



Invitation For Bid

[Federal]

8'6" and 10' Wood Crossties

IFB No.: FQ16128/FRV

Date: May 21, 2016

Washington Metropolitan Area Transit Authority
IFB: FQ16128/FRV

DATE: May 21, 2016

SUBJECT: Invitation for Bid (IFB) FQ16128/FRV

Dear Sir/Madam:

Washington Metropolitan Area Transit Authority (WMATA) is seeking bids from qualified vendors to provide 8'6" and 10' wood crossties for use on WMATA's existing rail tracks. The Authority anticipates awarding a firm fixed price contract with a two (2) year base and two (2) one-year options to the responsive and responsible offeror who offers the lowest Total Bid Amount shown on the Bid/Price Schedule. Please note that the Total Bid Amount includes the base period, two one-year options, and the additional option quantities in each of the four years of the contract. Also, this IFB contains a 5% DBE goal requirement.

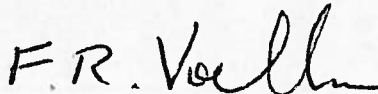
A pre-bid conference will not be held. Your bid must be submitted in accordance with the solicitation instructions and delivered to Washington Metropolitan Area Transit Authority, Office of Procurement and Materials, 600 Fifth Street, N.W., Room 3C02, Washington, DC 20001. Bids must be received no later than 2:00 P.M. on Wednesday, June 8, 2016. A public bid opening will be held at that time.

If you have any technical, contractual or administrative questions, please email them to the Contract Administrator, Frederick R. Voellm at fvoellm@wmata.com no later than 12:00 PM, May 27, 2016. WMATA will provide written answers via amendments to the IFB.

The following documents must be completed and signed where required, and submitted with Bidders' bid response:

- Solicitation, Offer & Award Form
- Bid/Price Schedule
- Acknowledgement of Amendments (if applicable)
- Pre- Award Survey
- Representations and Certifications
- Mid-Atlantic Purchasing Team Rider Clause
- Appendix B Forms

Sincerely,



Frederick R. Voellm
Contract Administrator

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**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. Have you signed and submitted the Offer & Award form with the Bid/Price Schedule?
3. Have you priced every line Item on the Bid/Price Schedule? The prices shown on the Bid/Price Schedule shall constitute full compensation for all costs of performance under this contract.
4. Have you acknowledged and recorded all amendments, if any, on the Acknowledgement of Amendments sheet?
5. Have you properly completed and checked the appropriate box for each Certification and Representation? Have you included the signed Representations and Certifications with your bid?
6. Have you completed and included the Pre-Award Data form?
7. Have you complied with the Appendix B requirements and the 5% DBE goal, and completed the appropriate DBE forms for submittal with your bid?
8. Have you signed and submitted the Metropolitan Washington Council of Governments Rider Clause with your bid? Note: Contractor's pricing, if offered to other jurisdictions, will be the same regardless of quantities ordered and the Authority makes no representations regarding the quantities that may be ordered by any such jurisdictions.
9. Submission of Bid:

Packages containing bids and related required documents must be sealed, marked with the solicitation number (IFB FQ16128/FRV) and addressed as follows:

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
OFFICE OF PROCUREMENT AND MATERIALS
ROOM 3C-02
600 FIFTH STREET, N.W.
WASHINGTON, DC 20001

All bid enclosures should adequately identify the bidder and the solicitation number.

Bids shall be timely mailed or hand delivered to reach WMATA no later than 2:00 p.m. (local time) on Wednesday, June 8, 2016. Bids hand carried between 1:00 p.m. and 2:00 p.m. should be presented to the bid opening clerk on the lobby level.

Bidders are advised that the Authority utilizes security screening measures for personnel and packages at the main entrance at 600 Fifth Street N.W. and other facilities. Please allow adequate time to pass through security.

10. **CAUTION TO BIDDERS:** This solicitation is an Invitation for Bids (IFB). As such, any qualifying statements, alterations, or exceptions taken to any section of the IFB submitted with the bid package may result in rejection of the entire bid package, thus making it ineligible for award. Also, failure to submit any requirements of the IFB may cause your bid to be rejected and not eligible for award.

11. Questions concerning this Invitation for Bids may be directed to:

Frederick R. Voellm
email: fvoellm@wmata.com
telephone: 202-962-2485

NOTICE TO ALL VENDORS

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

New Vendor Registration.

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

Forgot User ID/Password.

Registered Vendor Benefits:

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

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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT IFB FQ16128/FRV

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SOLICITATION, OFFER AND AWARD

CONTRACT NO.	SOLICITATION NO. IFB FQ16128/FRV	DATE ISSUED	ADDRESS OFFER TO OFFICE OF PROCUREMENT Office of Procurement 600 Fifth Street NW Washington, DC 20001
	<input checked="checked" type="checkbox"/> ADVERTISED <input type="checkbox"/> NEGOTIATED		

SOLICITATION

Sealed offer in original and TWO (2) copies plus one CD or flash drive for furnishing the supplies or services in the schedules will be received at Authority until 2:00 P.M. local time, June 8, 2016.
 (Hour) (Date)

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

All offers are subject to the following:

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

Bidder's E-mail _____

Bidder's Phone Number _____

Bidder's Fax Number _____

SCHEDULE

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	SEE BID/PRICE SCHEDULE				\$
	(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)
<input type="checkbox"/> Check if remittance is different from above — enter such address in Schedule	Signature Offer Date

AWARD (To be completed by The Authority)

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

ITEM NO.	QUANTITY	UNIT	UNIT PRICE

The total amount of this award is \$ _____

 Name of Contracting Officer (Print of Type) WASHINGTON METROPOLITAN TRANSIT AUTHORITY AWARD DATE

SOLICITATION, OFFER AND AWARD (CONT.)

BID/PRICE SCHEDULE

(Bidder must submit pricing for all years and options.)

BASE YEAR 1

Description	UOM	Quantity	Unit Price	Extended Price
8'6" Wood Crossties	EA	30,000		
8'6" Wood Crossties-Option Quantity	EA	5,500		
10' Wood Crossties	EA	8,600		
10' Wood Crossties-Option Quantity	EA	1,900		
TOTAL BID – BASE YEAR 1				

BASE YEAR 2

Description	UOM	Quantity	Unit Price	Extended Price
8'6" Wood Crossties	EA	9,800		
8'6" Wood Crossties-Option Quantity	EA	2,300		
10' Wood Crossties	EA	3,200		
10' Wood Crossties-Option Quantity	EA	700		
TOTAL BID – BASE YEAR 2				

OPTION YEAR 1

Description	UOM	Quantity	Unit Price	Extended Price
8'6" Wood Crossties	EA	9,800		
8'6" Wood Crossties-Option Quantity	EA	2,300		
10' Wood Crossties	EA	3,200		
10' Wood Crossties-Option Quantity	EA	700		
TOTAL BID – OPTION YEAR 1				

OPTION YEAR 2

Description	UOM	Quantity	Unit Price	Extended Price
8'6" Wood Crossties	EA	9,800		
8'6" Wood Crossties-Option Quantity	EA	2,300		
10' Wood Crossties	EA	3,200		
10' Wood Crossties-Option Quantity	EA	700		
TOTAL BID – OPTION YEAR 2				

CONT.

SOLICITATION, OFFER AND AWARD (CONT.)

BID/PRICE SCHEDULE (CONT.)

SUMMARY:

A. TOTAL BID - BASE YEAR 1: _____

B. TOTAL BID - BASE YEAR 2: _____

C. TOTAL BID - OPTION YEAR 1: _____

D. TOTAL BID - OPTION YEAR 2: _____

TOTAL BID AMOUNT – ALL 4 YEARS _____

SOLICITATION, OFFER AND AWARD (CONT.)

DELIVERY SCHEDULE

TRST 2017-2020 Wood Crosstie Delivery Schedule (Two Base Years, Two Option Years)								
Days after NTP	FY2017 (Base Year 1)		FY2018 (Base Year 2)		FY2019 (Option Year 1)		FY2020 (Option Year 2)	
	8'6"	10'	8'6"	10'	8'6"	10'	8'6"	10'
45 Days	5,000	900	1,200	300	1,200	300	1,200	300
75 Days	5,000	900	1,200	300	1,200	300	1,200	300
105 Days	3,000	900	1,000	300	1,000	300	1,000	300
135 Days	3,000	800	1,000	300	1,000	300	1,000	300
165 Days	3,000	800	1,000	300	1,000	300	1,000	300
195 Days	2,000	700	800	300	800	300	800	300
225 Days	2,000	700	800	300	800	300	800	300
255 Days	2,000	700	800	300	800	300	800	300
285 Days	2,000	700	800	200	800	200	800	200
315 Days	1,000	500	400	200	400	200	400	200
345 Days	1,000	500	400	200	400	200	400	200
365 Days	1,000	500	400	200	400	200	400	200
Total	30,000	8,600	9,800	3,200	9,800	3,200	9,800	3,200

SOLICITATION, OFFER AND AWARD (CONT.)

ACKNOWLEDGMENT OF AMENDMENTS

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

Amendment Number____, dated_____

Amendment Number____, dated_____

Amendment Number____, dated_____

Amendment Number____, dated_____

Failure to acknowledge receipt of all amendments may cause the bid to be considered nonresponsive to the solicitation, which would require rejection of the bid.

SOLICITATION INSTRUCTIONS

INVITATION FOR BID
SOLICITATION INSTRUCTIONS

1. INTRODUCTION

- a. The Authority seeks to award a Contract to manufacture and furnish 8'6" and 10' wood crossties for use on its existing rail tracks. To that end, the Authority is issuing this Invitation for Bids ("IFB") to solicit bids from qualified firms and individuals who can satisfy the requirements of the accompanying Contract.
- b. Since this is a low bid solicitation, a Contract will be awarded to the lowest priced, responsible bidder whose bid is responsive to, and meets all requirements of the solicitation.
- c. The Authority contemplates award of a firm fixed price contract with a two (2) year base and two (2) one-year options with additional option quantities in each of the four (4) years.

2. GOODS TO BE FURNISHED/SERVICES TO BE PERFORMED

Bidders are advised that:

- a. If "supplies" are to be provided pursuant to this solicitation, they must be in all respects as specified in the Contract and include the items to be furnished, together with any labor, service or other work necessary for satisfactory performance. Supplies shall be packaged and shipped in accordance with WMATA Administrative Procedure 113-19. (Attached)
- b. Unless otherwise specified, all goods and materials furnished to the Authority must be new and unused.

3. COMMUNICATIONS WITH THE AUTHORITY

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

- 1. Email: fvoellm@wmata.com
- 2. Office phone: 202-962-2485

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

4. EXPLANATIONS TO BIDDERS

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

5. PRE-BID MEETING-N/A

6. AMENDMENTS TO IFB

- a. The Authority reserves the right to revise or amend the terms of this IFB, the proposed Contract's Terms and Conditions, the Scope of Work and/or drawings prior to the date set for the opening of bids. Such revisions and amendments, if any, will be announced by amendment(s) to this Invitation for Bids. Written copies of such Amendment(s) as may be issued will be made available to all prospective bidders.
- b. If, in the Contracting Officer's judgment, any amendment(s) would require significant changes in quantities and/or bid prices, he or she may postpone the date set for the opening of bids by the number of days required to enable bidders to revise their bids. In such cases, the amendment will include an announcement of the new date for the opening of bids.

7. ACKNOWLEDGMENT OF AMENDMENTS

Bidders are required to acknowledge receipt of all amendments to this IFB on the "Amendment Acknowledgement" form prior to opening of bids. Failure to acknowledge all

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

8. PREPARATION OF BIDS

- a. Bids shall be submitted on the Bid/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. Failure to do so will be at the bidder's risk.
- c. Discounts for prompt payment will not be considered in the evaluation of bids. However, any offered discount will be included within the award of the Contract and will be taken by the Authority if payment is made within the discount period referenced in the bid.
- d. The Bid/Price Schedule may allow submittal of a price or prices for one or more items that may be unit prices, lump sum bids, alternate prices, or a combination thereof. The Bid/Price Schedule expressly requires a bid on all items. Failure to do so will render a bid nonresponsive.
- e. All Bid prices shall be deemed to include the cost of all work, labor and materials required by the Contract, 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. Destination.
- f. Unless specifically called for in the Bid/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 bidder's name and address. A failure to do so may result in a premature opening of, or a failure to open, the bid, for which the Authority assumes no responsibility.
- c. Facsimile bids will not be considered.
- d. All bids will remain sealed until the date and time specified for the opening of bids.

10. RESPONSIVE BIDS

- a. Bidders are advised that a bid that is at variance or noncompliant with any provision of this solicitation, including a qualified or conditional bid, may be rejected as nonresponsive.
- b. The Contracting Officer may reject a bid as nonresponsive if, in his or her judgment, the prices bid are materially unbalanced. A bid is materially unbalanced when it is based on prices that are significantly understated for one (1) or more elements of work and significantly overstated for others.
- c. The Authority reserves the right to waive minor errors or omissions in bids and to deem them 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 opening of bids 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 opening of bids , A bid submitted in response to a solicitation requiring opening of bids on the 20th of the month must have been mailed by the 15th);
 - (2) Was sent by first class mail and the Contracting Officer determines that the late receipt was due solely to mishandling by the Authority after its timely delivery on its premises;
 - (3) Was sent by U.S. Postal Service, Express Mail, Next Day Service not later than 5:00 p.m. at the place of mailing at least two (2) business days prior to the date specified for the opening 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 the Authority's receipt is the time/date stamp of that event on the bid wrapper or other documentary evidence of receipt maintained by the Authority.
- d. Notwithstanding subparagraph (a) above, a late modification of any otherwise successful bid that makes its terms more favorable to the Authority may be considered at any time it is received and may be accepted.
- e. Bids may be withdrawn by written notice received by the Contracting Officer before the opening of Bids. Bids may be withdrawn in person by a bidder, or an authorized representative of the bidder if the representative's identity is established to the satisfaction of the Authority and the representative signs a receipt for the return of the bid, before the opening of bids. The attempted withdrawal of a bid, received

subsequent to the bid opening and during the acceptance period set forth in paragraph 12, will not be honored and will be without effect.

12. BID ACCEPTANCE PERIOD AND BIDDER'S DEFAULT

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

13. BID GUARANTEE-N/A

14. BID MISTAKE

- a. A bidder who seeks to withdraw its bid subsequent to bid opening due to a claimed mistake or error in preparation shall notify the Contracting Officer, in writing, immediately upon realizing the mistake and in no event later than three (3) business days following bid opening, setting forth an explanation for, the claimed mistake. The Contracting Officer shall evaluate the claimed mistake and determine whether the bidder will be permitted to withdraw its bid.
- b. In the event of an apparent discrepancy between any unit price and its associated extended price, the unit price will be presumed to be correct. The Authority may award a Contract to an otherwise low bidder based upon the unit price, subject to the additional terms of this paragraph.
- c. A bidder claiming a mistake shall, if so requested by the Contracting Officer, appear before one (1) or more designated representative(s) of the Authority to provide testimony and/or documentation, 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 Contracting Officer from allowing a bidder to cure a deficiency in an otherwise responsive bid where he or she determines that such deficiency is in the nature of a minor informality or irregularity.

15. REPRESENTATIONS, CERTIFICATIONS, AND ACKNOWLEDGMENTS

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

16. LAWS AND REGULATIONS

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

17. ROYALTY INFORMATION-N/A

18. REQUIREMENT FOR COST DATA FOR CONTRACT AWARD

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

19. PRE-AWARD INFORMATION/BIDDER RESPONSIBILITY

- a. In order to be eligible for award, the low bidder will be required to demonstrate its ability to provide the supplies contained in the solicitation, in a timely manner, to the Authority's complete satisfaction.. The low bidder's failure to demonstrate that it maintains the requisite integrity, overall technical capability and financial resources to perform the Contract in a satisfactory and timely manner may result in a rejection of the low bidder as not responsible. In such event, the second lowest bidder will be required to demonstrate its responsibility, a process that will continue until a bidder successfully demonstrates that it is responsible for purposes of this solicitation.
- b. To assist in the Contracting Officer's evaluation of its responsibility for purposes of Contract award, each bidder shall furnish the following when submitting its bid:
 - (1) A completed and signed "Pre-Award Evaluation Data" form (copy attached), including the required financial statements;
 - (2) The Disadvantaged Business Enterprise data as set forth in Appendix B.

20. PRE-AWARD MEETING

The Authority reserves the right to require that a pre-award meeting be held with the apparent low Bidder prior to award of a Contract in order to review the Bidder's

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

21. SITE VISIT/INSPECTION OF BIDDER'S FACILITIES

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

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 based solely upon the price as identified in the Bid/Price Schedule and (ii) who demonstrates to the satisfaction of the Authority that it is responsible for purposes of award of this Contract. It is important for determining bidder responsibility that the bidder provide all information requested in the Pre-Award Evaluation Data form.
- b. Unless otherwise expressly specified in the Bid/Price Schedule the Authority may make multiple awards as a result of this solicitation.
- c. The Authority reserves the right to reject all bids and cancel this solicitation at any time prior to award.
- d. The Authority reserves the right to seek additional information or clarification from any bidder regarding any statement that is found to be ambiguous prior to making an award.

23. CONTRACT AWARD

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

24. EQUAL EMPLOYMENT OPPORTUNITY

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

25. DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS

Attached as part of this solicitation are documents outlining the requirements for the Disadvantaged Business Enterprise (DBE) Program: The DBE requirement goal for this contract is 5% unless a good faith waiver is requested and approved.

- a. If the Bid is over \$150,000, and for the Bidder to be considered responsible, the following documents (see Appendix B) shall be completed and submitted with the Bid:

Schedule of DBE Participation

Letter of Intent to Perform as Subcontractor/Joint Venture

DBE Unavailability Certification (if applicable)

Written request for waiver when DBE participation is less than stated percentage (if applicable)

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

The provisions of Appendix B do not become applicable and forms do not have to be completed, unless the bid is \$150,000 or more. If the bid is \$150,000 or more and any portion of the written requirement is omitted, then the bid may be found to be unacceptable and subsequently rejected. Appendix B forms and/or waivers must be completed with great care by each bidder to insure that the bid is acceptable.

26. OPPORTUNITY FOR DISADVANTAGED BUSINESS ENTERPRISES TO BID

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

27. NOTICE OF PROTEST POLICY

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

28. WMATA'S TAX EXEMPT STATUS

- a. Pursuant to Article XVI, Paragraph 78, of the Washington Metropolitan Area 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 Contractor's responsibility to determine its liability for any and all taxes applicable to this Contract.. 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 , "FEDERAL, STATE AND LOCAL TAXES" article of this Contract.
- c. The Authority's tax exempt numbers are as follows: District of Columbia -- 5611-0082187-001; Maryland -- 30072210; Virginia -- 5280-0067
- d. By submission of its bid, the bidder certifies that none of the taxes as to which the Authority is exempt are included in its bid price(s).

29. ENGLISH LANGUAGE AND UNITED STATES CURRENCY

With respect to both this Solicitation and the resultant Contract:

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

30. BRAND NAME OR EQUAL-N/A

31. PERFORMANCE AND PAYMENT BONDS-N/A

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

REPRESENTATIONS

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

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

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

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

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

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

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

Name of Parent Company

Main Office Address (including ZIP Code)

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

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

(d)

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 fifty one percent (51%) owned by one (1) or more individuals who are both socially and economically disadvantaged individuals or, in the case of a corporation, in which fifty one percent (51%) of the stock is owned by one (1) or more such individuals; and whose management and daily business operations are controlled by one (1) or more socially and economically disadvantaged individuals who own it.

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

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

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

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

This representation is applicable to federally assisted contracts of \$50,000 or more that are awarded to contractors with fifty (50) or more employees. By submission of this 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 U.S. Secretary of Labor (41 C.F.R. §§ 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 U.S. 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 \$150,000, or the Contracting Officer believes that orders under an indefinite type contract in any year will exceed \$150,000 or a facility to be used has been the subject of a conviction under the Clean Air Act [42 U.S.C. § 7413(c)(1)] or the Clean Water Act [33 U.S.C. § 1319(c)] and is listed by the U.S. Environmental Protection Agency (EPA) as a violating facility, and the acquisition is not otherwise exempt:

- (a) Any facility to be utilized in the performance of this proposed contract [] is, or [] is not listed on the EPA's list of Violating Facilities;
- (b) 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 that it proposes to use for the performance of this Contract is under consideration to be listed on the EPA's 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

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 2 C.F.R. Part 1200 and 2 C.F.R. Part 180, Subpart C, the offeror certifies to the best of its knowledge and belief that it and its principals:

(a) are not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

(b) have not, within a three (3) year period preceding this offer, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) 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 above of this certification; and have not, within a three (3) year period preceding this offer, had one (1) or more public transactions (federal, state, or local) terminated for cause or default.

2. Where the 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 this Contract.

1. 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 proposal.

- c. The Certification required by K.9.2, above, shall be included in all applicable subcontracts and a copy kept on file by the Contractor. The Contractor shall be required to furnish copies of certifications to the Contracting Officer upon his or her 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 that are quoted in this offer have not been knowingly disclosed by the offeror and will not be knowingly disclosed by the offeror prior to the opening of bids (in the case of a sealed bid solicitation) directly or indirectly, to any other offeror or to any competitor; and
 - (3) No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.

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

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 that is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for such subcontract or for all subcontracts during a period (i.e., quarterly, semiannually or annually).

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

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

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

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

- (a) By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that to the best of his or her knowledge or belief:
 - (1) No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of a federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - (2) If any funds other than federally appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this contract, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities."
 - (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers and that all sub-recipients shall certify and disclose it 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 Act 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 Act certification (below) with all offers on FTA funded contracts, except those subject to a general waiver. Offers that are not accompanied by a completed Buy America Act 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 offeror hereby certifies that it will meet the requirements of 49 U.S.C. § 5323(j)(1) and the applicable regulations in 49 C.F.R. § 661.5.

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

The 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 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. § 661.11.

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

The 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 (3) years of violating any federal criminal tax law or failed to pay any tax.
 - (2) It has certified if it has been notified of an unresolved tax lien or any unsatisfied federal tax delinquency in excess of \$3,000 and that it is paying tax debts through an installment agreement or has requested a collection due process hearing.
 - (3) The offeror agrees that a breach of this certification is a violation of the Federal Acquisition Regulation (FAR).
 - (4) As used in this certification, the term "tax delinquency" means an outstanding debt for which a notice of lien has been filed in public records.
 - (5) It further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will:
 - (a) Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the FAR;
 - (b) Retain such certifications in its files; and
 - (c) Forward the following notice to such subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

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

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

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

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

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

- (a) No WMATA **Board member, household member or business associate** has a financial interest in this firm, in a **financial transaction** with the Authority to which this firm is a party or prospective party, or in an **actual or prospective business relationship with the Authority** to which this firm is a party.
- (b) The following WMATA **Board member(s), household member(s) or business associate(s)** has a financial interest in this firm, in a **financial transaction** with the Authority to which this firm is a

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT IFB FQ16128/FRV

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.

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: 8'6" and 10' Wood Crossties

1. Name of Firm: _____

2. Address: _____

3. Individual Partnership Corporation Joint Venture
4. Date organized _____.
State in which incorporated _____.
5. Names and addresses of officers or partners:
 - a. _____
 - b. _____
 - c. _____
 - d. _____
 - e. _____
 - f. _____
6. How long has your firm been in business under its present name? _____
7. Attach as Schedule One (1) a list of current contracts, which demonstrate your firm's proficiency and ability to perform the work in this solicitation, each with contract number, contract amount, name of contracting party, type of work and percentage of completion.
8. Attach as Schedule Two (2) a list of contracts similar in nature to the work in this solicitation, each with contract number, contract amount, name of contracting party, and character or type of work for similar contracts completed in the last five (5) years.
9. In the last two (2) years, has your firm been denied an award where it was the low bidder? If the answer is YES, attach as Schedule Three (3) the full particulars regarding each occurrence.
10. Has your firm ever failed to complete any contract, on which it was the low bidder?
If the answer is YES, attach as Schedule Four (4), the full particulars regarding each occurrence.
11. 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 8'6" and 10' wood cross ties for WMATA's existing track, 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. In consideration for the complete, satisfactory and proper performance by the Contractor, the Authority agrees to pay to the Contractor, and the Contractor agrees to accept as full compensation therefore, the sums of money set forth in the Bid/Price Schedule at the time, in the manner and upon the terms and conditions set forth in the Contract.

2. ARRANGEMENT OF CONTRACTUAL PROVISIONS

For ease of reference, the provisions of this Contract is 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 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 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; (e) the technical proposal, if any, and other submissions of the Contractor generated as part of the Contract. In the event of a conflict within or between provisions entitled to equal precedence the more stringent requirement shall apply.
- (b) Notwithstanding paragraph (a), in the event that this Contract is funded in whole or part by the federal government, all contract terms mandated for inclusion by the federal government shall be deemed to supersede any other conflicting or inconsistent provision in the Contract.

4. REQUIREMENTS CONTRACT-N/A

5. AUDIT, AVAILABILITY, AND INSPECTION OF RECORDS

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

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

6. AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR

Funds are not guaranteed for performance under this Contract beyond the current fiscal year that ends on June 30, 2016. The Authority's obligation for performance of this Contract beyond that date is contingent upon the availability of funds from which payment for Contract purposes can be made. The Authority's legal liability for any payment cannot arise for performance under this Contract until funds are made available to the Contracting Officer for performance and until he or she confirms it in writing, to the Contractor. 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 that fiscal year and will be governed by the terms of this article.

7. CONTRACTING OFFICERS TECHNICAL REPRESENTATIVE (COTR)

The work will be conducted under the general direction of the Contracting Officer. Authority will be delegated to the Contracting Officer's Technical Representative (COTR) to take the following actions;

1. Act as the principal point of contact with the Contractor. The COTR will submit a copy of each item of incoming correspondence and a copy of any enclosures to the Contract Administrator;
2. Approve in writing, the Contractor's progress schedule and submittals when required;
3. Inspect the work for compliance with this Contract;
4. Review and approve invoices and payment estimates. The COTR will forward invoices and receipts to accounting. The COTR will bring any significant discrepancies in, or disputes concerning, Contractor invoices or payments to the Contracting Officer's attention. In those cases requiring release of final retained percentages of payment, the COTR will make his or her recommendations, in writing, to the Contracting Officer;
5. Coordinate correspondence with the Contract Administrator, if its importance significantly impacts the contractual terms and obligations;
6. Evaluate the Contractor's technical letters and proposals for the Contracting Officer;
7. Advise the Contracting Officer of potential problems that may affect Contract performance;
8. Advise Office of Procurement and Materials, DBE Branch, if DBE, SBE, or SBLPP issue(s) appear that may require investigation;
9. Advise the Contracting Officer whenever the COTR has reason to believe that the Contractual not-to-exceed amount will be exceeded;
10. Prepare the Authority's estimate for proposed Contract modifications. Participate in negotiations for modifications;
11. Approve, in writing, the Contractor's progress schedule when required;
12. Receive from the Contractor, monthly, if applicable, DBE status reports and forward them to the Office of Procurement and Materials, DBE Branch;
13. Receive from the Contractor certified payroll reports and prepare a log sheet indicating the following: (1) name of the Contractor and subcontractor; (2) the Contract number; (3) the certified payroll number (number for the payroll for the project starting with the number 1); (4) the time frame of the payroll period (i.e. 1/21/11-2/3/11); (5) the statement of compliance date (first page of the report); and (6) the date the report was received by WMATA;
14. Maintain a comprehensive file/record of documents and correspondence concerning Contract activities and actions;
15. Provide the Contract Administrator with a written notification after all supplies/services have been received with a statement that the COTR is not aware of any open issues that would preclude closeout of the Contract and that it is ready for closeout. The COTR will return the file, containing all records, correspondence, etc., to the Contract Administrator;
16. Execute Standard Form 1420, which contains a detailed performance evaluation of the Contractor. If, there are one (1) or more categories in which the Contractor is deemed unsatisfactory, these evaluations must be provided to it for comment;

17. Provide the Contract Administrator with a written request (and requisition) to exercise option(s) (if any) a minimum of ninety (90) days prior to the time established in this Contract for exercise of the option; and
18. The COTR may not further delegate his/her duties or responsibilities regardless of whether he or she will be absent;
19. The presence or absence of the COTR or his or her inspectors shall not relieve the Contractor from any requirements of this Contract.
20. If, for whatever reason the COTR is unable or unwilling to fulfill his or her responsibilities under this Contract, only the Contracting Officer can designate a new COTR.

CHAPTER II – TIME/DELAYS/LIQUIDATED DAMAGES

1. PERIOD OF PERFORMANCE

The period of performance is two (2) years or seven hundred and thirty (730) days commencing on the date of the Notice to Proceed.

The Authority has the unilateral right to extend the contract by exercising up to two (2) one-year option periods. Option periods are 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. The Authority shall give the Contractor a preliminary notice of its intent to exercise the option at least thirty (30) days before the Contract expires. The preliminary notice does not commit the Authority to exercise an option.

2. LIQUIDATED DAMAGES FOR DELAY-N/A

3. EXTENSIONS OF TIME/FORCE MAJEURE

(a) For purposes of this article, the term “force majeure” shall mean an unforeseen event or circumstance, beyond the control of, and not occasioned by the fault or neglect of the Contractor or the Authority, that gives rise to a delay in the progress or completion of the Contract, including, without limitation, acts of God, acts of war or insurrection, unusually severe weather, fires, floods, strikes, freight embargoes or other events or circumstances of like nature.

(b) If the Contractor is delayed at any time during the progress of the Contract by the Authority’s acts or omissions or by a force majeure event, then the Contracting Officer shall extend the time for completion and/or the affected delivery date(s) in the following circumstances:

- (1) The cause of the delay arises after the award of the Contract and neither was nor could have been anticipated by the Contractor by reasonable investigation before award;
- (2) The Contractor demonstrates to the Contracting Officer that the completion of the Contract and/or affected delivery(s) will be actually and necessarily delayed;
- (3) The delay cannot be avoided or mitigated by the exercise of all precautions, efforts and measures reasonably available to the Contractor, whether before or after the occurrence of the cause for delay; and
- (4) The Contractor makes a written request and provides other information to the Contracting Officer as described in paragraph (f) below.

(c) In the event that the Contractor will be delayed at any time or for any period by two (2) or more of the above-mentioned causes, , the Contractor shall not be entitled to a separate extension for each one (1) of the causes, but shall only be entitled to one (1) period of extension for the cumulative effects of the delay.

- (d) The Contracting Officer may rescind or shorten any extension previously granted, if he or she determines that any of the Contractor's information provided in support of a request for an extension of time was erroneous if accurate information, would have resulted in a denial of the request. The Contracting Officer will not rescind or shorten any extension previously granted, if the Contractor acted in reliance upon it and if, in the Contracting Officer's judgment, the extension was based on information that the Contractor submitted in good faith even if it is later determined to be erroneous.
- (e) The request for an extension of time pursuant to paragraph (a) shall be made within ten (10) days after the Contractor knows or should know any cause for which it may claim an excusable delay. The Contractor's request shall contain any potential basis for an extension of time, describing, as fully as then practicable, the nature and projected duration of the delay and its effect on the completion of that part of the Contract identified in the request. Within thirty (30) days of its receipt of all such information, the Authority shall advise the Contractor of its decision on such requested extension. Where it is not reasonably practicable for the Contracting Officer to render a decision in the thirty (30) day period, he or she shall, prior to the expiration of such period, advise the Contractor that he or she will require additional time and state the approximate date when he or she expects to render a decision.
- (f) In no event shall a delay in progress or performance of the Contract occasioned solely by a force majeure event or the acts or omissions of any party outside of the Contractor's control be the basis for a Termination for Default pursuant to this Contract. In no event shall a subcontractor at any tier be deemed a party outside of the Contractor's control for purposes hereof.

4. AUTHORITY'S DELAY OF WORK

- (a) If the performance of all or any part of the Contract is delayed or interrupted in a material manner by the Authority's acts or omissions in the administration of this Contract, that are not expressly or impliedly authorized by this Contract or by applicable provisions of law, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this Contract caused by such delay or interruption and the Contract shall be modified in writing, accordingly. Adjustment shall be made also in the delivery or performance dates and any other Contractual provision, if compliance was materially affected by such delay or interruption. No adjustment shall be made under this Contract for any delay or interruption if performance was or could have been delayed or interrupted by any other cause, including, without limitation: (i) the fault or negligence of the Contractor or any subcontractor; (ii) the fault or negligence of a third party to the Contract; (iii) an act constituting a FORCE MAJEURE event pursuant to this Contract; or (iv) any other cause for which an adjustment is provided or excluded under any other provision of this Contract, at law or in equity.
- (b) An adjustment pursuant to paragraph (a) shall not be allowed:
 - (1) for any costs incurred more than twenty (20) days before the Contractor notifies the Contracting Officer in writing of the applicable act or omission claimed; and

- (2) Unless the claim, in a sum certain, is asserted in writing as soon as practicable after the termination of the delay or interruption and in no event later than thirty (30) days after the termination. The Contractor shall accompany its claim with appropriate documentation, specifically supporting the nature and extent of the claimed impact upon the cost and/or time required for performance., In any instance where it is not reasonably practicable for the Contractor to fully project such impact within the thirty (30) day period, it shall accompany its claim with such supporting documentation as is then reasonably available along with a statement of the anticipated time frame when the Contractor will provide the additional materials. The Contracting Officer shall maintain the right throughout the process to request such additional materials as he or she shall reasonably require in consideration of the claim and shall be under no obligation to conclude his or her consideration of the claim prior to review of all relevant materials. Any adjustment to the contract price pursuant to this article must be agreed upon or otherwise determined prior to final payment.

5. NOTICE TO THE AUTHORITY OF LABOR DISPUTES

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

CHAPTER III – ACCEPTANCE/INSPECTIONS/DEFICIENCIES

1. INSPECTION OF SERVICES-N/A

2. INSPECTION OF SUPPLIES

- a. The Contractor shall provide and maintain an inspection system acceptable to the Authority covering supplies under this Contract. The Contractor shall tender to the Authority for acceptance, only supplies that have been inspected in accordance with the inspection system and that the Contractor determines to be in conformity with the Contract's 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 Contract and thereafter, in accordance with the "Audit and Inspection of Records" clause of this Contract. The Authority may perform reviews and evaluations as reasonably necessary to ascertain compliance with this clause. These reviews and evaluations shall be conducted in a manner that will not unduly delay the Contract. Reviews, whether exercised or not, do not relieve the Contractor of its obligations under this Contract.

- b. The Authority has the right to inspect and test all supplies under this Contract, to the extent practicable, at all places and times, including during manufacturing, and before acceptance. The Authority shall perform inspections and tests in a manner that will not unduly delay the Contract. The Authority assumes no contractual obligation to perform any inspection and/or test nor shall the Authority's failure to perform any inspection or test relieve the Contractor of any obligation under this Contract.

- c. If the Authority performs inspection(s) or test(s) on the Contractor's or subcontractor's premises, 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 inspections or tests.

- d. When supplies are not ready at the time specified for inspection or testing, the Contracting Officer may charge the Contractor for any additional, associated cost. The Contracting Officer may also charge the Contractor for any additional cost of inspection or testing when prior rejection makes re-inspection or retesting necessary.

3. ACCEPTANCE OF SUPPLIES

- : a. The Authority shall accept or reject tendered supplies as promptly as practicable after delivery, unless otherwise provided in this Contract. The Authority's failure to

inspect and/or accept or reject the supplies shall not relieve the Contractor from responsibility for, nor impose liability upon, the Authority for nonconforming supplies.

- b. The Authority's acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud and otherwise willful misconduct or as otherwise provided in this Contract. In such instances, the Authority, in addition to any other rights and remedies it has under this Contract at law or in equity, shall have the right:
 1. To direct the Contractor, at no increase in Contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or, if so determined by the Contracting Officer, at the Contractor's facility, in accordance with a reasonable delivery schedule as may be agreed upon between the parties. The Contracting Officer may reduce the Contract price, if the Contractor fails to meet such delivery schedule; or
 2. Within a reasonable time after the Contractor's receipt of a Notice of Defects or Nonconformance, the Contracting Officer may reduce the Contract price, as is equitable under the circumstances, if he or she elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the costs of transportation.

4. NEW MATERIAL [SUPPLIES]

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

5. WARRANTY

- a. All workmanship, parts and materials furnished for this Contract 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 that the item was placed in service.

- b. In the event that any work covered by this warranty clause fails during the warranty period, the Contractor shall repair or replace it within three (3) days, without cost or expense to the Authority.

- c. Should the Contractor fail to repair or replace any part or do any work in accordance with the terms of this warranty, or if immediate replacement or work is necessary to maintain operations, the Authority may cause such replacement to be made, utilizing its own forces and/or those of third parties as the Authority deems appropriate, at the Contractor's expense.

- d. Each piece of equipment, component or part thereof that the Contractor replaces, repairs, adjusts or services under the terms of this warranty during the warranty period shall be reported to the Contracting Officer on the Authority's forms. Each report shall indicate, in detail, all repairs, adjustments and servicing to each and every component, unit or part thereof.

- e. Any warranty work shall be accomplished with minimum disruption to the Authority's operations and its maintenance and service facilities. The Authority shall, at its sole discretion, determine the availability of facilities for warranty work.

- f. The Contractor shall make adequate service facilities available along with, spare parts, for all the items under warranty. Trained technical service personnel shall be available to the Authority sufficient to meet the Contractor's warranty obligations.
 - 1. The Contractor shall provide field service representatives who are competent and fully qualified in the maintenance and operation of the supplied items. These field service representatives shall assist the Authority in overcoming any difficulties in the operation or maintenance of the items supplied. They shall further serve as the Contractor's on-site representatives for any component failure claims or warranty claims under the Contract.

 - 2. During the warranty period, a field service representative shall be made available within twenty four (24) hours of WMATA's warranty claim.

- g. The Authority's rights set forth in this clause shall be in addition to those set forth elsewhere in this Contract or otherwise at law or in equity.

6. CORRECTION OF DEFICIENCIES

The Contractor must replace materials or correct workmanship not conforming to the Contract's requirements at no additional cost to WMATA. In addition, the Contractor is subject

to any liquidated damages specified in this Contract or actual damages incurred by WMATA. If the Contractor fails to correct deficiencies, the Contracting Officer, may take specific action as follows:

- a. Replace or correct the item or work at the Contractor's expense. This may be accomplished by award of a new contract or by use of WMATA's own resources.
- b. Accept the items with a reduction in price. This action will be accomplished by formal modification to this Contract. The reduced price will be based upon the reasonable value of the item, considering the possible cost of correcting the item.
- c. Terminate this Contract for default. If the item or work must be re-procured, the Contractor is normally liable for excess costs incurred by WMATA in accordance with the Termination for Default clause of this Contract.

7. FIRST ARTICLE INSPECTION-N/A

8. 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 WMATA's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and
 - (2) Supplies shall be delivered to WMATA's warehouse unloading platform, or receiving dock, at the Contractor's expense. WMATA shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery of the supplies to the destination, unless such charges are caused by WMATA's acts or omissions 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 WMATA.
- (b) The Contractor shall:
 - (1) Pack and mark the shipment to comply with the Contract's specifications;
 - (2) In the absence of specifications, prepare the shipment in conformance with carrier requirements;
 - (3) Prepare and distribute commercial bills of lading;
 - (4) Deliver the shipment in good order and condition to the point of delivery specified in the Contract;

- (5) Be responsible for any loss of and/or damage to the goods occurring before WMATA's receipt 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.

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

CHAPTER IV—CHANGES/ PRICING ADJUSTMENTS

1. CHANGE ORDERS

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

- h. In no event shall the Contractor be entitled to payment for change orders, additional or extra supplies or services or other modifications to 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, proposal, or adjustment, including equitable adjustments, whether it, arises under the Contract or otherwise.
- b. As part of its proposal for any Contract modification requiring a price adjustment in excess of \$100,000, the Contractor shall submit to the Contracting Officer, cost or pricing data under the conditions described in this paragraph and certify that, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete and current as of the date submitted. The Contractor, at the discretion of the Contracting Officer, may be required to submit cost or pricing data for price adjustments less than \$100,000.
- c. The Contractor shall ensure that this clause is included in all subcontracts at any tier, if the value of the subcontracted work exceeds \$100,000.

3. ACCOUNTING AND RECORD KEEPING FOR ADJUSTMENTS

- a. Applicability. This clause shall apply to any adjustment in the price of this Contract initiated by the Contractor or the Authority
- b. Forward Price Adjustments. Unless waived in writing, 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 Price Adjustments. This paragraph shall be applicable with respect to price adjustments that either (i) are expected to exceed \$50,000; or (ii), arise in connection with a Contract that has a base sum in excess of \$1,000,000. In addition to the records required pursuant to paragraph G.9.2 above, if pricing of an adjustment is not agreed upon between the parties prior to the commencement of work for which the pricing adjustment is requested, the Contractor and any subcontractor engaged in such work shall maintain accounts and original cost records, specifically segregated and identified by job order or other appropriate accounting categories approved by the Contracting Officer for all incurred, segregable costs related to the work for which the pricing adjustment is requested. The Contractor shall maintain accounts and records

that segregate and account for the costs of all work associated with that part of the Contract for which the pricing adjustment is requested. The Contractor shall allocate the costs so accumulated between: (1) work required under the base Contract; (2) work requested to be reimbursed under the pricing adjustment; and (3) work claimed to be related to other proposed adjustments, including but not limited to, changes orders, differing site conditions, and the like. The accounts and records so established shall accumulate such costs under logical cost groups, such as material, labor, equipment, subcontracts, field overhead and the like. The Contractor shall record these costs on a form approved by the Contracting Officer.

- d.** Access to Records. As a condition to the Authority's obligation to consider any claim for a potential price adjustment under any provision of this Contract, the Contractor shall grant the Authority access to review and ascertain the validity of the accounting records being maintained for segregation of costs, including base cost records, and to audit any such costs as are deemed appropriate by the Contracting Officer.
- e.** Limitation on Price Adjustment. In the event the Contractor or any subcontractor fails to generate, maintain, or make available any records required under this Contract, in addition to any and all rights to which the Authority may be entitled, the Contracting Officer shall determine whether such failure is willful, deliberate or otherwise precipitated by the Contractor's bad faith by, in which event, it 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.** The Authority's estimate as adopted or modified by the Contracting Officer.
- f.** In no event shall the Contractor and/or subcontractor be allowed any profit on claimed work for which records are not made available in accordance with its obligations under this Contract.
- h.** Flow-down clause. The Contractor shall ensure the inclusion of this clause in all subcontracts issued under this Contract, modified as necessary, for proper identification of the contracting parties and the Contracting Officer.

CHAPTER V – INVOICES/PAYMENTS/ DEDUCTIONS

1. BILLING AND PAYMENT

a. The Authority shall pay and the Contractor shall accept the amounts set forth in the Bid/Price Schedule as full compensation for all costs and expenses for completing the work in accordance with this Contract, including, but not limited to, all labor and material required to be furnished under this Contract; all overhead, expenses, fees and profits including the cost of providing storage yards or facilities; all risks and obligations set forth in 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 and acceptance of a properly completed invoice. WMATA will accept the submittal of invoices in one of the following methods:

1. Email: Invoices may be submitted through email at: apinvoice@wmata.com. Please submit one invoice and supporting documentation per PDF attachment. You may submit more than one PDF attachment per email.

2. Fax: Invoices may be submitted via the following number: 1-866-534-9063. Please submit one invoice and all supporting documentation for this invoice per fax.

3. Regular Mail: Invoices may be submitted via U.S. Postal Service to the following address:

WMATA-Accounts Payable
PO Box 1910
Beltsville, MD 20704-1910

Note: This address is only for vendor invoices. Correspondence should not be sent to this address.

c. Invoices shall contain the vendor's name, a unique invoice number for each shipment or service, invoice date, payment terms, total invoice amount, "remit to" address, purchase order number, freight terms, description of each item being invoiced, quantity, unit item cost, extended cost by item, total freight/handling costs, contact name and email address. Final invoices must clearly be marked "FINAL" and cite the amount of the Contract, amount previously paid, and the balance due.

- d. The Authority shall remit payment, generally within thirty (30) days of its receipt of an invoice satisfying the requirements of paragraphs G.4.2 and G.4.3, at the prices stated in the Contract for supplies or services accepted, less any applicable deductions.

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

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

3. SUBCONTRACTOR PAYMENTS

- a. The Contractor shall, under this Contract, establish procedures to ensure timely payment of amounts due pursuant to the terms of its subcontracts. The Contractor shall pay each subcontractor for satisfactory performance of its contract, or any billable portion thereof, no later than ten (10) days from the date of the Contractor's receipt of payment from the Authority for work by that subcontractor. The Contractor shall also release, any retention withheld from the subcontractor within ten (10) days of satisfactory completion of all work required by the subcontractor.
- b. The Contractor shall certify on each payment request to the Authority that payment has been or will be made to all subcontractors in accordance with paragraph G.5.1 above. The Contractor shall notify the Contracting Officer with each payment request, of any scheduled subcontractor payments that have not been made.
- c. In the event of a claim by any subcontractor that the Contractor has failed to comply with the terms of this clause, the Contractor agrees to fully cooperate in any Authority investigation, and, if deemed appropriate by the Authority, to implement appropriate remedial measures to ensure future compliance.
- d. The Contractor agrees that the Authority may provide information that the Contracting Officer deems appropriate in response to inquiries from subcontractors seeking to determine the status of the Authority's payments to the Contractor.
- e. Nothing contained in this clause or elsewhere in this Contract shall create a contractual relationship between the Authority and any subcontractor, shall make the subcontractor an intended beneficiary of this Contract or shall affect traditional concepts of privity of contract.

4. GARNISHMENT OF PAYMENTS

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT IFB FQ16128/FRV

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

CHAPTER VI – CONTRACT TERMINATION/STOP WORK ORDERS/DISPUTES

1. STOP WORK ORDERS

- a. The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part of the work for a period of up to ninety (90) days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a STOP WORK ORDER (“SWO”) issued under this clause. Upon receipt of a SWO, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the SWO, during the period of work stoppage. Within a period of ninety (90) days after a SWO is delivered to the Contractor, or within any extension thereof to which the parties agree, the Contracting Officer shall either:
 - 1. Cancel the SWO; or
 - 2. Terminate the work covered by the SWO under this Contract, as appropriate.
- b. If a SWO is cancelled or expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment to the delivery schedule or Contract price, or both, and modify the Contract in writing if, in his or her judgment:
 - 1. The SWO results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and
 - 2. The Contractor submits a written claim for such adjustment within thirty (30) days after the end of the work stoppage. At the Contracting Officer's discretion, the Authority may act upon any claim submitted 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 this Contract.

2. TERMINATION FOR DEFAULT – FTA

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

2. 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;
 3. It fails to make progress in a manner deemed unreasonable by the Contracting Officer so as to endanger performance of the Contract; or
 4. In the view of the Contracting Officer, the Contractor is willfully violating this Contract or is not executing it reasonably and in good faith.
- b.** In the event of the Contractor's material breach pursuant to paragraph (a), the Contracting Officer is authorized to direct a written notice to the Contractor, specifying the nature of the breach and stating that, the Contractor has ten (10) days (or such additional time as the Contracting Officer authorizes, to cure the breach ("Notice to Cure"). If the Contractor fails to cure the breach in the time specified in the Notice to Cure, the Authority shall terminate the Contract, in whole or designated part, for default in accordance with the provisions of this Contract, by a written "Notice of Default" 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 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, material costs, plant costs, tooling expenses, equipment costs, and property costs. The Authority may deduct the costs and expenses so charged from any monies otherwise payable to the Contractor. Nothing contained herein shall be deemed to relieve the Contractor of its continuing obligation to perform any portion of the Contract that was not terminated.
- d.** The Authority may, in its sole discretion, waive a default by the Contractor, but such waiver 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 (1) any completed or partially completed Supplies, and (2) , 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 may have an interest.
- f.** Upon any termination for default, the Authority shall pay for supplies or services accepted in accordance with this Contract. The Authority may also compensate the Contractor for any actions it reasonably takes at the Contracting Officer's direction, for the protection and preservation of property. The Authority may withhold from these amounts, any sum that the Contracting Officer determines to be necessary to protect the Authority against loss because of outstanding or claimed liens, or 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 converted to a termination for convenience and the rights and obligations of the parties shall be determined in accordance with the "Termination for Convenience" clause of this Contract.
- h.** Any dispute with respect to any issue arising under this clause shall be subject to adjudication in accordance with the "Disputes" clause of this Contract. In no event shall the Authority's issuance of a "Notice to Cure" pursuant to paragraph (b) be the basis of a dispute pursuant this Contract or otherwise. The pendency of any dispute shall not constitute a basis for the delay of, or otherwise affect, the Authority's right to proceed in accordance with this clause, including without limitation, its right to complete the work, or the Contractor's obligation to complete any portion of the work that was not terminated.
- i.** The rights and remedies of the Authority in this clause are in addition to any other rights and remedies provided under this Contract, at law or in equity.

3. TERMINATION FOR CONVENIENCE – FTA

- a.** The Authority may terminate this Contract in whole, or, in part, if the Contracting Officer determines that a termination is in the Authority's interest. The Contracting Officer shall terminate by delivering a "Notice of Termination" to the Contractor, specifying the extent of termination and the effective date.
- b.** Upon receipt of a Notice of Termination, except as otherwise directed by the Contracting Officer, the Contractor shall immediately:

 - 1.** Stop work as specified in the Notice of Termination;
 - 2.** Complete performance of the work not terminated;
 - 3.** Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the remaining portion of the Contract;
 - 4.** Terminate all subcontracts to the extent that they relate to the work terminated;
 - 5.** Assign to the Authority, as directed by the Contracting Officer, all of its right(s), title, and interest under the subcontracts terminated. The Authority shall have the right to settle or pay any termination costs arising out of the subcontracts and shall have no further liability to the Contractor for the work that was the subject of such subcontracts;
 - 6.** With approval of the Contracting Officer, settle all outstanding liabilities and settlement costs arising from the termination of subcontracts;

7. As directed by the Contracting Officer, transfer title and deliver to the Authority:
 - (a) Parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
 - (b) The completed or partially completed plans, drawings, information and other property that would have been required to be furnished to the Authority, if the Contract had been completed.
 8. Take any action that may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Contract that is in the Contractor's possession and in which the Authority has or may acquire an interest;
 9. Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (b)(7). The Contractor is not required to extend credit to any purchaser and may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce payments to be made by the Authority under this Contract, credited to the price or cost of the Work, or paid in any other manner that the Contracting Officer directs.
- c. The Contractor shall submit complete termination inventory schedules not later than one hundred twenty (120) days from the effective date of termination, unless such time is extended, in writing, by the Contracting Officer.
 - d. As soon as reasonably practicable, and in any event not later than twenty (20) business days following the Authority's issuance of a "Notice of Termination" pursuant to paragraph (a), the Contractor shall submit a termination settlement proposal (TSP) to the Contracting Officer in the form he or she prescribes pursuant to this clause. . If the Contractor fails to submit the TSP within the time prescribed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor as a result of the termination and shall pay the amount so determined.
 - e. Following submission of the Contractor's TSP pursuant to paragraph (d), the parties shall agree upon the whole, or any part, of the amount to be paid or remaining to be paid as a result of the termination. The amount may include a reasonable allowance for profit on work completed. In no event shall the total amount to be paid to the Contractor exceed the total Contract price as reduced by (1) payments previously made and (2) the Contract price of the remaining work, not terminated.
 - f. If the parties fail to agree on the whole amount to be paid because of the termination, the Contracting Officer shall pay the Contractor the amounts he or she determines as follows, without duplication of any amounts agreed upon under paragraph (e):
 1. The Contract price for 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:
 - (a) The costs incurred prior to termination for performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any costs attributable to items compensated or to be paid for under subparagraph (f)(1);
 - (b) Termination costs under terminated subcontracts that are properly chargeable to the terminated portion of the Contract, if not excluded in subparagraph (f)(2)(i); and
 - (c) A sum, representing profit on the items described in subparagraph (f)(2)(i), determined by the Contracting Officer pursuant to Section 49.202 of the Federal Acquisition Regulation (FAR), in effect on the date of this Contract, determined to be fair and reasonable. If it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the Contracting Officer shall allow no profit under this subparagraph and shall reduce the settlement to reflect the projected rate of loss.

- g. The reasonable indirect costs of settlement of the work terminated, including:
 1. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of the TSP(s);
 2. The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 3. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

- h. Except for normal spoilage, and except to the extent that the Authority expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f), the fair value, as he or she determines of property that is unavailable or damaged and undeliverable to the Authority or to a third party.

- i. The cost principles and procedures of FAR Part 31 effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this clause, except that the Authority shall not be obligated to pay interest, however represented, on any claimed costs.

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

- k. In determining any sum due to the Contractor under this clause, there shall be deducted:
 - 1. All unliquidated advances or other payments to the Contractor under the terminated portion of the Contract;
 - 2. The value, as determined by the Contracting Officer, of any claim that the Authority has against the Contractor under this Contract, including any third party claim, if the Contracting Officer is not satisfied that sufficient insurance coverage is in place; and
 - 3. The agreed price for, or the proceeds of sale of, materials, supplies, or other items that the Contractor procured or sold under this clause, not recovered by or credited to the Authority.

- l. If the Contractor asserts that any partial termination has rendered enforcement of the remainder of the Contract at the remaining Contract price inequitable, the Contractor may file a proposal with the Contracting Officer for an adjustment of the price(s) for the continued portion of the Contract. Such proposal shall be submitted within ninety (90) days from the effective date of termination, unless the Contracting Officer extends it in writing, and shall be accompanied by appropriate supporting documentation.

- m. The Contractor's responsibilities and obligations under this clause 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.

- n. 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, records and other evidence bearing on the Contractor's costs and expenses 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 – FTA

- a. Except as otherwise provided in this clause, the Contractor shall not transfer any of its rights and obligations under this Contract to third parties without the prior, written consent of the Authority. The Authority may recognize a third party as successor in interest to the Contract in the event of a transfer of all or substantially all of the assets of the Contractor, 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 shall be within the discretion of the Contracting Officer after review of the facts and circumstances surrounding each request. At the Contracting Officer's discretion, he or she may conduct an evaluation of the successor party's capability to perform the Contract in the

same manner and to the same extent that he or she was empowered to conduct a responsibility determination as part of the original solicitation for this Contract. Should the Contracting Officer, for any reason, not recognize a successor in interest, he or she may terminate this Contract.

- b. Any attempt to transfer by assignment not authorized by the Contracting Officer shall constitute a material breach of this Contract and the Authority may terminate this Contract in accordance with the "Termination for Default" clause set forth in this Contract.
- c. Nothing contained herein shall be deemed to preclude the Contractor's assignment of claims for monies due or to be become due to it 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 – FTA

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

CHAPTER VII – INDEMNIFICATION/INSURANCE/RISK OF LOSS

1. INDEMNIFICATION

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

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

- c. If any action or proceeding relating to this indemnification is brought against the Authority, then upon written notice from the Authority to the Contractor, the Contractor shall, at its own expense, resist or defend such action or proceeding by counsel approved by the Authority in writing. No approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same. The Authority reserves the right to use its own counsel under this indemnity at Contractor's sole cost and expense.

- d. Contractor understands and agrees to its responsibility to provide indemnification to the Authority pursuant to this clause.. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements. The failure of Contractor's insurance to fully fund any indemnification shall not relieve the Contractor of any obligation hereunder.

2. INSURANCE REQUIREMENTS

Minimum Insurance Requirements

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

General Insurance Requirements

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

Workers' Compensation and Employer's Liability

Required Minimum Limits of Coverage:

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

	\$1,000,000	Disease Each Employee
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Required Minimum Coverage(s):

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

Commercial General Liability

Required Minimum Limits of Coverage:

\$5,000,000	Each Occurrence Limit
\$10,000,000	General Aggregate Limit
\$5,000,000	Products and Completed Operations Limit

Required Minimum Coverage(s):

- 1) Commercial General Liability (CGL) coverage form shall be ISO Occurrence Form CG0001 (12/04) or its equivalent. Equivalency determinations shall be made in WMATA’s sole and unreviewable discretion.
- 2) Required minimum limits of coverage may be achieved through a combination of the aforementioned CGL coverage form and umbrella/excess liability coverage form(s), provided that the umbrella/excess liability coverage form(s) provide the same or broader coverage than the prescribed CGL coverage form.
- 3) Policies shall be endorsed with additional insured endorsements in compliance with the “Additional Insured” clause H.4.8 below. Commercial General Liability and umbrella/excess liability forms must provide defense coverage for additional insureds. Additional insured endorsements shall include products and completed operations coverage with no limitation on when claims can be made. The coverage provided by the additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.’s Additional Insured Form CG 20 10 11 85 or CG 20 26 11 85 as determined by WMATA.

- 4) Policies shall be endorsed with waiver of subrogation endorsements in compliance with clause H.4.9 "Waiver of Subrogation" below.

- 5) The definition of "insured contract" shall be modified to provide coverage for contracts for construction or demolition operations that are within fifty (50) feet of a railroad, and sidetrack agreements.

- 6) Defense costs (allocated loss adjustment expenses) must be included and in excess of the policy limits for all primary liability and umbrella excess liability policies.

- 7) Policies shall be endorsed with ISO endorsement CG 25 03 03 97; "Designated Construction Project(s) General Aggregate Limit", and designate "Any and all construction projects" as the Designated Construction project.

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

Business Auto Liability

Required Minimum Limits of Coverage:

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

- 1) Business automobile liability insurance 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) Policies shall be endorsed with additional insured endorsements in compliance with the "Additional Insured" section below.
- 3) Policies shall be endorsed with waiver of subrogation endorsements in compliance with the "Waiver of Subrogation" Section below.
- 4) Business automobile liability minimum combined single limit requirements may be obtained through the combination of a primary business auto liability policy and an

umbrella/excess liability policy provided that the umbrella/excess liability policy complies with items 1 through 3 above.

Additional Insured(s)

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

- 1) Coverage provided to any additional insured shall be primary and non-contributory to any other insurance available to the additional insured, including coverage afforded to WMATA as an additional insured by subcontractors, and from other third parties.
- 2) Coverage provided to any additional insured shall be for claims arising out of both ongoing operations and products and completed operations hazards.
- 3) Coverage available to any additional insured under the products and completed operations hazards can only be limited to the applicable statute of repose in the jurisdiction(s) where the Contract’s Scope of Work takes place.

Waiver of Subrogation

Contractor and subcontractors at every tier are required to have all insurance policies required under these Minimum Insurance Requirements endorsed to waive the respective insurance company’s rights of recovery against WMATA, and the WMATA Board of Directors. Waivers shall be provided on endorsements that are acceptable to WMATA.

Certificate of Insurance (COI)

Contractor shall provide WMATA an ACORD Certificate of Insurance (COI) and copy of all required endorsements as evidence that the insurance requirements of this section have been satisfied.

The certificate holder box should read:

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

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

3. TITLE AND RISK OF LOSS

a. Unless this Contract specifically provides for earlier passage of title to deliverables (including documents, reports, and data) or other items resulting from this Contract, title shall pass to the Authority upon acceptance, regardless of when or where the Authority takes physical possession. Risk of loss, theft, destruction of, or damage to, such deliverables or other items remains with the Contractor, until the transfer of title or at the time when the Authority takes physical possession, whichever is later.

b. In the event of loss or damage to any deliverable or other item of work, prior to the time when the Authority takes physical possession, the Contractor agrees to repair or replace it as soon as reasonably possible to restore the item to the same condition that pre-existed the loss or damage, in accordance with all requirements of this Contract, without cost to the Authority. Nothing contained herein shall be deemed to require the Contractor's repair or replacement of any loss or damage occasioned solely by the Authority's acts or omissions.

CHAPTER VIII – INTELLECTUAL PROPERTY RIGHTS

1. PATENT INDEMNITY

The Contractor shall indemnify the Authority and its Board members, 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. If the Contractor is not the original equipment manufacturer (OEM) for a manufactured product, it will ensure that the patent holder provides indemnity to WMATA under this clause. 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:

- a. 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;
- b. 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
- c. A claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

2. SET-OFF

The Authority has common law, equitable and statutory rights to set-off. These rights shall include, but are not limited to, the Authority's right to set-off any monies due to the Contractor under this Contract, by any amounts due and owing to the Authority with regard to, any Contract with the Authority, 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-N/A

4. RIGHTS IN TECHNICAL DATA – UNLIMITED

- a. The term “technical data” as used in this clause means technical writings, computer software, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether or not copyrighted, that are required 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 clause means commercial off-the-shelf (COTS) software, specially developed computer software, computer programs, computer data bases, data and documentation thereof.

- b. The Authority or its designated representative, shall have the unlimited right to use, duplicate or disclose technical data, including computer software, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so:
 - 1. Any manuals, instructional materials prepared for installation, operation, maintenance or training purposes;
 - 2. Technical data pertaining to end items, components or processes that were prepared for the purpose of identifying sources, sizes, configurations, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data; e.g., specification control drawings, catalog sheets, outline drawings. Except for the computer software, it means data identifying sources, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulae, and flow charts of the software);
 - 3. Other technical data that was or is normally furnished without restriction by the Contractor or subcontractor;
 - 4. Other specifically described technical data that the parties have agreed will be furnished without restriction;
 - 5. All computer software regardless of whether it is technical data as defined in this clause including the source code, algorithms, processes, formulae, and flow charts, that the Contractor develops or materially modifies for the Authority or for which the Authority is required by federal law to provide a royalty-free, irrevocable and nonexclusive license to the federal government.

- c. The Authority shall have the right to use, duplicate, or disclose technical data other than as defined in paragraph (a), in whole or in part. Such technical data shall not, without the written permission of the party furnishing it be:
 - 1. Released or disclosed, in whole or in part, outside the Authority;
 - 2. Used, in whole or in part, by the Authority for manufacturing, or
 - 3. Used by a party other than the Authority except for: (i) emergency repair or overhaul, (ii) where the item or process concerned is not otherwise reasonably available to the Authority to enable timely performance of this Contract, or (iii) administration of this Contract or the inspection of any

products produced under this Contract where the third party has a written contract with the Authority to perform these efforts. In all cases described in this clause, the release or disclosure outside of the Authority shall be subject to a nondisclosure agreement.

- d. Technical data provided in accordance with this clause shall be identified by a legend that suitably recites the any limitations. This clause shall not impair the Authority's right to use similar or identical data acquired from other sources.
- e. Where any item is purchased as a separate line item in this Contract, that purchase includes all integral parts of that item, including any computer software, source code, algorithms, processes, formulae, and flow charts. The Authority has full rights to use, duplicate or disclose any or all parts of the item, including computer software, in any manner and for any purpose whatsoever, and to permit others to do so. Should disclosure of the computer software be required only under this paragraph, then the Contracting Officer may waive the provisions of this paragraph, if he or she certifies, in writing, that the item is commercially available from multiple sources and will be fully compatible with existing Authority property.
- f. Material covered by copyright:
 - 1. The Contractor hereby grants to the Authority, and to its Board members employees and agents acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license for the Authority's purposes to publish, translate, reproduce, deliver, perform, dispose of, all (i) technical data and (ii) computer software covered by subsection (b) (5) now or hereafter covered by copyright.
 - 2. No such copyrighted matter shall be included in (i) technical data or (ii) computer software covered by subsection (b)(5), without the written permission of the copyright owner.
 - 3. The Contractor shall report to the Authority, promptly and in reasonable written detail, each notice or claim of copyright infringement it receives regarding any technical data or computer software covered by subsection (b)(5) provided to the Authority.
- g. Relation to patents: Nothing contained in this clause shall imply a license to the Authority under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Authority under any patent.
- h. Any dispute under this clause shall be subject to the "Disputes" clause of this Contract.
- i. The Contracting Officer may retain from payment up to ten percent (10%) of the Contract price until final acceptance of the technical data defined in this clause and as required to be furnished in the Price Schedule or the Contract specification.

5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

- a.** The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on this Contract once the Contractor is notified thereof.
- b.** In the event of any claim or suit against the Authority based on any alleged patent or copyright infringement arising out of this Contract or out of the use of any supplies furnished or services performed hereunder, the Contractor shall furnish to the Authority, when requested by the Contracting Officer, all evidence and information in its possession pertaining to such suit or claim. Such evidence and information shall be furnished at the Contractor's expense since it has agreed to indemnify the Authority for such infringement claims.
- c.** This clause shall be included in all subcontracts.

CHAPTER IX – ADDITIONAL COVENANTS/LEGAL REQUIREMENTS

1. NONDISCRIMINATION ASSURANCE – FTA

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

 - 3. Disabilities: In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the Contractor agrees that it will comply with the requirements of U. S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal

Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements that 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, that may result in the termination or such other remedy as the Authority deems appropriate.

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

3. WALSH-HEALEY PUBLIC CONTRACTS ACT

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

- a. All stipulations required by the Act and regulations issued by the Secretary of Labor (41 C.F.R. Part 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the U.S. 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 the Secretary of Labor (41 C.F.R. § 50-202.2). Learners, student learners, apprentices, and certain handicapped workers may be employed at less than the prescribed minimum wage (41 C.F.R. § 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

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

5. CONVICT LABOR

- a. Except as provided in paragraph (b), the Contractor shall not employ, in the performance of this Contract, any person undergoing a sentence of imprisonment imposed by any court of the federal government, a state, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam or the U.S. Virgin Islands.
- b. The Contractor is not prohibited from employing persons:

1. On parole or probation to work at paid employment during the term of their sentence;
2. Who have been pardoned or who have served their terms; or
3. Confined for violation of the laws of the federal government, the states, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if:
 - (a) The worker is paid or is in an approved work or training program on a voluntary basis;
 - (b) Representatives of the local union's central bodies or similar labor union organizations have been consulted;
 - (c) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades where there is a surplus of available gainful labor in the locality, or impair existing contracts or services;
 - (d) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality where the work is being performed; and
 - (e) 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

- a. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide, established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Authority shall have the right to terminate this Contract without liability or, in its discretion, to deduct from the Contract price, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee, if no fraud is suspected.
- b. If fraud is suspected, the Authority's only remedy prior to final adjudication by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any agency providing funding under this Contract and/or appropriate federal, state and/or local law enforcement authorities.

7. SEAT BELT USE POLICY

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

8. SENSITIVE SECURITY INFORMATION

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

9. LAWS AND REGULATIONS

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

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

disposing of hazardous materials (ii) obtain medical treatment for those affected by the materials; 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 clause in accordance with subparagraph (e)(1) above, in precedence over any other provision of this Contract providing for rights in data.
3. The Authority is not precluded from using similar or identical data acquired from other sources.
4. The data shall not be duplicated, disclosed, or released outside the Authority, in whole or in part, for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this Article applies -

"This data furnished under this Contract shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of the Contracting Officer. This legend shall be marked on any reproduction of this data."

5. The Contractor shall not place any restrictive legend on any data that (i) the Contractor or any subcontractor previously delivered to the Authority without limitations; or (ii) should be delivered without limitations under the "Rights in Technical Data" clause.
- f. The Contractor shall insert this clause, 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 materials.

11. LIVING WAGE- N/A

12. METRIC SYSTEM

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

13. WHISTLEBLOWER PROTECTION – FEDERAL

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

4. refused to obey an order that would violate law; or
 5. refused to work or authorize work when a hazardous safety or security condition presents an imminent danger of death or serious injury, there was no reasonable alternative to refusal, there was not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, notified the Contactor or subcontractor of the condition and of his or her intent not to perform or authorize work.
- d. The Contractor shall include, or shall cause to be included, the substance of this clause, 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) 6 U.S.C. §1142, which prohibits discharging, demoting, suspending, reprimanding or in any other way discriminating against an employee as a reprisal for the employee lawfully and in good faith:
1. reporting a hazardous safety or security condition;
 2. refusing to work when a hazardous safety or security condition presents an imminent danger of death or serious injury, there is no reasonable alternative to refusal, there is not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, has notified the Contractor or subcontractor of the condition and of his or her intent to not perform work;
 3. refusing to authorize the use of any safety or security related equipment, track or structures, if the individual is responsible for their inspection or repair and reasonably believes they are in a hazardous safety or security condition, there is no reasonable alternative to refusal, there is not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, has notified the Contractor or subcontractor of the condition and of his or her intent not to authorize use of hazardous equipment or infrastructure unless corrected;
 4. providing information for or directly assisting in an investigation of conduct that the individual reasonably believes to be in violation of federal law regarding safety, security or fraud, waste or abuse of funds intended for safety or security;
 5. refusing to violate or assist in violation of federal public transportation safety or security law;
 6. cooperating with a safety or security investigation by the U.S. Secretary of Transportation, U.S. Secretary of Homeland Security or the National Transportation Safety Board;
 7. furnishing information to law enforcement agencies relating to an accident or incident resulting in damage to property, injury or death; or

- 8. filing a complaint under the NTSSA (6 U.S.C. §1142), or testifying regarding such complaint.
- f. The Contractor shall notify the Authority of any instance, related to this Contract, of a report under subparagraph (e)(1) or refusal under subparagraphs (e)(2), (3) or (5).
- g. The enforcement, filing and investigation of complaints, and remedies under this clause shall be governed by the NTSSA (6 U.S.C. §1142), applicable federal regulations and federal law.
- h. This clause shall be interpreted in accordance with the NTSSA (6 U.S.C. §1142). 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, this clause, including this paragraph, in its subcontracts at all tiers.

14. DRUG AND ALCOHOL TESTING-N/A

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 Board member or employee of the Authority who has been involved, directly or indirectly, in any matter of financial interest to the Contractor until at least two (2) years after the Board member or employee has ceased involvement in the matter. The Contractor shall not knowingly engage in communications of the nature described above with any immediate family member or member of the household of any Authority employee or Board member during the period when such employee or Board member is involved in any matter of financial interest to the Contractor.
- b. If a former Board member or employee of the Authority is eventually hired, the Contractor shall ensure that the former Board member or employee is not involved in negotiating or otherwise dealing with the Authority on any particular matter over which he or she had responsibility during his or her tenure.
- c. Should the Contractor fail to comply with the provisions hereof, and no fraud is suspected, the Contracting Officer shall have the right to withhold payment under this Contract in an amount not to exceed two percent (2%) of the total Contract amount as liquidated damages to the Authority, such withholding to be in addition to any other withholding or retainage under this Contract. Any dispute shall be settled in accordance with the "Disputes" clause of this Contract.
- d. If fraud is suspected, the Authority's only remedy prior to a final decision by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any state or federal agency providing funding under this Contract and/or appropriate federal, state and/or local law enforcement authorities.

16. GRATUITIES

- a. In connection with performance of 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, to any Board member, employee or agent of the Authority; with a view toward securing this Contract or securing favorable treatment regarding this Contract is expressly forbidden. The terms of this "Gratuities" clause 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" clause will be investigated by the Authority's 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 clause exists. If such probable cause exists, the Board of Directors, or its duly authorized representative, shall formally notify WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any state or federal agency providing funding under this Contract and/or appropriate federal, state and/or local law enforcement authorities.
- c. The rights and remedies of the Authority provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided under this Contract, at law or in equity.

17. OFFICIALS NOT TO BENEFIT

- a. No member of or delegate to Congress, resident commissioner or member of a state or local public body shall be admitted to any share or part of this Contract, or to any benefit that may arise therefrom during his or her tenure or for two (2) years thereafter, unless his or her interest in the business entity that is awarded this Contract is placed in a blind trust in accordance with the rules and regulations of the U.S. Office of Government Ethics (OGE).
- b. Enforcement of this clause shall be consistent with 18 U.S.C. §431.

18. ORGANIZATIONAL CONFLICTS OF INTEREST

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

- a Contractor is called upon to evaluate an offer from or performance by itself or an affiliated entity.
- b.** In the event that the Contractor believes that it or any of its potential subcontractors may have an OCI, it shall notify the Contracting Officer, in writing, within five (5) working days after it becomes aware of the potential or actual OCI. The written notification shall identify the nature and circumstances of the perceived conflict and propose appropriate measures to eliminate or mitigate the OCI. The Contracting Officer will review the circumstances and the proposed mitigation plan and notify the Contractor stating whether: (1) no mitigation is required; (2) the conflict cannot be mitigated; or (3) the conflict can be mitigated and he or she accepts the proposed measures, or recommends other and/or additional measures.
 - c.** The failure of the Contractor to identify such perceived conflicts may result in the Contract being rescinded or terminated.
 - d.** Should the Contractor identify or become aware of a conflict during the term of this Contract, including any extension thereof that it could not reasonably anticipate prior to award, it shall notify the Contracting Officer in accordance with paragraph (b) above, or request an exception to the restriction with supporting rationale. The Contracting Officer shall consider the Contractor's proposed measures to mitigate or eliminate the conflict, or the request for an exception.
 - e.** If the proposed measures are not determined to be feasible or are otherwise not acceptable to the Contracting Officer, he or she may terminate the Contract. If the Contracting Officer does not grant a request for an exception, and the Contract is not terminated, the Contractor shall be notified in writing and be given ten (10) days from the date of the written notification to take all necessary actions to comply with this clause.
 - f.** If the proposed measures are determined to be acceptable to the Contracting Officer, he or she may grant a specific exception to this restriction, when in the Contracting Officer's judgment, the exception will not create a conflict between the Contractor's duties and obligations under this Contract and the duties and obligations imposed on the Contractor under another contractual or other relationship.
 - g.** If the Contractor fails to comply with the terms of this clause, and no fraud is suspected, the Contracting Officer, may withhold payments due under this Contract until such time as the Contractor is in compliance or, should the non-compliance remain uncorrected at the expiration of ten (10) days from written notice from the Contracting Officer as provided in subparagraph (d)(2), terminate the contract for default pursuant to this Contract.
 - h.** If fraud is suspected, the Authority's only remedy prior to a final determination by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any state or federal agency providing funding under this Contract and/or appropriate federal, state and/or local law enforcement authorities.
 - i.** The Contractor, in performing this Contract, shall avoid any conduct that might result in or give the appearance of creating for Board members or employees of the Authority

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

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

19. CONTRACTOR PERSONNEL

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

20. FALSE STATEMENTS, CLAIMS OR SUBMISSIONS

- a. The Contractor acknowledges its responsibility to undertake its obligations under this publicly funded contract with full integrity and, to take all reasonable steps to ensure that statements, claims and submissions made pursuant to the Contract are provided in good faith and with a reasonable belief as to their truthfulness, accuracy and completeness.
- b. In the event that it is finally determined by a court of competent jurisdiction that any statement, claim, submission, or certification made by or on behalf of the Contractor pursuant to a material element of the Contract was knowingly false, fictitious or fraudulent, the Authority shall be entitled to recover from the Contractor an amount equal to not more than three (3) times the monetary value of the benefit derived or sought to be derived by the Contractor through its false statement, claim or submission. For purposes hereof, an element of the Contract shall be deemed material if it impacted or could reasonably have been intended to impact the disposition of any claim, dispute, proposed or implemented change order, proposed pricing or schedule adjustment of any nature, or other substantive issue directly affecting the rights of the parties under the Contract.
- c. The Authority's only remedy prior to a final determination by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the

Offices of Inspectors General of any state or federal agency providing funding under this Contract and/or appropriate federal, state and/or local law enforcement authorities.

- c. The rights of the Authority set forth in this clause are in addition to any contractual, legal or equitable rights that may arise upon the Contractor's submission of a false claim or statement, including without limitation, the Authority's right to terminate the Contract for default once fraud is finally determined by a court of competent jurisdiction. The provisions of this clause shall not serve in any respect to limit, waive or modify any civil or criminal liability, of the Contractor or any of its officers, agents or employees that such conduct may precipitate.

21. OPTIONS- EVALUATION

In awarding the basic Contract, the Contracting Officer shall evaluate offers for any option quantities or periods contained in a solicitation in accordance with PPM §§ 4-21- 4-23.

22. OPTIONS- EXERCISE

- a. When exercising an option, the Contracting Officer shall provide written notice to the Contractor within a reasonable amount of time before exercising the option.
- b. When the Contract provides for economic price adjustment and the Contractor requests a revision of the price, the Contracting Officer shall determine the effect of the adjustment on prices under the option before the option is exercised.
- c. In accordance with PPM § 4-23, the Contracting Officer may exercise options only after determining that—
 - 1. Funds are available;
 - 2. The requirement covered by the option fulfills an existing WMATA need;
 - 3. The exercise of the option is the most advantageous method of fulfilling WMATA's need, price and other factors considered.

Additionally, the Contracting Officer shall determine that

- 4. Contractor is not listed in the System for Award Management's Exclusions (See www.sam.gov).
- 5. The Contractor's past performance evaluations on other Contract actions have been considered; and
- 6. The Contractor's performance on this Contract has been acceptable, e.g., received satisfactory ratings.
- d. The Contracting Officer, after considering price and other factors, shall make the determination on the basis of one of the following:
 - 1. A new solicitation fails to produce a better price or a more advantageous offer than that offered by the option. If it is anticipated that the best price available is the option price or that this is the more advantageous offer, the Contracting Officer should not use this method of testing the market.

2. An informal analysis of prices or an examination of the market indicates that the option price is better than prices available in the market or that the option is the more advantageous offer.
 3. The time between the award of the Contract containing the option and the exercise of the option is so short that it indicates the option price is the lowest price obtainable or the more advantageous offer. The Contracting Officer shall take into consideration such factors as market stability and comparison of the time since award with the usual duration of Contracts for such supplies or services.
- e. The determination of other factors under clause 1.51.4:
1. Should take into account WMATA's need for continuity of operations and potential costs of disrupting operations; and
 2. May consider the effect on DBEs.
- f. Before exercising an option, the Contracting Officer shall make a written determination for the Contract file that the exercise is in accordance with the terms of the option, and the requirements of this clause. To satisfy requirements for full and open competition, the option must have been evaluated as part of the initial competition and be exercisable at an amount specified in or reasonably determinable from the terms of the basic contract, e.g.—
1. A specific dollar amount;
 2. An amount to be determined by applying provisions (or a formula) provided in the basic contract, but not including renegotiation of the price for work in a fixed-price type contract;
 3. In the case of a cost-type contract, if—
 - (a) The option contains a fixed or maximum fee; or
 - (b) The fixed or maximum fee amount is determinable by applying a formula contained in the basic contract;
 4. A specific price that is subject to an economic price adjustment provision; or
 5. A specific price that is subject to change as the result of changes to prevailing labor rates provided by the U.S. Secretary of Labor.
- g. The Contract modification or other written document that notifies the Contractor of the exercise of the option shall cite this option clause as authority.

23. OPTION FOR INCREASED OR DECREASED QUANTITIES OF SUPPLIES

WMATA may increase or decrease the quantities of supplies called for in the Schedule at the unit price specified. WMATA may also require the delivery of a numbered line item, identified in the Price Schedule as an option item, in the quantity and at the price stated in the Schedule. The Contracting Officer may exercise the option by written notice to the Contractor within a reasonable amount of time before exercising the option. Delivery of the added items shall continue at the same rate as the like items called for under the Contract, unless the parties agree otherwise.

24. OPTION TO EXTEND THE TERM OF THE CONTRACT

- a. WMATA may extend the term of this Contract by written notice to the Contractor within a reasonable amount of time exercising the option, provided that WMATA gives the Contractor a preliminary notice of its intent to extend within a reasonable amount of time before the Contract expires. The preliminary notice does not commit WMATA to the extension.
- b. If WMATA exercises this option, the extended Contract shall include this option clause.
- c. The total duration of this Contract, including any options under this clause shall be reasonable as determined by the Contracting Officer in consultation with COUN.

25. OPTIONS EXERCISED OUT OF SEQUENCE

WMATA may exercise options at any time, including during the base period, and in any sequence, even if it varies from the sequence stated in the Price Schedule. The Contractor shall be entitled to an equitable adjustment in the Contract price, if exercising the option out of sequence causes any undue delay in performance of the Contract.

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), if a statute, court decision, written ruling or regulation takes effect after the Contract date regarding any federal excise tax or duty on the transactions or property covered by this Contract, and:
 - (1) Results in the Contractor being required to pay or bear the burden of any such federal excise tax or duty or increase in the rate thereof that would not otherwise have been payable on such transactions or property, the Contract price shall be increased by the amount of such tax or duty or rate increase, if the Contractor warrants in writing that no amount for such newly imposed obligation was included in the Contract price as a contingency reserve or otherwise; or
 - (2) Results in the Contractor not being required to pay or bear the burden of, or in its obtaining a refund or drawback of, any federal excise tax or duty that would otherwise have been payable on such transactions or property or that was the basis of an increase in the Contract price, the Contract price shall be decreased by the amount of the relief, refund, or drawback, or that amount shall be paid to the Authority, as directed by the Contracting Officer. If the Contractor, fails to follow the Contracting Officer's instructions, it will be required to pay or bear the burden of, , any such federal excise tax or duty.
- (c) Paragraph (b) above shall not be applicable to social security taxes or to any other employment tax.
- (d) No adjustment of less than \$250 shall be made in the Contract price pursuant to paragraph (b).
- (e) As used in paragraph (b) , the term "Contract date" means the date the Contract was executed by the Authority. As to additional supplies or services procured by modification to this Contract, the term "Contract date" means the effective date of such modification.
- (f) The Contractor shall promptly notify the Contracting Officer of matters that may result in either an increase or decrease in the Contract price under this article and shall take action as the Contracting Officer directs.

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. By submission of its bid or offer, the Contractor certified that none of the taxes that the Authority is exempt from were included in its bid price(s) or the final Contract price. In the event that the Authority learns that, notwithstanding this certification, any taxes that the Authority is exempt from are included in the final Contract price, the Authority shall be entitled

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

3. PUBLIC COMMUNICATION

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

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 determined either in the courts of the United States located in the District of Columbia, the State of Maryland or the Commonwealth of Virginia or in the courts of the District of Columbia, State of Maryland or Commonwealth of Virginia that maintain jurisdiction over such claims and in which venue properly resides.

5. SEVERABILITY

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

6. SURVIVAL

Any provision expressly set forth as surviving the expiration or termination of this Contract shall be deemed to survive any such expiration or termination.

7. ALL NECESSARY FEDERAL PROVISIONS DEEMED INCLUDED – FTA

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 hereby inserted herein.

CHAPTER XI – FEDERAL PROVISIONS

1. NOTIFICATION OF FEDERAL PARTICIPATION

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

2. ACCESS TO THIRD PARTY CONTRACT RECORDS – FTA

- a. The Contractor agrees to provide the Authority, the FTA’s Administrator, the Comptroller General of the United States or any of their authorized representatives access to any of the Contractor’s books, documents, papers and records that are pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 C.F.R. § 633.15 to provide the FTA Administrator or his or her authorized representatives including any Project Management Oversight (PMO) Contractor access to Contractor’s records and construction sites pertaining to a major capital project, defined at 49 U. S. C. § 5302(a)(1) that is receiving federal financial assistance through the programs described at 49 U. S. C. §§ 5307, 5309 or 5311.
- b. The Contractor agrees to permit any of the foregoing parties to reproduce, by any means whatsoever, or to copy excerpts and transcriptions as reasonably needed.
- c. The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract. In the event of litigation or settlement of claims arising from the performance of this Contract, the Contractor agrees to maintain such documents until the Authority, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. [See 49 C.F.R. § 18.39(i) (11).]

3. RIGHTS IN DATA AND COPYRIGHTS — FTA –N/A

4. BUY AMERICA ACT – FTA

- a. The Buy America Act requirements apply to the following types of contracts: construction contracts, the acquisition of goods or rolling stock valued at more than \$150,000.00¹
- b. The Contractor agrees to comply with 49 U.S.C. § 5323(j) and 49 C.F.R. Part 661, which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver.

¹ If the federal grant that funds a procurement was issued prior to 12/2014, then this amount is \$100,000.00.

General waivers are listed in 49 C.F.R. § 661.7, and include final assembly in the United States for fifteen (15) passenger vans and fifteen (15) passenger wagons produced by the Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11. Rolling stock must be assembled in the United States and have a sixty percent (60%) domestic content.

- c. Contractor is responsible for flowing down these requirements to subcontractors at every tier. The dollar threshold only applies to the prime contract. All subcontracts thereunder are subject to the Buy America Act requirements.
- d. An offeror must submit to WMATA the appropriate Buy America Act certification with all offers on FTA funded contracts, except those subject to a general waiver. (See Section K for the appropriate form of certification.) Offers that are not accompanied by the appropriate Buy America Act certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

5. CHARTER BUS REQUIREMENTS-N/A

6. SCHOOL BUS REQUIREMENTS-N/A

7. BUS TESTING-N/A

8. CARGO PREFERENCE – FTA

The Contractor agrees:

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

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U. S. C. §§ 7401-7671. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.
- b. The Contractor will comply with U.S. EPA Regulations “Control of Air Pollution from Mobile Sources,” 40 C.F.R. Part 85; “Control of Emissions from New and In-Use Highway Vehicles and Engines,” 40 C.F.R. Part 86; “Fuel Economy and Greenhouse Gas Exhaust Emissions of Motor Vehicles,” 40 C.F.R. Part 600, as well as any applicable State Implementation Plans (SIP), and EPA regulations “Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or Federal Transit Laws” 40 C.F.R. Part 93, along with other applicable federal regulations.
- c. Flow-down requirement. The Contractor also agrees to include this clause in each subcontract exceeding \$150,000 financed, in whole or in part, with federal assistance provided by FTA.

10. CLEAN WATER ACT – FTA

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act, as amended, 33 U. S. C. §§1251-1377. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- b. The Contractor will protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§300 (f)-(j).
- c. The Contractor will comply with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368.
- d. The Contractor will facilitate compliance with Executive Order 11738, “Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants or Loans,” 42 U.S.C. §7606 note.
- e. Flow-down requirement. The Contractor also agrees to include this clause in each subcontract exceeding \$150,000 financed, in whole or in part, with federal assistance provided by FTA.

11. RECOVERED MATERIALS/RECYCLED PRODUCTS – FTA

- 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 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. 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.

12. ENERGY CONSERVATION – FTA

- a. The Contractor agrees to comply with mandatory standards and policies relating to the energy efficiency that are contained in any applicable state energy conservation plans issued in compliance with the National Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321, *et. seq.*
- b. The Contractor agrees to perform an energy assessment for any building constructed, reconstructed or modified with FTA funds as required under FTA regulations, “Requirements for Energy Assessments.” 49 C.F.R. Part 622.
- c. The Contractor must include this clause in all subcontracts and subagreements at every tier.

13. CHANGES TO FEDERAL REQUIREMENTS – FTA

- 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 FTA Master Agreement [Form FTA MA (22) dated October 1, 2015] 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 clause in each subcontract financed, in whole or in part, with federal assistance provided by FTA. It is further agreed that this clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

14. FLY AMERICA ACT REQUIREMENTS – FTA

- a. The Contractor agrees to comply with 9 U. S. C. § 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 C.F.R. § 301-10, which provide that recipients and sub-recipients of federal funds and their contractors are required to use U. S. flag carriers for U. S. government financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. If a foreign air carrier was used, the Contractor shall submit, an appropriate certification or memorandum adequately explaining why service by a U. S. flag carrier was not available or why it was necessary to use a foreign air carrier and shall provide a certificate of compliance with the Fly America Act’s requirements.
- b. Flow-down requirement. The Contractor agrees to include the requirements of this clause in all subcontracts that may involve international air transportation.

15. PAYMENT DEDUCTIONS - NONCOMPLIANCE WITH DBE REQUIREMENTS

- (a) For federally funded contracts that exceed \$150, 000 and to which the Disadvantage Business Enterprise (DBE) Requirements (Appendix B) apply, the failure to perform in accordance with requirements of Appendix B may result in a partial or full suspension of payment, including progress payments, if applicable.
- (b) If the Contractor is found to be in noncompliance with the DBE requirements of Appendix B, the progress of the work shall also be deemed to be unsatisfactory, and an amount equal to the DBE participation in the Contract shall be retained from payment (or progress payments, if any) made to the Contractor.
- (c) If the contract value is over \$150,000, the prime contractor will be responsible for submitting a monthly report of the status of its DBE subcontractors as outlined in Appendix B to the Contracting Officer.
- (d) If the Contractor fails to submit the required monthly DBE reports, the Contracting Officer may suspend payment (or progress payments) until such time as the monthly reports are submitted and accepted by the Authority.

16. GOVERNMENT-WIDE DEBARMENT OR SUSPENSION- FTA

- a. The Contractor is bound by its certification contained in its offer to the Authority that neither the Contractor, its principals or affiliates, are suspended, debarred, proposed for debarment or otherwise excluded or disqualified from federal contracting. 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 2 C.F.R, part 180, subpart C as adopted and supplemented by U.S. DOT regulations at 2 C.F.R, part 1200 "Nonprocurement Suspension and Debarment," including any amendments thereto, Executive Orders Nos. 12549 and 12689 "Debarment and Suspension" 31 U.S.C. § 6101 note, and other applicable federal laws, regulations or guidance regarding participation with debarred or suspended contractors throughout the term of this Contract.
- b. Flow-down requirement. The Contractor agrees to include this clause in all subcontracts at all tiers under this Contract requiring lower tier contractors to comply with federal suspension and debarment requirements, and review the System for Award Management (SAM) at www.sam.gov in order to comply with U.S. DOT regulations at 2 C.F.R, part 1200 prior to awarding any subcontract under this Contract.

17. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS – FTA

- a. This Contract includes, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in other Contract clauses. All contractual provisions required by DOT, as set forth in FTA

Circular 4220.1F and FTA Master Agreement (22), October 1, 2015 or any revision thereto, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all DOT or FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests that would cause the Authority to be in violation of the FTA's terms and conditions.

- b. Flow-down requirement. The Contractor agrees to include this article in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

18. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES – FTA

- a. The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of this Contract, absent the express written consent by the federal government, it is not a party to this Contract and shall not be subject to any obligations or liabilities to the Authority, the Contractor, or any other party (whether or not a party to this Contract) pertaining to any matter resulting from this 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 – FTA

- a. The Contractor acknowledges that the Program Fraud Civil Remedies Act of 1986, as amended, 31 U. S. C. § 3801 *et. seq.* and U. S. DOT Regulations, "Program Fraud Civil Remedies," 49 C.F. R. Part 31, apply to its actions pertaining to this Contract. Upon execution of this 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 this Contract or the FTA assisted project for which this Contract 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 that 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 that 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 its provisions.

20. FALSE STATEMENTS, CLAIMS OR SUBMISSIONS

- a. The Contractor acknowledges its responsibility to undertake its obligations under this publicly funded contract with full integrity and, to take all reasonable steps to ensure that statements, claims and submissions made pursuant to the Contract are provided in good faith and with a reasonable belief as to their truthfulness, accuracy and completeness.
- b. In the event that it is finally determined by a court of competent jurisdiction that any statement, claim, submission, or certification made by or on behalf of the Contractor pursuant to a material element of the Contract was knowingly false, fictitious or fraudulent, the Authority shall be entitled to recover from the Contractor an amount equal to not more than three (3) times the monetary value of the benefit derived or sought to be derived by the Contractor through its false statement, claim or submission. For purposes hereof, an element of the Contract shall be deemed material if it impacted or could reasonably have been intended to impact the disposition of any claim, dispute, proposed or implemented change order, proposed pricing or schedule adjustment of any nature, or other substantive issue directly affecting the rights of the parties under the Contract.
- c. The Authority's only remedy prior to a final determination by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any state or federal agency providing funding under this Contract and/or appropriate federal, state and/or local law enforcement authorities.
- d. The rights of the Authority set forth in this clause are in addition to any contractual, legal or equitable rights that may arise upon the Contractor's submission of a false claim or statement, including without limitation, the Authority's right to terminate the Contract for default once fraud is finally determined by a court of competent jurisdiction. The provisions of this clause shall not serve in any respect to limit, waive or modify any civil or criminal liability, of the Contractor or any of its officers, agents or employees that such conduct may precipitate.

21. LOBBYING – FTA

- a. The Contractor agrees that it will not use federal funds to influence any officer or employee of a federal agency, member of Congress or an employee of a member of Congress or an officer or employee of Congress on matters that involve this Contract or the underlying grant or agreement, including any award, extension or modification.
- b. Contractor agrees that it will comply with 31 U.S.C. § 1352, as amended, U.S. DOT regulations "New Restrictions on Lobbying" 49 C.F.R, Part 20, to the extent consistent

with 31 U.S.C. § 1352, as amended and other applicable federal laws, regulations and guidance prohibiting the use of federal funds for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature unless an exception exists in current federal law.

- c. Flow-down requirement. The Contractor agrees to include these requirements in all subcontracts at all tiers under this Contract.

22. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS

The Contractor agrees to:

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

23. PRIVACY ACT REQUIREMENTS – FTA

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

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 and Environmental Manual (1984 as amended) issued by the Authority, and the Department of Labor, Occupational Safety and Health Act (OSHA) standards pertaining to the safe performance of the work. In the absence of a specific construction industry standard, the Contractor is required to comply with either an established OSHA general industry standard, National Institute for Occupational Safety and Health (NIOSH) guidelines, American Conference of Governmental Industrial Hygienists (ACGIH) guidelines, American National Standards Institute (ANSI) guidelines, the Federal Railroad Administration's regulations, the WMATA System Safety Program Plan, the WMATA Construction Safety Methods Manual, or the Metrorail Safety Rules and Procedures Handbook, as directed by the Contracting Officer. For contracts in which work is performed on, or interfaces with the Metrorail System, the Contractor shall also comply with the publication entitled "Metrorail Safety Rules and Procedures Handbook." Further, the Contractor shall ensure that all methods of performing the work do not involve danger to the personnel employed thereon, the public and private property, whether or not these methods are cited or indicated in the Contract documents. Should charges of violation of any of the above be issued to the Contractor in the course of the work, a copy of each charge shall be immediately forwarded to the Contracting Officer.

2. PRE-EMPLOYMENT CRIMINAL BACKGROUND CHECK REQUIREMENT

Pursuant to Metro Policy Instruction 6.10/5, WMATA requires that all Contractor employees and candidates for employment undergo and pass criminal background screenings before being eligible to work on WMATA's property and facilities. Contractor employees and candidates who pass the background screenings are eligible to enter WMATA's property once WMATA issues them a Contractor's badge. Contractor employees and candidates who do not authorize background screenings or whose background screenings are unsatisfactory will not be granted Contractor's badges or access to WMATA's property. Background checks are valid for one (1) year from the date of issuance.

3. WORKPLACE VIOLENCE/ZERO TOLERANCE

Pursuant to Metro Policy/Instruction 7.8.3, all Metro Contractors must: (1) establish zero tolerance for acts of workplace violence for their employees and those of subcontractors at any tier, and (2) not retaliate against any of their employees or independent contractors for cooperating with investigations.



MID-ATLANTIC PURCHASING TEAM RIDER CLAUSE

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

Extension to Other Jurisdictions

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

Inclusion of Governmental & Nonprofit Participants (Optional Clause)

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

Notification and Reporting

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

Contract Agreement

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

Mid-Atlantic Purchasing Team:

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

Vendor

Date

TECHNICAL SPECIFICATIONS

(ATTACHED SEPARATELY)

WMATA ADMINISTRATIVE PROCEDURE 113-19

(ATTACHED SEPARATELY)

APPENDIX B

ATTACHMENT A

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

May 2015

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

~APPENDIX B~

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

1. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENT:

- A. The DBE requirements of the Authority's DBE Program Plan apply to this contract. Accordingly, the Contractor shall carry out the requirements of the Authority's DBE Program Plan and this Appendix in the award and administration of this U.S. Department of Transportation (US DOT) assisted contract.

2. POLICY:

- A. It is the policy of the Authority (WMATA), the Federal Transit Administration (FTA) and the US DOT that Disadvantaged Business Enterprises (DBEs) shall compete fairly to receive and participate in performing federally assisted contracts, including contracts and subcontracts at any tier. It is further the policy of the Authority, the FTA and the US DOT that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts. The Contractor hereby agrees to carry out this policy in the award and administration of subcontracts to the fullest extent possible consistent with efficient Contract performance.

3. CONTRACT GOAL:

- A. If the bidder is not a DBE, the bidder agrees that the DBE goal for this Contract shall be met by subcontractors or by joint ventures with DBEs. The goal set forth for this Contract is 5% of the final Contract price, including amendment and modification. The amount of DBE participation will be determined by the dollar value of the work performed and/or supplies furnished by DBE firms as compared to the total value of all work performed and/or supplies furnished under this Contract. The Contractor shall have met this goal if the Contractor's DBE participation meets or exceeds this goal.
- B. In cases where work is added to the Contract by modification such that additional DBE participation is necessary to meet this goal, the Contractor shall increase the participation of one or more firms listed on the "Schedule of DBE Participation" or submit additional DBE certified firms to meet the goal. In cases where work is deleted from the Contract, the goal shall be applicable to the new Contract amount. The Contractor shall be permitted to meet the goal by revising its DBE participation, provided, however, that the revision shall not result in DBE participation that is less than the original goal.

4. DEFINITIONS:

- A. **Appendix B.** The Notice of Requirements for Disadvantaged Business Enterprise, which when attached to a solicitation, implements the DBE requirements of the Authority's DBE Program Plan in the award and administration of federally funded Authority contracts.
- B. **Certified DBE.** means a for-profit small business concern (a) that is at least 51 percent owned by one or more individuals who are both socially and economically

disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and (c) whose eligibility is evidenced by a current WMATA Certification letter, a D.C. Department of Transportation Certification letter, or a certification letter issued by the Metropolitan Washington Unified Certification Program (MWUCP).

- C. **Contractor.** One who participates, through a contract or subcontract (at any tier), in a US DOT assisted highway, transit or airport program.
- D. **DC DOT.** The District of Columbia Department of Transportation.
- F. **Good Faith Efforts.** Efforts to achieve a DBE goal or other requirements of the Authority's DBE Program Plan which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the goal program requirement.
- G. **Joint Venture.** An association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and shares in the capital contribution, control, management, risks, and profits of the joint venture commensurate with its ownership interest.
- H. **Metropolitan Washington Unified Certification Program (MWUCP).** A unified certification program mandated by 49 CFR §26.81 between two federal transit recipients (WMATA and the D.C. Department of Transportation). The agreement became effective January 2005.
- I. **Pre-certification.** A requirement under 49 CFR §26.81(c) that all certifications by the MWUCP be made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.
- J. **Race-conscious.** A measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs.
- K. **Race-neutral.** A measure or program that is, or can be, used to assist all small businesses. For the purposes of the DBE program, race-neutral includes gender-neutrality.
- L. **Small Business Concern.** With respect to firms seeking to participate as DBE's in US DOT assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration implementing regulations (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26.65(b).
- M. **Socially and Economically Disadvantaged Individual.** Any individual who is a citizen (or other lawfully admitted permanent resident) of the United States and who the Authority finds to be a socially and economically disadvantaged individual on a case-by-case basis, and any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged.

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

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

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

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

- (2) This amount includes the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the contract, towards the DBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (3) When a DBE subcontracts part of its work under the contract to another firm, the value of the subcontract work may be counted towards the DBE goal only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count towards the DBE goal.
- B. When a DBE performs as a participant in a joint venture, the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that a DBE performs with its own forces towards the DBE goal may be counted.
- C. Expenditures to a DBE contractor towards the DBE goal may be counted only if the DBE is performing a commercially useful function on that contract.
 - (1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Authority will consider the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
 - (2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.
 - (3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work, the Authority will presume that the DBE is not performing a commercially useful function.
- D. The following factors will be used by the Authority in determining whether a DBE trucking company is performing a commercial useful function:
 - (1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible for on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.
 - (2) The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract.

- (3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers, it employs.
 - (4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - (5) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
 - (6) The lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the terms of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
- E. The following factors will be used to count expenditures with DBEs for materials or supplies towards the DBE goal:
- (1) If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies will be counted towards the DBE goal. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the contract.
 - (2) If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies will be counted towards the DBE goal. A regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if this person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.
 - (3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the entire amount of fees or commissions

charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials and supplies required on a job site, may be counted towards the DBE goal, provided the fees are reasonable and are not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves may not be counted towards the DBE goal.

- F. All DBE firms must be pre-certified. Participation by a firm that is not currently certified as a DBE by the Authority at the time of the due date for bids or offers on a contract, does not count towards the DBE goal. All DBE firms must be in compliance with 49 CFR, Part 26.
- G. The dollar value of work performed under the contract by a firm who has been decertified as a DBE by the MWUCP does not count towards the DBE goal.
- H. The participation of a DBE subcontractor does not count towards the Contractor's DBE goal until the amount being counted towards the goal has been paid to the DBE.

6. BID AND REQUIREMENTS (WITH THE BID):

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

- A. Completed "Schedule of DBE Participation" (Attachment B-1) sufficient to meet the above goal. If the bidder is a DBE firm and intends to satisfy the appropriate DBE requirement with its own firm, it must indicate in the Schedule the area of work and percentage it will perform to satisfy the goal. All bidders must attach current WMATA, DC DOT or MWUCP certification letters for each DBE listed on the Schedule.
- B. Executed "Letters of Intent to Perform as a Subcontractor/Joint Venture" (Attachment B-2). If the bidder is not a DBE or intends to satisfy the requirements through other DBE firms, then it must attach these letters from each certified DBE listed on the Schedule.
- C. Justification for grant of relief (Appendix B waiver of DBE goal). If in the submittal of its bid, the bidder fails to meet the DBE goal above, the bidder has the burden of furnishing sufficient documentation with its bid of its "good faith efforts" to justify a grant of relief (waiver) from the goal or portion of the goal. Such justification shall be in the form of a detailed report. The following is a list of actions which shall be considered as part of the bidder's good faith efforts to obtain DBE participation. This list is neither a mandatory checklist nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases:
 - (1) Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

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

7. BID REQUIREMENTS (APPARENT SUCCESSFUL BIDDER):

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

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

8. CONTRACT ADMINISTRATION REQUIREMENTS:

The following requirements apply after contract award:

- A. The Contractor shall include the following provision in the General Provisions of each subcontract it awards in support of the DBE goal:

“The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in termination of this contract or such other remedy as the Buyer deems appropriate.”

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

- (8) Failure or refusal to execute the subcontract in accordance with the terms of an offer submitted to the Contractor prior to the Contractor's submission of its bid, but only where the contracting officer or other delegated authority's representative can ascertain with reasonable certainty the terms of such offer. In the absence of any other factors, such a failure or refusal will be considered an unusual situation only if the bidder obtained, prior to bidding/proposing, an enforcement commitment from the subcontractor involved.
- (9) Failure to comply with the terms and conditions of this Contract or those of its subcontract or joint venture agreement.

Within 30 days thereafter, the Contractor shall, if necessary to achieve the Appendix B goal, make every reasonable effort to subcontract the same or other work equivalent in value to other certified DBE firms. The Contractor must have the prior written approval of the contracting officer and the DBE office before substitution for a DBE subcontractor, regardless of the reason for substitution. Failure to obtain Authority approval could result in the Authority declaring the Contractor ineligible to receive further Authority contracts for three years from the date of the finding.

- D. The contractor shall forward copies of all subcontracts to the DBE office at the time of their execution.
- E. If the contracting officer or other delegated authority's representative determines that the Contractor has failed to comply with this Appendix B, he/she will notify the Contractor of such non-compliance and the action to be taken. The Contractor shall, after receipt of such notice, take corrective action. If the Contractor fails or refuses to comply promptly, the contracting officer or other delegated authority's representative may issue a "stop work order" stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop work order shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor. When the Authority proceeds with such formal actions, it has the burden of proving that the Contractor has not met the requirements of this Appendix, but the Contractor's failure to meet its Appendix B goal shall shift to it the requirement to come forward with evidence to show that it has met the good faith requirements of this Appendix. Where the Contractor, after exhausting all its administrative and legal remedies and procedures is found to have failed to exert a "good faith effort" to involve DBE's in the work as herein provided, the Authority may declare the Contractor ineligible to receive further Authority contracts for three years from the date of the finding.
- F. The Contractor agrees to cooperate in any studies or surveys as may be conducted by the Authority which are necessary to determine the extent of the Contractor's compliance with this Appendix.
- G. The Contractor shall keep records and documents for two years following performance of this Contract to indicate compliance with this Appendix. These records and documents, or copies thereof, shall be made available at reasonable times and places for inspection by any authorized representative of the Authority and will be submitted upon request together with any other compliance information which such representative may require.

- H. If the Authority, the FTA or the US DOT has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements regarding the DBE Program, the matter shall be referred to the WMATA's DBE office.

- I. Failure by the Contractor to carry out the requirements of this Appendix is a material breach of this Contract, which may result in the termination of this Contract under the Default provision of this Contract or such other remedy as the Authority deems appropriate.

SUMMARY OF SUBMITTALS

With the Bid

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

Bid Requirements (Apparent Successful Bidder)

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

After Contract Award

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

SUBMIT WITH BID
SCHEDULE OF DBE PARTICIPATION

Contract No. _____

Project Name _____

Name of Bidder

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

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

_____ **Signature of Contractor Representative**

_____ **Title**

_____ **Date**

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Contract Number: _____

Project Name: _____

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

TO: _____
(Name of Bidder)

The undersigned intends to perform work in connection with the above projects as (check one):

_____ an individual _____ a corporation
_____ a partnership _____ a joint venture

Specify in detail particular work items or parts thereof to be performed:

at the following price: \$

Please indicate _____ % of the dollar value of the subcontract that will be awarded to non-DBE contractors, if applicable. The undersigned will enter into a formal agreement with you for the above work upon your execution of a contract with the Authority.

Name of DBE Subcontractor/Joint Venture

Phone Number

Address

WMATA Vendor ID #/DBE Cert. #

Signature & Title

Date

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

To: _____
(Name of DBE)

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

WORK ITEMS	PROJECTED DBE COMMENCEMENT DATE	PROJECTED DBE COMPLETION DATE
_____	_____	_____

(Date)

(Name of Prime Contractor &
Acceptance Signature)

SUBMIT WITH BID

DBE UNAVAILABILITY CERTIFICATION

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

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

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

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

Signature: _____

Date: _____

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

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

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

(Signature of DBE Contractor)

(Title)

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DBE Certification Instructions

Important Notice

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

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

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

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

Instructions

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

General (All firms must submit documents under General)

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

Corporations

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

Partnerships

- Partnership Agreement

Proprietorships

IRS Employer ID Number
WMATA Vendor ID#

Limited Liability Companies

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

Change of Status Review

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

Affidavit Enclosure

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

Information For Determining Joint Venture Eligibility

Page 1

.....

Name and address of Joint Venture:

Contact Person: _____ Telephone: _____

Have you attached a copy of the Joint Venture agreement? Yes No

NOTE: Affidavit will not be processed without a copy of the Joint Venture agreement.

.....

Name and address of Joint Venture partner: _____

Contact Person: _____ Telephone: _____

Status of firm: DBE. Non-Minority.

Does firm have current WMATA, DC DOT or MWUCP DBE certification? Yes No

.....

Name and address of Joint Venture partner: _____

Contact Person: _____ Telephone: _____

Status of firm: DBE. Non-Minority.

Does firm have current WMATA, DC DOT or MWUCP DBE certification? Yes No

.....

Describe the nature of the Joint Venture business:

Describe the role in the Joint Venture of each partner listed above:

Describe the experience and business qualifications of each partner in the Joint Venture listed above:

.....

Information For Determining Joint Venture Eligibility

Page 2

Indicate the percentage of ownership in the Joint Venture for each Joint Venture partner, indicating dollar amounts wherever applicable.

Name of Partner	Percentage of Ownership	Profit and Loss Sharing	Capital Contributions including Equipment	Other Agreements
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

TOTALS:

Identify by name, title, race, sex and company affiliation those individuals responsible for the management control of and participation in this contract:

1. Financial decisions, such as payroll, insurance, surety and/or bonding requirements:

Name: _____ Race: _____

Title: _____ Sex: Male Female

Company affiliation: _____

2. Management decisions, such as estimating, marketing and sales, hiring and firing, purchasing supplies:

Name: _____ Race: _____

Title: _____ Sex: Male Female

Company affiliation: _____

3. Supervision of field operations:

Name: _____ Race: _____

Title: _____ Sex: Male Female

Company affiliation: _____



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Information For Determining Joint Venture Eligibility

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.....
The undersigned swear that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operations of our following named Joint Venture:

.....
and the intended participation by each Joint Venturer in the undertaking. Further the undersigned covenant and agree to provide the Authority current, complete and accurate information regarding actual Joint Venture work and the payment thereof and any proposed changes in any of the Joint Venture arrangements and to permit the audit and examination of the books, records and files of the Joint Venture, or those of each Joint Venturer relevant to the Joint Venture, by authorized representatives of the Authority or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal and State laws concerning false statements.

It is recognized and acknowledged that the Authority's DBE Program shall have access to the information provided herein above for the purpose of establishing eligibility and authenticity of the minority/woman-owned status of the Joint Venture.

It is understood that trade secrets and information privileged by law, as well as commercial, financial, geological and geophysical data furnished will be protected.

_____	_____
(NAME OF FIRM)	(NAME OF SECOND FIRM)
_____	_____
(SIGNATURE OF AFFIANT)	(SIGNATURE OF AFFIANT)
_____	_____
(PRINT NAME)	(PRINT NAME)
_____	_____
(TITLE)	(TITLE)
_____	_____
(DATE)	(DATE)

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Information For Determining Joint Venture Eligibility

Page 4

.....
Date: _____ State: _____ County: _____

On this _____ day of _____, 19____,

before me appeared _____
(Name)

to me personally known, who, being duly sworn, did execute the foregoing Affidavit, and did state that he or she was properly authorized by _____

(Name of Firm)

to execute the Affidavit and did so as his or her free act and deed.

(Seal) Sworn and subscribed before me _____
(Notary Public)

Commission Expires: _____

.....
Date: _____ State: _____ County: _____

On this _____ day of _____, 19____,

before me appeared _____
(Name)

to me personally known, who, being duly sworn, did execute the foregoing Affidavit, and did state that he or she was properly authorized by _____

(Name of Firm)

to execute the Affidavit and did so as his or her free act and deed.

(Seal) Sworn and subscribed before me _____
(Notary Public)

Commission Expires: _____

.....

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Washington Metropolitan Area Transit Authority

DISADVANTAGED BUSINESS ENTERPRISE (DBE)
 MONTHLY PROMPT PAYMENT REPORT

PRIME – CONTRACTOR’S REPORT

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

Contract No.: _____ Reporting Period: _____

Name of Prime Contractor: _____ DBE – Yes or No

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

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

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

By: _____ Title: _____ Date: _____

Washington Metropolitan Area Transit Authority

DISADVANTAGED BUSINESS ENTERPRISE (DBE)
 MONTHLY PROMPT PAYMENT REPORT

SUBCONTRACTOR'S REPORT

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

Contract No.: _____ Reporting Period: _____

Name of Subcontractor: _____ DBE – Yes or No

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

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

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

By: _____ Title: _____ Date: _____

