own cost and expense, any and all licenses/permits required to transact business in any political jurisdictions to be serviced.

**10. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA**

- (a) The Contractor agrees to submit a Material Safety Data Sheet (Department of Labor Form OSHA-20), as prescribed in Federal Standard No. 313B, for all hazardous material five days before delivery of the material, whether or not listed in Appendix A of the Standard. This obligation applies to all materials delivered under this Contract which involve exposure to hazardous materials or items containing these materials.
- (b) "Hazardous material," as used in this Article, is as defined in Federal Standard No. 313B, in effect on the date of this contract.
- (c) Neither the requirements of this Article nor any act or failure to act by the Authority shall relieve the Contractor of any responsibility or liability for the safety of Authority, Contractor, or subcontractor personnel or property.
- (d) Nothing contained in this Article shall relieve the Contractor from complying with applicable Federal, state, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (e) The Authority's rights in data furnished under this Contract with respect to hazardous material are as follows:
  - (1) To use, duplicate and disclose any data to which this Article is applicable. The purposes of this right are to (i) apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous material (ii) obtain medical treatment for those affected by the material; and (iii) have others use, duplicate, and disclose the data for the Authority for these purposes.
  - (2) To use, duplicate, and disclose data furnished under this Article, in accordance with subparagraph (e)(1) above, in precedence over any other provision of this Contract providing for rights in data.
  - (3) That the Authority is not precluded from using similar or identical data acquired from other sources.
  - (4) That the data shall not be duplicated, disclosed, or released outside the Authority, in whole or in part for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this Article applies -

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

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

**11. LIVING WAGE (NOT APPLICABLE)**

**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](mailto: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](mailto:safety@wmata.com), or by any other reasonable means; or
  - (4) Any other official, office or agency within WMATA or outside WMATA that the employee or independent contractor reasonably believes has the authority to act on the matter.

- (b) The Contractor, its employees, independent contractors and subcontractors shall cooperate with any inquiry or review by an authorized official of WMATA, or by the federal government or any other governmental entity with jurisdiction over WMATA, regarding a matter that would constitute a report under paragraph (a) or a violation of this or any whistleblower provision of this Contract, and with any enforcement or judicial proceeding arising from such inquiry or review.
- (c) The Contractor and its subcontractors shall not interfere with or deny the right of any employee or independent contractor of either the Contractor or any of its subcontractors to make a report under paragraph (a). The Contractor and its subcontractors shall not recommend, take or threaten to take any action having a negative or adverse impact on any employee or independent contractor of either the Contractor or any of its subcontractors because he or she:
- (1) made or is perceived to have made a report under paragraph (a);
  - (2) sought a remedy under applicable law after making a report under paragraph (a);
  - (3) participated in or cooperated with an inquiry or review by an authorized official of WMATA, or by the federal government or any other governmental entity with jurisdiction over WMATA, regarding a matter that would constitute a report under paragraph (a) or a violation of this or any whistleblower provision of this Contract, or with an enforcement or judicial proceeding arising from such inquiry or review;
  - (4) refused to obey an order that would violate law; or
  - (5) refused to work or authorize work when a hazardous safety or security condition presents an imminent danger of death or serious injury, there was no reasonable alternative to refusal, there was not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, notified the Contractor or subcontractor of the condition and of the intent not to perform or authorize work.
- (d) The Contractor shall include, or shall cause to be included, the substance of this Article, including this paragraph (d), in its subcontracts at all tiers.
- (e) The Contractor and its subcontractors shall comply with the National Transit Systems Security Act (NTSSA), which prohibits discharging, demoting, suspending, reprimanding or in any other way discriminating against an employee as a reprisal for the employee lawfully and in good faith—
- (1) reporting a hazardous safety or security condition;
  - (2) refusing to work when a hazardous safety or security condition presents an imminent danger of death or serious injury, there is no reasonable alternative to refusal, there is not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, has notified the Contractor or subcontractor of the condition and of the intent to not perform work;
  - (3) refusing to authorize the use of any safety or security related equipment, track

or structures, if the individual is responsible for their inspection or repair and reasonably believes they are in a hazardous safety or security condition, there is no reasonable alternative to refusal, there is not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, has notified the Contractor or subcontractor of the condition and of the intent not to authorize use of hazardous equipment or infrastructure unless corrected;

- (4) providing information for or directly assisting in an investigation of conduct that the individual reasonably believes to be in violation of federal law regarding safety, security or fraud, waste or abuse of funds intended for safety or security;
  - (5) refusing to violate or assist in violation of federal public transportation safety or security law;
  - (6) cooperating with a safety or security investigation by the U.S. Secretary of Transportation, U.S. Secretary of Homeland Security or the National Transportation Safety Board;
  - (7) furnishing information to law enforcement agencies relating to an accident or incident resulting in damage to property, injury or death; or
  - (8) filing a complaint under the NTSSA or testifying regarding such complaint.
- (f) The Contractor shall notify the Authority of any instance, related to this Contract, of a report under sub-paragraph (e)(1) or refusal under sub-paragraphs (e)(2), (3) or (5).
- (g) The enforcement, filing and investigation of complaints, and remedies under this section shall be governed by the NTSSA, applicable federal regulations and federal law.
- (h) This Article shall be interpreted in accordance with the NTSSA. If any provision is found to be in conflict with the NTSSA, the NTSSA shall govern.
- (i) The Contractor shall include, or shall cause to be included, the substance of this Article, including this paragraph, in its subcontracts at all tiers.

**14. DRUG AND ALCOHOL TESTING**

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

**15. EMPLOYMENT RESTRICTION WARRANTY**

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

**16. GRATUITIES**

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

- (b) Reported instances of the giving or offering to give gratuities within the context of this GRATUITIES Article will be investigated by the Board of Directors or its duly authorized representative. A preliminary investigation will be made to determine whether there is probable cause to suspect that a violation of this Article has been committed. If such probable cause is found to exist, the Board of Directors, or its duly authorized representative, shall formally notify the suspected donor corporation or individual in writing of the particulars of the event; and provide such donor the opportunity to be heard on the matter. The aims of the investigations and hearing shall be to ensure due process and to preserve the best interests and rights of all parties by the full and fair disclosure of all relevant and material information. Accordingly, the Board of Directors, or its duly authorized representative, shall require production of all pertinent documents and records, and sworn testimony from witnesses. During the pendency of any investigation or hearing treating with a violation of this GRATUITIES Article, the Board of Directors, or its duly authorized representative may exercise its power granted by the Washington Metropolitan Area Transit Authority Compact, Public Law 774, 80 Star. 1324, Article V, General Powers, Subparagraph (k), by issuing subpoenas to compel the attendance of necessary witnesses, and to compel production of papers, records, accounts, ledgers and documents. The subpoenas shall be enforceable by order of an appropriate United States District Court. If, after notice and hearing, or notice of the opportunity to be heard, the Board of Directors, or its duly authorized representative, finds that a violation of this GRATUITIES Article has been committed, the Authority shall have the right to:
- (1) Require that the individual(s) giving or offering the gratuity be removed from further participation on any Authority projects (be terminated);
  - (2) Deny the Contractor any G & A (general and administrative) mark-ups for all changes and/or modifications found to be tainted by the giving of or offering to give gratuities;
  - (3) Preclude the Contractor from bidding on, receiving or participating as joint venturer, subcontractor or otherwise in any Authority project for a period of five (5) years;
  - (4) Have complete access to all the Contractor's financial books, records and accounts for the purpose of performing a comprehensive audit of the entire project; and/or
  - (5) In the event of repeated violations of this GRATUITIES Article or of gross or extreme conduct indicative of a corrupt intent to gain special advantage, by written notice to the Contractor, terminate the Contract for default in accordance with the provisions of the TERMINATION FOR DEFAULT article of the Contract.
- (c) The existence of the facts upon which the Board of Directors, or its duly authorized representative, makes findings in connection with investigations and hearings in consonance herewith, shall be an issue and may be reviewed in any competent court.
- (d) In the event this Contract is terminated as provided in sub-paragraph (b)(5), the Authority shall be entitled:

- (1) To pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor; and
  - (2) As a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in any amount (as determined by the Board or its duly authorized representative) which shall be not less than three (3) nor more than ten (10) times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.
- (e) The rights and remedies of the Authority provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

**17. OFFICIALS NOT TO BENEFIT**

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

**18. ORGANIZATIONAL CONFLICT OF INTEREST**

- (a) An organizational conflict of interest exists when the nature of the work to be performed under a proposed contract or subcontract may, without some restriction on future activities (1) result in an unfair competitive advantage to the contractor or subcontractor; or (2) impair the contractor's objectivity in performing the contracted work. Most typically this would arise when a contractor prepares a design or specification for work that is to be procured competitively. It may also arise when a contractor or one of its affiliates would have an economic interest in the outcome of a contract or project. Conflicts of interest may be either real or apparent.
- (b) In the event that the Contractor believes that it or any of its potential subcontractors may have an organizational conflict of interest, it shall notify the Contracting Officer, in writing, within five (5) work days after it becomes aware of the potential or actual organizational conflict of interest. The written notification shall identify the nature and circumstances of the perceived conflict and propose appropriate measures to eliminate or mitigate the situation. The Contracting Officer will review the circumstances and the proposed mitigation 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 accepts the proposed measures, or recommends other and/or additional measures.



- (c) The failure of the Contractor to identify such perceived conflicts may result in the contract award being rescinded or the Contract terminated for default.
- (d) Should the Contractor identify or become aware of a conflict during the term of this Contract, including any extension of the Contract, which it could not reasonably have anticipated prior to award, it shall notify the Contracting Officer in accordance with paragraph (b) above, or request an exception to the restriction with supporting rationale. The Contracting Officer shall consider the Contractor's proposed measures to mitigate or eliminate the conflict, or the request for an exception.
- (e) If the proposed measures are not determined to be feasible or are otherwise not acceptable to the Contracting Officer, the Contracting Officer may terminate the Contract in accordance with the TERMINATION FOR CONVENIENCE OF THE AUTHORITY provisions of the Contract; or
- (f) If the request for an exception is not granted by the Contracting Officer, and the Contract is not terminated for convenience, the Contractor shall be notified in writing and be given ten (10) days from the date of the written notification to take all necessary action to comply with the requirements of this provision.
- (g) If the proposed measures are determined acceptable to the Contracting Officer, the Contracting Officer may grant a specific exception to this restriction, when in the Contracting Officer's judgment, the exception will not create a conflict between the Contractor's duties and obligations under this Contract and the duties and obligations imposed on the Contractor under the contractual or other relationship for which an exception is requested.

(1) If the Contractor fails to comply with the terms of this Article, the Contracting Officer, may withhold payments due under the contract until such time as the Contractor is in compliance or, should the non-compliance remain uncorrected at the expiration of ten (10) days from written notice from the Contracting Officer as provided in sub-paragraph (d)(2) , terminate the contract for default pursuant to the provisions of the TERMINATION FOR DEFAULT Article of the Contract.

(2) The Contractor, in performing this Contract, shall avoid any conduct which might result in or give the appearance of creating for Directors, Officers, or employees of the Authority in their relationship with the Contractor, any conflicts of interest or favoritism and/or the appearance thereof and shall avoid any conduct which might result in a Director, Officer, or employee failing to adhere to the Standards of Conduct adopted by the Authority's Board of Directors.

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

**19. CONTRACTOR PERSONNEL (NOT APPLICABLE)**

**20. FALSE STATEMENTS, CLAIMS OR SUBMISSIONS**

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

**CHAPTER X – MISCELLANEOUS ADDITIONAL PROVISIONS**

**1. FEDERAL, STATE, AND LOCAL TAXES**

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

**2. FEDERAL/LOCAL/STATE SALES TAX**

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

**3. PUBLIC COMMUNICATION**

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

**4. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE**

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

**5. SEVERABILITY**

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

**6. SURVIVAL**

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

**7. ALL NECESSARY 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 – FEDERAL PROVISIONS**

**1. NOTIFICATION OF FEDERAL PARTICIPATION**

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

**2. ACCESS TO THIRD PARTY CONTRACT RECORDS (NOT APPLICABLE)**

**3. RIGHTS IN DATA AND COPYRIGHTS — FTA (NOT APPLICABLE)**

**4. BUY AMERICA ACT (NOT APPLICABLE)**

**5. CHARTER BUS REQUIREMENTS (NOT APPLICABLE)**

**6. SCHOOL BUS REQUIREMENTS (NOT APPLICABLE)**

**7. BUS TESTING (NOT APPLICABLE)**

**8. CARGO PREFERENCE**

The Contractor agrees:

- (a) To utilize privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- (b) To furnish within 20 working days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) above to WMATA (through the Contractor in the case of a subcontractor's bills-of-lading) and to the Office of Cargo Preference, Maritime Administration (MAR-590), 400 Seventh Street SW, Washington, DC 20590;
- (c) To include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean liner.

**9. CLEAN AIR (NOT APPLICABLE)**

**10. CLEAN WATER (NOT APPLICABLE)**

**11. RECYCLED PRODUCTS (NOT APPLICABLE)**

**12. ENERGY CONSERVATION (NOT APPLICABLE)**

**13. CHANGES TO FEDERAL REQUIREMENTS**

- (a) Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (14) dated October 1, 2007) between the Authority and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.
- (b) Flow-down requirement. The Contractor agrees to include this Article in each subcontract financed in whole or in part with Federal Assistance provided by FTA. It is further agreed that the Article shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**14. FLY AMERICA REQUIREMENTS (NOT APPLICABLE)**

**15. PAYMENT DEDUCTIONS - NONCOMPLIANCE WITH DBE REQUIREMENTS (NOT APPLICABLE)**

**16. GOVERNMENT-WIDE DEBARMENT OR SUSPENSION**

- (a) The Contractor is bound by its certification contained in its offer to the Authority that neither the Contractor, its principals, or affiliates, are excluded or disqualified, as defined at 49 C.F.R. 29.940 and 29.945. The certification is a material representation of fact, relied upon by the Authority in entering into this Contract. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 49 C.F.R. 29, Subpart C, throughout the term of this Contract.
- (b) Flow-down requirement. The Contractor agrees to include this requirement in all subcontracts at all tiers under this Contract.

**17. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS (NOT APPLICABLE)**

**18. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES**

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

**19. FALSE STATEMENTS OR CLAIMS CIVIL AND CRIMINAL FRAUD**

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

**20. RECOVERED MATERIALS**

- (a) The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA) as amended (42 U. S. C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.
- (b) Flow-down requirement. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA.



**21. LOBBYING**

- (a) The Contractor is bound by its certification contained in its offer to the Authority regarding the use of federal or non-federal funds to influence, or attempt to influence any Federal officer or employee regarding the award, execution, continuation, or any similar action of any Federal grant or other activities as defined in 31 U.S.C. 1352, 49 CFR Part 19, or 49 C.F.R. Part 20. The Contractor agrees to comply with this requirement throughout the term of the Contract.
- (b) Flow-down requirement. The Contractor agrees to include these requirements in all subcontracts at all tiers under this Contract.

**22. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS**

The Contractor agrees to:

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

**23. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS**

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

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

**CHAPTER XII-WMATA POLICIES**

**1. SAFETY REQUIREMENTS**

- (a) The Contractor shall be responsible for ensuring compliance with the most stringent provisions of the applicable statutes and regulations of the District of Columbia, State of Maryland, Commonwealth of Virginia or political subdivision in which the work is being performed, as well as the METRO Construction Safety Methods Manual (1984 et. seq.) issued by the Authority, and the Department of Labor OSHA standards pertaining to the safe performance of the work. In the absence of a specific Construction Industry Standard, the Contractor would be required to comply with either an established OSHA General Industry Standard, National Institute for Occupational Safety and Health (NIOSH) guidelines, American Conference of Governmental Industrial Hygienists (ACGIH) guidelines, American National Standards Institute (ANSI) guidelines, the WMATA System Safety Program Plan, the WMATA Construction Safety Methods Manual, or the Metrorail Safety Rules and Procedures Handbook. For contracts in which work is performed on, or interfaces with the Metrorail System, the Contractor shall also comply with the publication titled Metrorail Safety Rules and Procedures Handbook. Further, the Contractor shall ensure that all methods of performing the work do not involve danger to the personnel employed thereon, the public and private property, whether or not these methods are cited or indicated in the Contract documents. Should charges of violation of any of the above be issued to the Contractor in the course of the work, a copy of each charge shall be immediately forwarded to the Authority Representative.
  
- (b) The contractor shall employ and assign full time to the work a Safety Superintendent. The Safety Superintendent shall have specialized training and experience in construction safety supervision and have a working knowledge of all OSHA regulations. He shall have the ability to develop and conduct safety training courses. He shall be familiar with industrial hygiene equipment and testing as required for the protection of all employees. The Safety Superintendent shall be employed exclusively for the purpose of supervising the safety of persons on or about the work and the property affected thereby. The Safety Superintendent shall also be responsible for providing first aid at the site and must have a current Red Cross First Aid Certificate. If, at any time, the work site is without the services of an approved Safety Superintendent for a period of 15 calendar days or more, the work may be closed down at the discretion of the Contracting Officer. The Safety Superintendent must be acceptable to the Contracting Officer and his performance will be reviewed by the Contracting Officer on a continuing basis. If the Safety Superintendent's effectiveness is below standard, the Contractor shall provide immediate replacement at the Contracting Officer's direction. Once employed, the Safety Superintendent shall not be changed without permission of the Contracting Officer.
  
- (c) The contractor shall provide, at the site of the work, a first aid kit which shall be fully equipped to meet the needs of the anticipated work force.
  
- (d) The contractor shall follow all appropriate RAIL Operational Rules, OAPs, SOPs and General and Special Orders while on the operational railroad and all Start-Up Rules and Manager's Notices when in a declared start-up area.

**2. PRE-EMPLOYMENT CRIMINAL BACKGROUND CHECK REQUIREMENT**

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

**3. WORKPLACE VIOLENCE/ZERO TOLERANCE**

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



**MID-ATLANTIC PURCHASING TEAM RIDER CLAUSE**

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

**Extension to Other Jurisdictions**

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

**Inclusion of Governmental & Nonprofit Participants (Optional Clause)**

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

**Notification and Reporting**

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

**Contract Agreement**

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

**Mid-Atlantic Purchasing Team:**

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

**PART III**  
**TECHNICAL SPECIFICATIONS**

**TECHNICAL SPECIFICATIONS  
[FQ15238 – RADIATION ISOTOPE IDENTIFICATION DEVICES (RIIDs)]**

## **Introduction**

The purpose of this acquisition is to equip and supply the Metro Transit Police Department (MTPD) for detection of and response to a chemical, biological, radiological, nuclear or explosive (CBRNE) threat scenario. MTPD requires additional supplies and equipment to allow members to conduct CBRNE detection and response operations. The procurement will expand the current capabilities of MTPD, allowing for better protection of members and reduction of risk for patrons through the ability of MTPD to more effectively respond to CBRNE threats. The purchase will specifically address capability gaps in the area of radiation isotope identification by explosive ordnance technicians.

## **Background**

The Metro Transit Police Department currently has several units with responsibility for CBRNE detection and response, including the Anti-Terrorism Teams, Explosive Ordnance Detection Canine Teams, and Hazardous Devices Unit. MTPD has expanded both the size and capability of the Hazardous Devices Unit to handle the full range of CBRNE threat scenarios. As the unit has expanded, additional tools have been identified as needed for combating specific categories of threats. The products within this solicitation represent the current need to fill identified capability gaps and to provide the unit the tools to be more agile in CBRNE response. MTPD continues to expand the detection activities of the Department to prevent a successful CBRNE attack on the transit system.

## **Current Scope of Work**

MTPD serves as the dedicated law enforcement entity for the Washington Metropolitan Area Transit Authority (WMATA). Additional information on MTPD may be found at [http://www.wmata.com/about\\_metro/transit\\_police/](http://www.wmata.com/about_metro/transit_police/). WMATA operates transit bus and rail service in the Nation’s Capital and surrounding jurisdictions. Additional information on WMATA may be found at [http://www.wmata.com/about\\_metro/](http://www.wmata.com/about_metro/).

MTPD has identified a need to expand the capabilities to detect and respond to the variety of CBRNE threats that may be encountered. The Hazardous Devices Unit has responsibility for inspecting suspicious items to determine if they are a threat, regardless of whether they are potentially chemical, radiological, or explosive threats. In order to effectively perform activities to make a determination of whether an item is a threat, particularly within the unique environment of the

transit system, they require a variety of tools and protection equipment. When encountering a potential radiological device or source, technicians need additional identifying information for the specific isotope involved. Identifying the isotope will guide notification and decontamination procedures taken by the technicians onsite.

The specific items required and their specifications are located in the “Technical Specifications” portion of this document. The quantities required are listed in the “Deliverables” section of this document. All items in the base contract must be delivered within 60 days of the award of contract to the successful bidder. To ensure all items are accounted for, the successful bidder will inform the designated WMATA POC of all shipments prior to final delivery, the items to be contained in each shipment, and electronic tracking information for each shipment. The options may be exercised for individual or multiple quantities. The items in each exercised option quantity must be delivered within 60 days of the notice to proceed from WMATA.

**Deliverables**

Base Contract:

Item	Quantity
Radiation Isotope Identification Device	2

Options:

Item	Quantity
Radiation Isotope Identification Device	18

- Notification of shipments at the time they are sent from the vendor, whether a direct shipment from the successful bidder or drop shipped from a third party
- Tracking information for each shipment at the time of shipment

**Performance and Acceptance Criteria**

- All items must be delivered new, unused, unsoiled, free of damage, and free of imperfection
- All items must meet the technical specification, including all identified standards
- Must be able to provide the quantity indicated in the technical specification of each item
- Must be able to provide WMATA POC with advance notice of all items being shipped and shipment tracking information for each delivery

## Technical Specifications

<b>Radiation Isotope Identification Device</b>			
Requirement	Detailed Description	Compliance (Yes/No)	Description of product to be provided
Weight	Must not exceed eight pounds, including any batteries		
Dimensions	Must not exceed 15" X 6" X 9"		
Detection Capability	Must be able to detect gamma and neutron		
Dose-rate range	Must be a minimum of 10uR to 27mR/hr		
Energy Range	Must be a minimum of 20 keV to 3.0 MeV		
Operating Temperature	Must operate at least from -3° Celsius to 32° Celsius		
Power	<p>Must function on standard alkaline disposable, 123A, or NiMH rechargeable batteries. Must provide means of recharging batteries.</p> <p>Batteries must provide a minimum of 8 hours of continuous monitoring.</p> <p>Must indicate battery charge level.</p>		
Data Recording and Downloading	Must be able to record data internally and have a means of exporting the data to a laptop.		
Standard Compliance	<p>Device must meet ANSI N42.34-2006</p> <p>Device must meet IP65</p> <p>Device must meet or exceed MIL-STD 810G method 516.6</p>		
Warranty	Must provide a warranty of five years		



### **Performance Schedules**

- Notification of shipment and tracking information must be supplied within 24 hours of shipment being made by vendor
- All items must be delivered within 60 days of final contract award for base contract, and within 60 days of notice to proceed for options

### **Location of work and any constraints**

- The delivery location is a secured facility. Shipment notification and tracking information must be provided to the WMATA POC to ensure a representative will be present to receive items. Any deliveries attempted without proper notification and tracking information will be refused and must be redelivered at no cost to WMATA.
- The location does not have a loading dock, pallet jack, or fork lift. If shipments are palletized, the shipper must provide a means of unloading pallets from the vehicle to a level parking lot surface.
- The entry to the facility is on an incline and has limited clearance from each side. Any delivery vehicle must be able to pass through an entry 13' wide with an immediate right turn and exit 13' wide with a wide left turn. Vehicles of larger sizes may deliver items only if a separate means of transporting the shipments from the street adjacent into the adjacent facility is provided.
- Items will be delivered to:  
Metro Transit Police Department  
4303 Auth Place  
Suitland, MD 20746

**COMBINED GLOSSARY OF DEFINITIONS**

**As used throughout this Contract, except to the extent otherwise expressly specified, the following terms shall have the meanings set forth below:**

**Acceptance:** Acknowledgment by the Authority that the supplies, services, or other Work conform to the applicable contract requirements.

**Acceptance Period:** The number of Days available to the Authority to award a Contract pursuant to this Invitation from the date of opening of Bids in accordance with the terms of this solicitation, during which period Bidders may not withdraw their Bids

**Agreement:** The Authority's form titled "Construction Contract Form" in this Invitation for Bid (IFB) that, upon execution by the Contractor and the Authority, creates the Contract between the two parties.

**Amendment:** Written or graphic instructions issued to clarify, revise, add, or delete IFB requirements issued prior to the Bid opening date.

**Approval of a Submittal** or any other item shall be solely for the purpose of establishing conformance to the Contract Documents.

**Approved equal:** An item or service approved by WMATA as equivalent to brand name item or other service originally specified.

**Article:** One of the provisions of this Contract, each identified separately by number and title, which may contain subdivisions denominated as Paragraphs and Subparagraphs.

**As shown, as indicated, as detailed or words of similar import:** Shall be understood to mean that the reference is made to the Contract Documents.

**As specified, as described, or words of similar import:** Shall be understood to mean that the reference is made to the Contract Documents.

**Authority or WMATA or Metro:** The Washington Metropolitan Area Transit Authority, created effective February 20, 1967, by Interstate Compact by and between Maryland, Virginia and the District of Columbia pursuant to Public Law 89-774, approved November 6, 1966.

**Bid:** A submission made by an interested party seeking to receive award of a Contract pursuant to this Solicitation that, if accepted by the Authority, would bind the Bidder to perform the resultant Contract.

**Bid Bond:** An insurance agreement, accompanied by a monetary commitment, by which a third party (surety) accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds in the required amount and if the contract is awarded to the bonded bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount.

**Bidder:** A party submitting a Bid pursuant to this Solicitation.

**Bid Security.** A bond or deposit that guarantees that the Bidder, if awarded the Contract, will accept the Contract as bid.

**Bidder's Default:** The unjustified failure or refusal of the Bidder to whom WMATA tenders a Contract pursuant to this Solicitation to accept the award of, and proceed to execute upon the Work of, such Contract.

**Board of Directors:** The Board of Directors of the Washington Metropolitan Area Transit Authority.

**Brand name:** Identification of an item or service that is produced or controlled by one or more entities, including trademarks, manufacturer names, or model names or numbers that are associated with a manufacturer.

**Breach:** An unexcused and unjustifiable failure or refusal of a party to satisfy one or terms of the Contract which, if material, shall constitute a basis for potential default.

**Chapter:** one of the eleven principal divisions of the Contract terms, each identified by separate name and roman numeral, and each containing multiple numbered Articles.

**Change or Change Order:** A written alteration issued, upon agreement of both parties or unilaterally by the Authority, to modify or amend the Contract, generally directing changes to the Scope of Work and/or contract terms.

**Claim:** A written demand or assertion by the Contractor seeking, as a legal right, the payment of money, adjustment or interpretation of Contract terms, or other relief, arising under or relating to this Contract.

**Constructive Change:** An act or omission by the Authority that, although not identified as a Change Order, does in fact cause a change to the Work of the Contract.

**Contract or Agreement:** The written agreement executed between the Authority and the Contractor awarded pursuant to this Solicitation and covering the Work as set forth in the Contract Documents.

**Contract Administrator:** the Authority representative designated to serve as its primary point of contact for pre-award activities relating to this Solicitation as well as such post-award activities as are set forth in the Contract Documents.

**Contract Documents:** The documents consist of the IFB Documents, all Amendments issued before the effective date of the Agreement, and all Modifications issued after the effective date of the Contract; the Notice to Proceed; including the Contractor's Bid, as finally accepted by the Authority.

**Contracting Officer:** An employee with authority duly delegated from the powers of the Chief Procurement Officer to legally bind the Authority by signing a contractual instrument. The Contracting Officer is the Authority's primary point of contact for pre-award administration, Modifications above the limits of the Contracting Officer Representative, and Final Settlement. **C**

**Contracting Officer Representative:** The person to whom the Contracting Officer delegates the authority and responsibility for post award execution of the Contract. The Contracting Officer Representative is the Authority's primary point of contact with its Contractor.

**Contractor:** The individual, partnership, firm, corporation, or other business entity that is contractually obligated to the Authority to furnish, through itself or others, the Supplies, Services and/or construction services described in the Contract, including all incidentals which are necessary to complete the Work in accordance with the Contract.

**Contract Price:** The amount payable to the Contractor under the terms and conditions of the Contract based on lump sum prices, unit prices, fixed prices, or combination thereof, with any adjustments made in accordance with the Contract.

**Data:** Recorded information, regardless of form or the media on which it may be recorded, including technical data and computer software.

**Day:** Calendar day, except where the term business day, work day or like term is used.

**Designer:** The individual, partnership, firm, corporation or other business entity that is either the Contractor, or employed or retained by the Contractor, to manage and perform the design services for the Project.

**Disadvantaged Business Enterprise ("DBE"):** A for-profit small business concern that has been certified by the Authority to be at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more individuals, and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**Descriptive literature:** Information provided by a Bidder, such as cuts, illustrations, drawings, and brochures that shows a product's characteristics or construction of a product or explains its operation. The term includes only that information needed to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

**Explanation:** Additional information or clarification provided by an Authority representative to one or more prospective Bidders in response to an inquiry relating to the Solicitation, which information or clarification shall be binding upon the Authority only to the extent specified in the Solicitation Instructions.

**Equivalent:** Of equal or better quality and/or performance to that specified in the Contract Documents, as determined by the Authority.

**Final Acceptance:** Final acceptance of the work occurs when the work is fully, completely, and finally accomplished in strict compliance with the contract documents to the satisfaction of the Authority.

**Final Payment:** The last payment to the Contractor for Work performed under the Contract, made following Final Acceptance

**Force Majeure:** An unforeseen event or circumstance, beyond the control of, and not occasioned by the fault or neglect of, the Contractor (including subcontractors at any tier) or the Authority, which event gives rise to a delay in the progress or completion of the Work of the Contract, including, without limitation, acts of God, acts of war or insurrection, unusually severe weather, fires, floods, strikes, freight embargoes or other events or circumstances of like nature.

**FTA:** Federal Transit Administration, an agency within the United States Department of Transportation that provides financial and technical assistance to local public transit agencies.

**General Conditions:** A compilation of contractual and legal requirements that lists the rights, responsibilities, and relationships of the parties to a contract and defines duties and limits of authority for design professionals and construction management in performance of contract administration.

**Government:** The government of the United States of America.

**Industry Standards:** Drawings, documents, and specifications or portions thereof published by industry organizations. Industry Standards are not Contract Documents unless specifically listed as such in a WMATA Standard Specification or WMATA Guide Specification.

**Jurisdictional Authority:** Refers to Federal, State, and local authorities or agencies having approval authority over work to which reference is made.

**Legal Requirements:** All federal, state and local laws, ordinances, rules, orders, decrees, and regulatory requirements such as: building codes, mechanical codes, electrical codes, fire codes, Americans with Disabilities Act Accessibility Guidelines (ADAAG) regulations and other regulations of any government or quasi-government entity that are applicable to the Project.

**Milestone:** A specified date in the Contract by which the Contractor is required to complete a designated portion or segment of the Work.

**Minor Irregularity:** A variation from the Solicitation contained in a Bid that does not affect the price or other material term of the Contract and does not confer a competitive advantage or benefit not enjoyed by other Bidders or adversely impact the interests of the Authority.

**Modification:** A written document issued which alters the scope of the Work, the Schedule, the Contract Price, the Period of Performance, or makes any other change to the Contract after award or execution of the Contract.

**Notice to Proceed:** Written notice issued by the Authority establishing the date on which the Contractor may commence Work and directing the Contractor to proceed with all or a portion of the Work.

**Option:** A unilateral right in the Contract by which, for a specified time, the Authority may elect to purchase, at a predetermined specified price, additional Supplies, Services and/or Work called for by the Contract or to extend the term of the Contract.

**Organizational conflict of interest:** A circumstance in which, because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Authority, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

**Paragraph:** A subdivision of an Article contained in this Contract, generally introduced through a non-capitalized letter (e.g. "(a)").

**Period of Performance:** The time allotted in the Contract Documents for completion of the Work. The Period of Performance begins upon the effective date of the Notice to Proceed and ends on the date of Acceptance. Period of Performance incorporates the Milestones established for the Contract.

**Pre-award Survey:** An evaluation of a prospective Contractor's capability to perform a proposed Contract, including an assessment of matters relating to its responsibility.

**Product Data:** Information furnished by the Contractor to describe materials used for some portion of the Work, such as written or printed descriptions, illustrations, standard schedules, performance charts, instructions, brochures, and diagrams.

**Project:** The construction of the facility described in the Contract Documents.

**Proposal:** A submission by an Offeror to the Solicitation that, if accepted by the Authority, would bind the Offeror to perform the resultant Contract. R

**Punch List:** Work that remains to be completed after Substantial Completion. This Work must be completed as a condition of Final Completion and Acceptance.

**Records:** Books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

**Request for Information (RFI):** The document by which the Bidders or Contractor request clarification, verification, or information concerning a portion of the IFB or the Work.

**Services:** The performance of Work by a person or legal entity under contract with the Authority, including without limitation: maintenance; overhaul; repair; servicing; rehabilitation; salvage; modernization or modification of supplies, systems or equipment; routing recurring maintenance of real property; housekeeping; operation of Authority-owned equipment, facilities and systems; communication services; Architect-Engineering services; professional and consulting services; and transportation and related services.

**Subparagraph:** A subdivision, at any tier, of a Paragraph contained in an Article of this Contract.

**Supplies:** The end item(s) required to be furnished by the Contractor in fulfillment of its obligation under this Contract as well as any and all related services and required performance

**Statement of Work/Scope of Work ("SOW").** The portion of a contract or Request for Proposal that describes specifically what is to be done by the contractor. It may include specifications, performance outcomes, dates and time of performance, quality requirements, etc.

**Solicitation:** This Invitation for Bids (IFB) and the accompanying Contract Documents. I,R,C

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

**Similar:** Generally the same but not necessarily identical; details shall be worked out in relation to location and relation to other parts of the Work.

**Site:** The areas that are occupied by or used by the Contractor and Subcontractors during performance of the construction of the Project as indicated in the Contract Documents.

**Subcontract:** An agreement between the Contractor and another party, or between other subcontractors at any tier, to perform a portion of the Work of the Contract through the acquisition of specified supplies, materials, equipment or services.

**Subcontractor:** An individual, firm, partnership, or corporation that has a contractual obligation with the Contractor or other Subcontractor or Supplier.

**Submittal:** Written or graphic document or Sample prepared for the Work by the Contractor or a Subcontractor or Supplier and submitted to the Authority by the Contractor, including Shop Drawings, Product Data, Samples, certificates, schedules of material, or other data.

**Substantial Completion:** Work or a portion thereof that has progressed to the point where it is sufficiently complete in accordance with the Contract Documents (including receipt of test and inspection reports) so that the Work, or a specified portion thereof, can be utilized for the purpose for which it is intended, and only incidental work remains for physical completion of the Work in accordance with the Contract Documents.

**Substitution:** An item offered by the Contractor of significant difference in material, equipment, or configuration, which functionally meets the requirements of the Contract Documents but is submitted in lieu of item specified therein.

**Supplementary Conditions:** The term Supplementary Conditions means modifications to the General Conditions for requirements unique to a specific project.

**Supplier:** A Subcontractor who is a manufacturer, fabricator, supplier, distributor, or vendor having a contract with the Contractor or with another Subcontractor to furnish items, materials or equipment to be utilized or incorporated in the Work of the Contract.

**Utility:** A public and private facility or installation, other than a WMATA system facility, which relates to (1) the conveyance and supply of water, sewage, gas, chemicals, steam, petroleum products, and other piped installations, or (2) electrical energy, telephone, telegraph communications, radio, television, and cellular or wireless communications.

**Utility Standards:** Drawings and specifications for Utilities published or issued by municipalities or Utility companies.

Wherever in the Contract, the words directed, ordered, designated, prescribed or words of like import are used, it shall be understood that the direction, requirement, order, designation or prescription of the Contracting Officer is intended and similarly the words approved, acceptable, satisfactory or words of like import shall mean approved by, or acceptable to, or satisfactory to the Contracting Officer, unless otherwise expressly stated.

**WMATA CAD Manual:** Document that establishes drafting criteria for drawings and electronic files that provide templates for drawing/plotter configuration to Bidders and Contractor.

**WMATA Manual of Design Criteria:** Document that outlines the design criteria and process requirements that must be followed for the submittal of project information to WMATA, and measures that are required when constructing a project in the vicinity of, or impacting WMATA systems and facilities.

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

**WMATA Safety and Security Certification Program Plan:** A compilation of the appropriate System safety and security certification requirements for the Project.

**Work:** All design and construction services, including supervision, quality control and quality assurance, labor, materials, machinery, equipment, tools, supplies and facilities required to complete the Project, or the various separately identifiable parts thereof including but not limited to Safety, Security, System Safety Certification and Commissioning requirements, in accordance with the terms of the Contract.

**Work:** All of the services of any kind, as well as any and all goods, supplies, equipment, labor, material, delivery and other work of any type and nature to be furnished and/or performed pursuant to a Contract awarded through this Solicitation such as to accomplish the Contract's stated objectives in a timely and fully satisfactory manner.