



Washington
Metropolitan
Area
Transit
Authority

Request For Proposal

Production Spot Tamping Machine

RFP NO: FQ12120/MC

Date: January 19, 2012



Date: January 19, 2012

SUBJECT: Production Spot Tamping Machine - FQ12120/MC

Dear Sir/Madam:

The Washington Metropolitan Area Transit Authority (WMATA) requires the services of a qualified Offerors to provide two Production Spot Tamper machines. The Spot Tamper shall contain a fully enclosed cab for one (1) operator; a hydraulic or approved work head for tamping up cross ties tight to the rail; driven by the main engine source; a stand-alone diesel powered engine, and controls for the braking systems.

The unit shall be equipped with an internal hydraulically operated rail to rail turn table that will allow clearance of the third rail when tuning unit and remain level during this process, and have positive lock for travel mode. This equipment will meet all requirements as defined in Technical Specification Section 3.0. The requirement includes on-track training and initial on-track in service operation by Contractor personnel. As such, Contractor employees shall be subject to WMATA regulations including RWP Training, ID issuance, Background Checks, Drug Testing and Railroad Liability Protection Insurance.

The offeror compliance response shall be clause by clause and inserted into the RFP or on a standalone document. If you have any questions, Technical Contractual, or Administrative, please email them to macoefield@wmata.com no later than Close of Business on February 6, 2012. WMATA will provide an Amendment with written answers, by email to all those who obtain the RFP and provided their email address as well as post the Amendment and answers on the WEB. Your proposal must be submitted with all required documents as stated in the RFP, no later than 2:00PM, February 20, 2012 at WMATA, Office of Procurement, 8201Ardwick Ardmore Road, Landover, MD 20785.

NOTE: Offerors are cautioned this is a “Technically Acceptable Lowest Price” Request of Proposal (RFP): Therefore, to be eligible for award consideration you **MUST** comply with Part 1, Section 22, and “Proposal Technical Evaluation Criteria of the Solicitation. Failure to comply with this requirement will result in proposals being determined technically unacceptable.

Sincerely,

Kunj Behari

Kunj Behari
Contracting Officer
Office of Procurement and Materials

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)**

Production Spot Tamping Machine

RFP NO: FQ12120/MC

INTRODUCTORY INFORMATION

TABLE OF CONTENTS

I. SOLICITATION INSTRUCTION AND FORMS	
DESCRIPTION OF WORK	1
NOTICE TO OFFERORS	1
DIRECTION FOR SUBMITTING OFFER.....	2
NOTICE TO ALL VENDORS	3
VENDOR INFORMATION.....	4
SOLICITATION, OFFER AND AWARD	5
UNIT PRICE SCHEDULE SHEET	7
REPRESENTATION AND CERTIFICATIONS/PRE-AWARD DATA	9
SOLICITATION INSTRUCTIONS.....	20
II. PROVISIONS	GP-1
SECTION 1 – GENERAL PROVISIONS	GP-2
SECTION 2 - SPECIAL PROVISIONS	SP-2
III. DISADVANTAGED BUSINESS ENTERPRISE (DBE) - ATTACHMENT	DBE-1
IV. TECHNICAL SPECIFICATION	TS-1

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

DESCRIPTION OF WORK

This solicitation provides for the supply and deliveries to the locations specified for the Line Items and Parts as set forth in the Unit Price Schedule(s) and in accordance with the Delivery Schedule in the Special Provisions. The Authority intends to award a Firm Fixed Price Contract to the responsible Offerors or Offerors through a competitive selection process as described in the solicitation instructions.

NOTICE TO OFFERORS

In order to ensure that your proposal complies with the Authority's procurement regulations and that it will be acceptable to the Authority, the following forms must be completed, signed, and submitted as specified below:

- Solicitation, Offer, and Award Form (Volume I)
- Acknowledgement of Amendments (Volume I)
- Unit Price Schedule Sheet (Volume I)
- Proposed Equals Sheet (if applicable) (Volume I)
- Representations and Certifications (Volume I)
- Washington Metropolitan Council of Governments Rider Clause (Volume I)
- Pre-Award Data (Volume I)
- Schedule of DBE Participation – Appendix B (Volume I)
- Certificate of Insurance (provide upon request) (Volume I)
- Technical Proposal (Volume II)

Failure to submit any portion of these requirements as specified may cause your proposal to be considered non-responsive and subsequently rejected.

All references to 'days' in the RFP shall be considered 'calendar days' unless otherwise stated.

Disadvantaged Business Requirements for this Contract is 1.50%.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

DIRECTIONS FOR SUBMITTING OFFER

Submit your proposal and related documents to Ms. Mariana Coefield, Contract Administrator.

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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
ATTN: Ms. Mariana Coefield, CONTRACT ADMINISTRATOR
OFFICE OF PROCUREMENT
8201 Ardwick Ardmore Road
LANDOVER, MD 20785

OFFER UNDER SOLICITATION RFP No. **FQ12120/MC**

ALL PROPOSAL ENCLOSURES SHOULD ADEQUATELY IDENTIFY THE OFFERORS AND THE SOLICITATION NUMBER.

PROPOSALS SHALL BE TIMELY MAILED OR HAND DELIVERED TO REACH WMATA BEFORE 2:00 P.M. (LOCAL TIME) ON THE PROPOSAL DUE DATE. PROPOSALS HAND CARRIED BETWEEN 1:00PM AND 2:00PM SHOULD BE PRESENTED TO THE RECEPTIONIST ON THE LOBBY LEVEL.

OFFERORS ARE ADVISED THAT THE AUTHORITY UTILIZES SECURITY SCREENING FACILITIES FOR PERSONNEL AND PACKAGES AT THE MAIN ENTRANCE AT 600 FIFTH STREET AND OTHER FACILITIES. PLEASE ALLOW ADEQUATE TIME TO PASS THROUGH SECURITY.

FAILURE TO SUBMIT ANY PORTION OF THE WRITTEN REQUIREMENTS MAY CAUSE YOUR OFFER TO BE REJECTED AND NOT ELIGIBLE FOR AWARD.

QUESTIONS CONCERNING THIS REQUEST FOR PROPOSAL MAY BE DIRECTED TO:

Mariana Coefield, Contract Administrator
Email: macoefield@wmata.com

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

NOTICE TO ALL VENDORS

Please be advised that all vendors and Offerors who have *NOT* done 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 Offerors and *HAVE* done business with WMATA in the past, if you have *Forgotten User Id/Password*, please electronically request your company's User ID and Password at <http://www.wmata.com>

Attention to Disadvantaged Business Enterprise (DBE)/Small Business and Local Preference Program (SBLPP) companies:

Minority and women owned businesses who are interested in becoming a WMATA DBE should complete an online DBE application. Self certification is required for Small Business and Local Preference as a part of the Vendor Registration.

Registered Vendor Benefits:

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

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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

Vendor Information

COMPANY NAME: _____

NAME OF PERSON PREPARING RFP (Please Print):

ADDRESS: _____

TELEPHONE NUMBER: _____

FAX NUMBER: _____

E-MAIL ADDRESS: _____

DATE RFP PREPARED: _____

VENDOR'S ID NUMBER: _____

VENDOR'S DUN AND BRADSTREET NUMBER: _____

NOTE: This is the preferred format and must be completed and returned. Vendor may include their preferred format along with this format.



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SOLICITATION, OFFER AND AWARD

Table with 4 columns: CONTRACT NO., SOLICITATION NO. (RFP No. FQ12120/MC), DATE ISSUED (SAME DATE AS AWARD DATE), ADDRESS OFFER TO OFFICE OF PROCUREMENT (Office of Procurement, 600 Fifth Street NW - Room 403, Washington, DC 20001). Includes checkboxes for ADVERTISED and NEGOTIATED.

SOLICITATION

Sealed offer in original and Three (3) copies for furnishing the supplies or services in the schedules will be received at Authority until 2:00 P.M. Local time on February 20, 2012. Email response followed by a hard copy within 5 days is preferred. Email your response to: macoefield@wmata.com

If this is an advertised solicitation, offers will be publicly opened at that time. CAUTION - LATE OFFERS: See paragraph 6 of Solicitation Instructions.

All offers are subject to the following:

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

Offerors' Phone Number Offerors' Email

SCHEDULE

Table with 6 columns: ITEM NO., SUPPLIES/SERVICES, QUANTITY, UNIT, UNIT PRICE, AMOUNT. Content: SEE UNIT PRICE SCHEDULE SHEET (BEGINNING ON PAGE 7). (See continuation of schedule on page 22)

DUN & BRADSTREET ID NUMBER:

OFFERORS

Form with fields for Name and Address, Name and Title of Person Authorized to Sign Offer, Signature, Offer Date, and a checkbox for remittance.

AWARD (To be completed by The Authority)

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

Table with 4 columns: ITEM NO., QUANTITY, UNIT, UNIT PRICE

The total amount of this award is \$

Kunj Behari Contracting Officer WASHINGTON METROPOLITAN TRANSIT AUTHORITY AWARD DATE



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SOLICITATION, OFFER AND AWARD

(CONTINUATION SHEET)

ACKNOWLEDGEMENT OF AMENDMENTS

THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF THE FOLLOWING AMENDMENTS

TO SOLICITATION **RFP #** FQ12120

Amendment Number _____ Dated _____

Amendment Number _____ Dated _____

Amendment Number _____ Dated _____

Amendment Number _____ Dated _____

Amendment Number _____ Dated _____

Amendment Number _____ Dated _____

Failure to acknowledge receipt of all amendments may render the offer unacceptable.

Authorized Signature

Company Name

Date

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)**

Production Spot Tamping Machine

RFP NO: FQ12120/MC

**UNIT PRICE
SCHEDULE I**

PRICE SCHEDULE SHEET

ELEVATOR & ESCALATOR PARTS

CLIN	<u>SUPPLIES/SERVICES</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>EXTENDED AMOUNT</u>
0001	Switch Tamping Machine	2	Each		
0002	Spare Parts	2	Lot		
0003	Training and Training Manuals	1	Lot		
	TOTAL ESTIMATED PRICE				

Note to Proposers:

- The contract price will be evaluated based on the total base price plus all option prices if applicable. The Authority retains the right to award based on total base price only, total base plus options or any combination of base price plus options if any.

Authorized Signature

Company Name

DATE

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

REPRESENTATION AND CERTIFICATIONS

REPRESENTATIONS..... 9

- 1. TYPE OF BUSINESS ORGANIZATION 9**
- 2. AFFILIATION AND IDENTIFYING DATA 9**
- 3. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS10**
- 4. DISADVANTAGED BUSINESS ENTERPRISE.....10**
- 5. AFFIRMATIVE ACTION COMPLIANCE10**

CERTIFICATIONS 11

- 6. COVENANT AGAINST GRATUITIES11**
- 7. CONTINGENT FEE11**
- 8. CLEAN AIR AND WATER CERTIFICATION11**
- 9. DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNANTARY EXLCUSION.....11**
- 10. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION13**
- 11. CERTIFICATION OF NONSEGREGATED FACILITIES13**
- 12. NONDISCRIMINATION ASSURANCE14**
- 13. CERTIFICATION OF RESTRICTIONS ON LOBBYING14**
- 14. BUY AMERICA ACT CERTIFICATION.....15**
- 15. CERTIFICATION OF NON-DELINQUENT TAXES16**
- 16. PRE-AWARD EVALUATION DATA18**

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

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

By submission of this offer, the Offerors 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

Each Offerors 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 Offerors. To own another company means the parent company must own at least a majority, i.e., more than 50 percent, of the voting rights in that company. To control another company, such ownership is not required; if another company is able to formulate, determine or veto basic business policy decisions of the Offerors, such other company is considered the parent of the Offerors. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, contractual arrangements or otherwise.

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

Offerors E.I. Number: _____ or, Parent Company's E.I. Number: _____

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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

3. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS

This representation is applicable to federally assisted contracts. By submission of this offer, the Offerors 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 sub-Offerors will be obtained prior to subcontract awards.

4. DISADVANTAGED BUSINESS ENTERPRISE

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

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

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

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

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

5. AFFIRMATIVE ACTION COMPLIANCE

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

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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

CERTIFICATIONS

6. COVENANT AGAINST GRATUITIES

By submission of this offer, the Offerors 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

By submission of this offer, the Offerors 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 Offerors) 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 Offerors) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this contract.

8. CLEAN AIR AND WATER CERTIFICATION

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

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

9. DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNANTARY EXLCUSION

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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

- (a) Primary Covered Transactions. This certification applies to the offer submitted in response to this solicitation and will be a continuing requirement throughout the term of any resultant contract.
- (1) In accordance with the provisions of Appendix A to 49 Code of Federal Regulations (CFR) Part 29, the Offerors certifies to the best of its knowledge and belief that it and its principals:
- (i) are not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
 - (ii) have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (iii) are not currently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(ii) of this Certification; and
 - (iv) have not, within a three-year period preceding this offer, had one or more public transactions (Federal, State, or local) terminated for cause or default.
- (2) Where the Offerors is unable to certify to any of the statements in this certification, the Offerors shall attach an explanation to this offer.
- (b) Lower Tier Covered Transactions. This certification applies to a subcontract at any tier expected to equal or exceed \$25,000 and will be a continuing requirement throughout the term of the prime contract.
- (1) In accordance with the provisions of Appendix B to 49 Code of Federal Regulations (CFR) Part 29, the prospective lower tier sub-Offerors 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 sub-Offerors 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 subparagraph (b), above, shall be included in all applicable subcontracts and a copy kept on file by the prime Offerors. The prime Offerors shall be

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

required to furnish copies of certifications to the Contracting Officer upon the Contracting Officer's request.

10. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

- (a) By submission of this offer, the Offerors 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 Offerors or with any other competitor, as to any matter relating to such prices;
 - (2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the Offerors and will not be knowingly disclosed by the Offerors prior to the opening of bids (in the case of a sealed bid solicitation) or prior to award (in the case of a negotiated procurement), directly or indirectly, to any other Offerors or to any competitor; and
 - (3) No attempt has been made or will be made by the Offerors 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 Offerors' organization responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or
 - (2) He or she is not the person in the Offerors' organization responsible within that organization for the decision as to the prices being offered herein, but that he/she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated; and will not participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify.

11. CERTIFICATION OF NONSEGREGATED FACILITIES

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

- (a) By submission of this offer, the Offerors 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.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

- (2) The Offerors 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 sub-Offerors for specific time periods) it will:
 - (a) Obtain identical certifications from proposed sub-Offerors before the award of subcontracts under which the sub-Offerors will be subject to the Equal Opportunity clause;
 - (b) Retain such certifications in its files; and
 - (c) Forward the following notice to such sub-Offerors (except if the proposed sub-Offerors have submitted identical certifications for specific time periods):

**NOTICE TO PROSPECTIVE SUB-OFFERORS OF REQUIREMENTS FOR CERTIFICAITONS
OF NONSEGREGATED FACILITIES**

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

12. NONDISCRIMINATION ASSURANCE

By submission of this offer, the Offerors certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, in connection with this procurement that it will not discriminate on the basis of race, color, creed, national origin, sex, age in the performance of this contract. The Offerors is required to insert the substance of this clause in all subcontracts and purchase orders. Failure by the Offerors 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 Offerors 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

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

- (a) By submission of this offer, the Offerors 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:

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, the undersigned shall complete and submit Standard Form--LLL, "Disclosure of Lobbying Activities."
 - (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers and that all sub-recipients shall certify and disclose accordingly.
- (b) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered 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

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

- (a) By submission of this offer, the Offerors 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 Offerors must submit to the Authority the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier sub-Offerors. Mark the applicable certifications below:

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

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

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

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

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

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

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

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

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

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

The bidder or Offerors 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

This certification is applicable to federally assisted contracts.

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

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

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

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

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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

- (5) It further agrees that (except where it has obtained identical certifications from proposed sub-Offerors for specific time periods) it will:
 - (b) Obtain identical certifications from proposed sub-Offerors before the award of subcontracts under which the sub-Offerors will be subject to Federal Acquisition Regulation;
 - (c) Retain such certifications in its files; and
 - (d) Forward the following notice to such sub-Offerors (except if the proposed sub-Offerors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUB-OFFERORS 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 Federal Acquisition Regulation. The certification may be submitted either for such subcontract or for all subcontracts during a period (i.e., quarterly, semiannually or annually). (RC-116, OCTOBER 08)

SIGNATURE BLOCK FOR ALL REPRESENTATIONS AND CERTIFICATIONS		
Name of Offerors: _____		
Name and Title of Authorized Representative: _____		
	Print and Sign Name	
	_____	_____
	Title	Date

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

PRE-AWARD EVALUATION DATA

PROJECT DESCRIPTION: _____

1. Name of Firm _____

2. Address: _____

3. Individual Partnership Corporation Joint Venture

4. Date Organized _____.

State in which incorporated _____.

5. Names of Officers or Partners:

a. _____

b. _____

c. _____

d. _____

e. _____

f. _____

6. How long has your firm been in business under its present name?

7. Attach as SCHEDULE ONE a list of similar current contracts which demonstrates your technical proficiency, each with contract amount, name of contracting party, character or type of work and percentage of completion.

8. Attach as SCHEDULE TWO a list of similar contracts, each with contract amount, name of contracting party, and character or type of work for similar contracts completed in the last two years.

9. In the last two years have you ever been denied an award where you were low bidder/ Offerors?

If the answer is YES, attach as SCHEDULE THREE the full particulars regarding each occurrence.

10. Have you ever failed to complete, in the last two years, any contract on which you were the low bidder/Offerors?

If the answer is YES, attach as SCHEDULE FOUR, the full particulars regarding each occurrence.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

11. Financial resources available as working capital for the Contract:
 - a. Cash on hand: \$_____
 - b. Sources of credit: _____
12. Attach as SCHEDULE FIVE certified financial statements available for the last 2 years and letters from banks regarding credit as required by the Pre-Award Information article.
13. What percentage of work (contract amount) do you intend performing with your own personnel? %.
14. Attach as SCHEDULE SIX a list of all principal sub-Offerors and the percentage and character of work (contract amount) which each will perform. Principal items of work shall include, but not be limited to, those items listed in the Pre-Award Information article of the Request for Proposal/Invitation for Bid.
15. If the Offerors or sub-Offerors is a joint venture, submit PRE-AWARD EVALUATION DATA forms for each member of the joint venture.

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

The undersigned certifies to the accuracy of all information.

COMPANY: _____

SIGNATURE: _____

NAME: _____

TITLE: _____

DATE: _____

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

SOLICITATION INSTRUCTIONS

1.	Definition	21
2.	PREPARATION OF OFFERS.....	22
3.	EXPLANATION TO OFFERORS.....	22
4.	PRIOR REPRESENTATIONS.....	23
5.	ACKNOWLEDGMENT OF AMENDMENTS.....	23
6.	PRE-PROPOSAL CONFERENCE (NOT APPLICABLE).....	23
7.	REVISIONS PRIOR TO DATE SET FOR RECEIPT OF PROPOSALS.....	23
8.	SUBMISSION OF OFFERS.....	23
9.	LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF OFFERS.....	24
10.	PROPOSAL GUARANTEE (NOT APPLICABLE).....	25
11.	CONTRACT AND BONDS (NOT APPLICABLE).....	25
12.	MINIMUM PROPOSAL ACCEPTANCE PERIOD.....	25
13.	CONTRACT AWARD.....	25
14.	DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS.....	26
15.	OPPORTUNITY FOR DISADVANTAGED BUSINESS ENTERPRISES TO PROPOSE.....	26
16.	NOTICE OF PROTEST POLICY.....	27
17.	PRE AWARD INFORMATION.....	27
18.	PROPOSAL FORMAT INSTRUCTIONS/REQUIREMENTS.....	28
19.	RESTRICTION ON DISCLOSURE AND USE OF DATA.....	29
20.	AWARD.....	29
21.	EVALUATION OF OPTIONS.....	29
22.	BASIS FOR AWARD.....	29
23.	TECHNICAL PROPOSAL EVALUATION CRITERIA.....	29
24.	RATINGS FOR PROPOSAL EVALUATION CRITERIA.....	31
25.	DEFINITIONS FOR TECHNICAL EVALUATION.....	31
26.	PRICE PROPOSAL EVALUATION.....	32
27.	TYPE OF CONTRACT.....	32
28.	ENGLISH LANGUAGE AND UNITED STATES CURRENCY.....	32
29.	FEDERAL/LOCAL/STATE SALES TAX.....	33
30.	BRAND NAME OR EQUAL	33

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

SOLICITATION INSTRUCTIONS

1. DEFINITIONS

As used herein:

1. **Clarifications** are limited exchanges, between the Authority and Offerors, where Offerors may be given the opportunity to clarify certain aspects of their proposals or to resolve minor irregularities, informalities or clerical errors.
2. **Descriptive literature** means information provided by an Offerors, such as cuts, illustrations, drawings, and brochures that shows a product's characteristics or construction of a product or explains its operation. The term includes only that information needed to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.
3. **Discussions** are negotiations that may occur after receipt of proposals (generally after establishment of the competitive range) and before award that may, at the Contracting Officer's discretion, result in the Offerors being allowed to revise its proposal.
4. **Excluded Parties List System** means an electronic database maintained and posted by the General Services Administration containing the list of all parties suspended, proposed for debarment, debarred, declared ineligible, or excluded or disqualified under the non-procurement common rule by agencies, Government corporations, or by the Government Accountability Office.
5. **In writing," "writing," or "written** means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.
6. **May** denotes the permissive. However, the words "no person may□" mean that no person is required, authorized, or permitted to do the act described.
7. **Must** means (see "shall").
8. **Offer** means a response to a solicitation that, if accepted, would bind the Offerors to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called "bids" or "sealed bids"; responses to requests for proposals (negotiation) are offers called "proposals"; however, responses to requests for quotations (simplified acquisition) are "quotations," not offers.
9. **Offerors and proposer** are synonymous and refer to the entity that submits an offer in response to this solicitation.
10. **Option** means a unilateral right in a contract by which, for a specified time, the Authority may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

11. **Organizational conflict of interest** means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Authority, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.
12. **Pre-award survey** means an evaluation of a prospective Offerors' capability to perform a proposed contract.
13. **Proposal modification** is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.
14. **Proposal revision** is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer typically as a result of discussions.
15. **Shall** means the imperative.
16. **Should** means an expected course of action or policy that is to be followed unless inappropriate for a particular circumstance.
17. **Solicitation** means "Request for Proposal (RFP)" where the procurement is negotiated.
18. **Will means** (see "shall").

2. PREPARATION OF OFFERS

- a. Offerors are expected to examine the Request for Proposals and all referenced documents carefully. Failure to do so will be at the risk of the Offerors.
- b. The Offerors shall furnish the information required by the solicitation. The Offerors shall sign the solicitation and print or type his/her/its name on the Schedule and each Continuation Sheet thereof on which an entry has been made. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent are to be accompanied by evidence of authority, unless such evidence has been previously furnished to the issuing office.
- c. Offers for supplies or services other than those specified will not be considered unless authorized by the solicitation.
- d. Offerors must state a definite time for delivery of supplies or for performance of services unless otherwise specified in the solicitation.
- e. Time, if stated as a number of days, will include Saturdays, Sundays and holidays.

3. EXPLANATION TO OFFERORS

Any explanation desired by an Offerors regarding the meaning or interpretation of the solicitation documents must be requested in writing and with sufficient time allowed for a reply to reach all Offerors before the submission of their offers. **Oral explanations or instructions given before the**

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

award of the contract will not be binding. Any information given to an Offerors concerning a solicitation will be furnished promptly to all Offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if lack of such information would be prejudicial to other Offerors. All requests should be submitted via e-mail to **Ms. Mariana Coefield, Contract Administrator** at macoefield@wmata.com. Please reference **RFP # FQ12120/MC** on the email. All email requests must be received no later than **4:00PM on February 6, 2012**

4. PRIOR REPRESENTATIONS

The Authority assumes no responsibility for any understanding or representations concerning this solicitation made by any of its officers or agents prior to the issuance of the solicitation, the specifications, or related documents.

5. ACKNOWLEDGMENT OF AMENDMENTS

Receipt of an amendment to a solicitation by a Offerors must be acknowledged (a) by signing and returning the amendment, (b) by identifying the amendment number and date on the Solicitation, Offer and Award Form, (c) and by expressly acknowledging the amendment on the designated form and including it as part of the proposal. Such amendment must be received prior to the hour and date specified in the solicitation. If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

6. PRE-PROPOSAL CONFERENCE (NOT APPLICABLE)

7. REVISIONS PRIOR TO DATE SET FOR RECEIPT OF PROPOSALS

- a. The right is reserved by the Authority to revise or amend the Scope of Work, Description of Work, drawings, etc. prior to the date set for the opening of proposals. Such revisions and amendments, if any, will be announced by an amendment to the Request for Proposal. Copies of such amendments as may be issued will be furnished to all prospective bidders.
- b. If the revisions and amendments require material changes in quantities or price proposals, or both, the date set for the opening of proposals may be postponed by such number of days as in the opinion of the Authority that will enable Offerors to revise their proposals. In such cases, the amendment will include an announcement of the new date for the opening of proposals.

8. SUBMISSION OF OFFERS

- a. Offers and modifications thereof shall be enclosed in sealed envelopes and addressed to the office specified in the solicitation. The Offerors shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the Offerors on the face of the envelope.
- b. Offerors may submit electronic proposals as responses to this solicitation followed by hard copy within 5 days of electronic submittal.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

1. As used in herein, “electronic proposal” means a proposal, revision or modification of a proposal, or withdrawal of a proposal that is transmitted to and received by the Authority via e-mail.
2. Electronic proposals are subject to the same rules as paper proposals.
3. Electronic proposals are to be submitted to the Contract Administrator’s e-mail address at provided on Solicitation, Offer and Award From
4. If any portion of an electronic proposal received by the Contracting Officer is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document—
 - (1) The Contracting Officer immediately shall notify the Offerors and permit the Offerors to resubmit the proposal;
 - (2) The method and time for resubmission shall be prescribed by the Contracting Officer after consultation with the Offerors; and
 - (3) The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the Offerors complies with the time and format requirements for resubmission prescribed by the Contracting Officer.
5. The Authority reserves the right to make award solely on the electronic proposal. However, if requested to do so by the Contracting Officer, the apparently successful Offerors promptly shall submit the complete original signed proposal.

9. LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF OFFERS

- a. Offerors are responsible for submitting proposals, and any modifications or revisions, so as to reach the Authority by the time specified in the solicitation.
- b. Any proposal, modification, or revision received at the Authority after the exact time specified for receipt is “late” and will not be considered unless it is received before award is made, and—
 - (1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Authority infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or
 - (2) There is acceptable evidence to establish that it was received at the Authority and was under the Authority’s control prior to the time set for receipt of offers; or
 - (3) It is the only proposal received.
- c. A late modification of an otherwise successful proposal that makes its terms more favorable to the Authority will be considered at any time it is received and may be accepted.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

- d. The Authority may in its sole discretion accept a late proposal in instances where it is clear that the proposal left the hands of the Offerors before the time set for receipt and acceptance of the late proposal will not delay the procurement or prejudice the other Offerors.
- e. Offerors are advised that the Authority utilizes entry security screening methods and should plan accordingly.

10. PROPOSAL GUARANTEE (NOT APPLICABLE)

11. CONTRACT AND BONDS (NOT APPLICABLE)

12. MINIMUM PROPOSAL ACCEPTANCE PERIOD

- a. "Acceptance period," as used in this provision, means the number of calendar days available to WMATA for awarding a contract from the current date specified in this solicitation for receipt of proposals or from the most current date specified of Revised Final Proposals if applicable.
- b. This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.
- c. WMATA requires a minimum acceptance period of **180** calendar days from the latest revised proposal.

13. CONTRACT AWARD

IF THIS SOLICITATION IS A REQUEST FOR PROPOSAL:

- a. The Authority intends to award a contract or contracts resulting from this solicitation to the responsible Offerors(s) whose proposal(s) conforming to the solicitation will be most advantageous to the Authority cost or price and other factors, specified elsewhere in this solicitation, considered.
- b. The Authority may; (1) reject any or all proposals if such action is in the Authority's interest, or (2) waive informalities and minor irregularities in offers received.
- c. The Authority may award a contract on the basis of the initial offer received, without discussions (other than discussions conducted for the purpose of minor clarifications). Therefore, the initial offer should contain the Offerors' best terms from a cost or price and technical standpoint. However, the Authority reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary.
- d. A written award or acceptance of offer mailed or otherwise furnished to the successful Offerors within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Authority may accept an offer (or part of an offer, as provided in paragraph (d) above) whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the Authority.

- e. Neither financial data submitted with an offer, nor representations concerning facilities or financing will form a part of the resulting contract. However, if the resulting contract contains a clause providing for price reduction for defective cost or pricing data, the contract price will be subject to reduction if cost or pricing data furnished is incomplete, inaccurate, or not current.
- f. The Authority may determine that an offer is unacceptable if the prices proposed are materially unbalanced between line items or sub-line items. An offer is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the offer will result in the lowest overall cost to the Authority even though it may be the low evaluated offer, or it is so unbalanced as to be tantamount to allowing an advance payment.

14. 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 1.50% unless a good faith waiver is requested and approved.**

- a. If the offer is over \$100,000, and for the Offeror to be considered responsible, the following documents (see Appendix B) shall be completed and submitted with the offer:

Schedule of DBE Participation

Letter of Intent to Perform as Subcontractor/Joint Venture
(If applicable)

DBE Unavailability Certification
(where applicable)

Written request for waiver when DBE participation is less than stated percent

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

The provisions of Appendix B (if attached) do not become applicable and forms do not have to be completed, unless the total offer is \$100,000 or more. If the offer is \$100,000 or more and any portion of the written requirement is omitted, then the offer may be found to be unacceptable and subsequently rejected. Appendix B forms and/or waivers must be completed with great care by each Offeror to insure that the offer is acceptable.

15. OPPORTUNITY FOR DISADVANTAGED BUSINESS ENTERPRISES TO PROPOSE

The Washington Metropolitan Area Transit Authority hereby notifies all Offerors that it will affirmatively ensure that disadvantaged minority business enterprises will be afforded full opportunity

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

to submit offers in response to this solicitation and will not be discriminated against on the basis of race, color, or national origin in consideration for award.

16. NOTICE OF PROTEST POLICY

- a. WMATA policy and procedure for the administrative resolution of protests is set forth in Chapter 20 of the Authority's Procurement Procedures Manual (PPM). Chapter 20 contains strict rules for filing a timely protest, for responding to a notice that a protest has been filed, and other procedural matters. The Contracting Officer can furnish a copy of Chapter 20 upon request.
- b. FTA Circular 4220.1F, addresses Bid Protests. FTA will only review protests regarding the alleged failure of the grantee to have a written protest procedure or alleged failure to follow such procedures, and only when submitted by an interested party. The term "interested party" is defined in the Authority policy for handling protests.
- c. Alleged violation on other grounds must be submitted to the Contracting Officer who will decide the protest.
- d. The judicial authorities having jurisdiction over court actions concerning protest decisions are the United States District Courts for the Districts of Maryland, Virginia, and the District of Columbia, and the local courts in Maryland, Virginia, and the District of Columbia.

17. PRE AWARD INFORMATION

- a. The Contracting Officer may conduct a pre award survey to determine if the Offerors eligible for award is responsible both financially and technically and has the capability to perform the work of the Contract in accordance with the requirements of the Specifications and within the times specified.
- b. Accordingly, in order that an offer is fully considered, EACH OFFERORS SHALL FURNISH THE FOLLOWING INFORMATION WITH THE PROPOSAL:
 - (1) A completed and signed Pre Award Evaluation Data form (furnished with the solicitation), including, but not limited to, the following: A statement of the Offerors' experience record, the type of concerns for which the work was performed, a statement by the financial institutions with which the Offerors conducts business and a list of contracts, if any, on which failure to complete within the specified time resulted in the assessment of liquidated damages.
 - (2) Complete financial statements for the last two years, including Statement of Financial Position (Balance Sheet), Results of Operations (Income Statement), Statement of Changes in Financial Position (Net Change in Resources) and Statement of Current and Retained Earnings.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

18. PROPOSAL FORMAT INSTRUCTIONS/REQUIREMENTS

The Offerors shall submit their proposal as follows:

a. **Proposal Format**

The original of Volumes I and II shall be unbound, all copies of Volumes 1 and II will be separately bound and all copies shall have the RFP number, the Offerors' identity, volume number, and volume title printed on the cover page. Volumes shall be submitted in the following order:

- (1) Volume I – Cost/Price and Contractual - One (1) original copy of the cost/price and One original and two (2) copies of the Contractual proposal to including signed Solicitation, Offer and Award, Representation Certifications, Pre-Award Data, Certificate of Insurance, DBE requirements, per Appendix B and Amendments, if any.
- (2) Volume II – Technical - One (1) original AND 3 copies of the technical proposal (**Shall not include cost/price information**)

b. **Volume I – Cost/Price and Contractual**

All information relating to cost or pricing data must be included in Volume I. Under no circumstances shall cost or pricing data be included elsewhere in the Offerors' proposal. Contractual documents shall contain a completed signed Solicitation, Offer and Award Form and include Representations, Certifications, Pre-Award Data, Certificate of Insurance, DBE requirements, per Appendix B and any amendments.

c. **Volume II – Technical Proposal**

Technical: The technical proposal shall enable WMATA evaluating personnel to make a thorough evaluation and arrive at a sound determination as to whether or not the proposal will meet the specifications in accordance with the Authority's requirements. Technical proposals shall be specific, detailed, and complete and demonstrate that the Offerors has a thorough knowledge and understanding of the requirements. Offerors shall avoid statements which paraphrase the specifications or attest that "standard procedures will be employed," are inadequate to demonstrate how it is proposed to comply with the requirements of the specifications, and this clause.

See Paragraph 23 of the instructions section. Technical proposals as minimum shall include: (1) Description and technical specification of the offered equipment to include layout, drawings, sketches, and photographs; (2) Conformance with specifications; (3) Record of past performance; (4) Description of Project Management and Quality Control; and (5) Repair parts service availability.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

Contractual: Contractual documents shall contain a completed signed Solicitation, Offer and Award Form and include Representations, Certifications, Pre-Award Data, Certificate of Insurance and any amendments.

19. RESTRICTION ON DISCLOSURE AND USE OF DATA

The Authority shall provide all reasonable precautions to insure that proprietary, technical and pricing information remains within the review process. Offerors shall attach to any proprietary data submitted with the solicitation the following legend:

- a. "This data furnished pursuant to this RFP shall not be disclosed outside the Authority, be duplicated, or used in whole or in part, for any purpose other than to evaluate the offer; provided that, if a contract is awarded on the basis of that offer, the Authority shall have the right to duplicate, use, and disclose this data, in any manner and for any purpose whatsoever.
- b. This information does not limit the Authority's right to use information contained in this data if it is or has been obtained by the Authority from another independent legitimate source.
- c. Except for the foregoing limitation, the Authority may duplicate, use, and disclose in any manner and for any purpose whatsoever and have others so do, all data furnished in response to this solicitation."

20. AWARD

This will be a Firm Fixed Priced Contract. The Authority will award a single or multiple Contracts for items on the Unit Price Schedule Sheet resulting from this Solicitation.

21. EVALUATION OF OPTIONS - OPTIONAL

The Authority will evaluate proposals for award purposes by adding the total price for the option years to the basic requirement. If applicable, evaluation of options will not obligate the Authority to exercise the options.

22. BASIS FOR AWARD

Technically Acceptable – Low Price

- a. The Authority will award a single contract resulting from this solicitation to the responsible Offerors(s) whose offer conforms to the solicitation and is determined to be the lowest priced among those offers rated "Technically Acceptable."
- b. The Authority may (1) reject any or all offers if such action is in WMATA's interest, (2) accept other than the lowest offer, and (3) waive minor informalities and irregularities in offers received.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

23. TECHNICAL PROPOSAL EVALUATION CRITERIA

The technical evaluation ratings will be acceptable, marginal or unacceptable. The following evaluation factors will be used to evaluate submitted proposals. The evaluation factors are listed below in descending order of importance:

1. Compliance With Specification:

- Degree in which the Contractor notes compliance with technical specifications.
- Thoroughness of any technical submittal for any “or equal” components.

2. Past Performance

- Contractor must demonstrate at least two (2) contracts of similar nature.
- Overview of the Contractor’s abilities and their commitment to the services set forth in this RFP.

3. Project Management and Quality Control

- The successful Contractor must demonstrate its strength in controls, through project management and service quality.
- The Contractor must demonstrate its control of sub-contractor quality, process management, sub-component fabrication and delivery schedule.

4. Repair Parts Service and Availability

- Reliability and availability of this equipment is critical. The successful contractor is required to provide short-notice on-site support when required.
- Quickly provide unique parts, assemblies, and subassemblies throughout the equipment warranty period.

24. RATINGS FOR PROPOSAL EVALUATION CRITERIA

Each criterion will be rated using the Adjectival scoring method as follows:
Definition of Adjective Rankings:

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

Acceptable	Meets evaluation standards required under the technical provisions. Weaknesses are correctable.
Marginal	Fails to meet evaluation standard; however any significant deficiencies are correctable. Lack the essential information to support the proposal.
Unacceptable	Fails to meet an acceptable evaluation standard and the deficiency is uncorrectable. Proposal would have to undergo a major revision to become acceptable. Demonstrate the lack of understanding of WMATA’s requirements or omissions of major areas.

A rating of “Acceptable” is required to be eligible for award consideration. Offerors is cautioned to be aware of this standard when preparing your Proposal.

25. DEFINITIONS FOR TECHNICAL EVALUATION

Clarifications:	Communications with an Offeror for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal. Unlike discussions, clarifications do not give the Offerors an opportunity to revise or modify its proposal, except to the extent that correction of apparent clerical mistake results in revisions.
Discussions:	Oral or written communications including negotiations between the Authority and an Offerors (other than clarifications) that; involves information essential for determining the acceptability of the proposal or to cure identified defects in the proposal.
Deficiencies:	Defects in the proposal which preclude acceptance. Involves any part of the Offeror’s proposal which would not satisfy the Authority’s minimum requirements established in the solicitation. Included failures to meet specifications, submit information, or questionable technical or management approaches. Items disclosed during discussions, evaluated in two categories: material-basis for rejection because further discussions would be meaningless; curable –may be corrected by clarifications or discussions and brought into the competitive range.
Weakness:	Includes ambiguities, lack of complete descriptions, errors in interpretation, and omissions of essential information, inadequate information, all of which are considered curable in discussions. An excessive number of clarifications may in itself constitute a weakness.
Strengths:	Elements of the proposal that meet or exceed the minimum requirements of the solicitation and provide an identified benefit to the Authority.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

26. PRICE PROPOSAL EVALUATION

Price offers will only be evaluated for those Offerors whose technical offers have been determined to be technically acceptable. The Authority will evaluate price proposals for reasonableness, completeness, and realism as appropriate. Each Offeror's cost will be evaluated in term of the following which are equal in importance:

- i. Submittal of proposed prices for both the Base and the Options, if any, failure to do so will necessitate rejection of the proposal;
- ii. Any offer which is materially unbalanced may be rejected. An unbalanced offer is one which is based on prices that are significantly overstated for some items and understated for other items;
- iii. The Authority will compare the price proposals to the Authority estimate and otherwise determine reasonableness by performing a price analysis if adequate competition exists. A cost analysis will be performed if adequate price competition does not exist, to ascertain whether or not the proposed price is fair and reasonable; and
- iv. In accordance with FAR 15.804 3, the Offerors shall provide certified cost or pricing data as requested by the Contracting Officer.

27. TYPE OF CONTRACT

The Authority intends to award a Firm Fixed Price Contract.

28. ENGLISH LANGUAGE AND UNITED STATES CURRENCY

As regards this solicitation and the resultant contract:

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

29. FEDERAL/LOCAL/STATE SALES TAX

- a. The Authority is exempt under this solicitation from all Federal, State and District of Columbia, municipal and local taxation.
- b. This provision supersedes any language pertaining to payment of taxes that may appear elsewhere in this solicitation.
- c. The Authority's tax exempt numbers are as follows: District of Columbia -- 5611-0082187-001; Maryland -- 30072210; Virginia -- 5280-0067.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

30. BRAND NAME OR EQUAL

- a. If items called for by this Request for Proposal have been identified in the Schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Proposals offering "equal" products including products of the brand name manufacturer other than the one described by brand name will be considered for award if such products are clearly identified in the proposals and are determined by the Authority to meet fully the salient characteristics requirements in the Request for Proposals.
- b. Unless the Offerors clearly indicates in his proposal that he is offering an "equal" product, his proposal shall be considered as offering a brand name product referenced in the Request for Proposals.
- c. (1) If the Offerors proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished in the space provided in the Request for Proposals, or such product shall be otherwise clearly identified in the proposal. The evaluation of proposals and the determination as to equality of the product offered shall be the responsibility of the Authority and will be based on information reasonable available to the Department of Procurement.

CAUTION TO OFFERORS

WMATA is not responsible for locating or securing any information which is not identified in the proposal and reasonably available to the Authority. Accordingly, to insure that sufficient information is available, the Offerors must furnish as a part of his proposal all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the Authority to (i) determine whether the product offered meets the salient characteristics requirements of the Request for Proposals and (ii) establish exactly what the Offerors proposes to furnish and what the Authority would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the Authority.

- (2) If the Offerors proposes to modify a product so as to make it conform to the requirements of the Request for Proposals, he shall (i) include in his proposal a clear description of such proposed modifications, and (ii) clearly mark any descriptive material to show the proposed modifications.
- (3) Modifications proposed after proposal closing to make a product conform to a brand name product referenced in the Request for Proposal may not be considered:
- d. To be considered for award, offers of "equal" products, including "equal" products of the brand name manufacturer, must—
 - (1) Meet the salient physical, functional, or performance characteristic specified in this solicitation;
 - (2) Clearly identify the item by—

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

- (i) Brand name, if any; and
 - (ii) Make or model number;
- (3) Include descriptive literature such as illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the Contracting Officer; and
- (4) Clearly describe any modifications the Offerors plans to make in a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modifications by:
- (a) Evaluating “equal” products on the basis of information furnished by the Offerors or identified in the offer and reasonably available to the Contracting Officer. The Contracting Officer is not responsible for locating or obtaining any information not identified in the offer;
 - (b) Unless the Offerors clearly indicates in its offer that the product being offered is an “equal” product, the Offerors shall provide the brand name product referenced in the solicitation.

PART II

SECTION 1 - GENERAL PROVISIONS

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

PART II, SECTION 1 - GENERAL PROVISIONS	GP-3
1. DEFINITIONS	GP-3
2. ACCOUNTING AND RECORD KEEPING	GP-4
3. ASSIGNMENT	GP-5
4. AUDIT RECORDS-NEGOTIATION.....	GP-6
5. CERTIFICATE OF CURRENT COST OR PRICING DATA	GP-8
6. CHANGES	GP-8
7. CIVIL RIGHTS	GP-9
8. CONFLICT OF INTEREST	GP-10
9. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION.....	GP-11
10. CONVICT LABOR	GP-11
11. CORRECTION OF DEFICIENCIES.....	GP-12
12. COST OR PRICING DATA	GP-15
13. COVENANT AGAINST CONTINGENT FEES	GP-15
14. DEFAULT	GP-16
15. DELAY OF WORK.....	GP-18
16. DISPUTES	GP-18
17. EMPLOYMENT RESTRICTION WARRANTY	GP-18
18. EXTRAS	GP-19
19. FEDERAL, STATE AND LOCAL TAXES	GP-19
20. GRATUITIES	GP-20
21. INSPECTION OF SERVICES.....	GP-22
22. INSPECTION OF SUPPLIES	GP-22
23. LIMITATION ON WITHHOLDING PAYMENTS	GP-25
24. NEW MATERIAL.....	GP-25
25. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT.....	GP-25
26. NOTICE TO THE AUTHORITY OF LABOR DISPUTES.....	GP-26
27. OFFICIALS NOT TO BENEFIT	GP-26
28. ORDER OF PRECEDENCE	GP-26
29. ORGANIZATIONAL CONFLICT OF INTEREST	GP-26
30. PATENT INDEMNITY.....	GP-28
31. PAYMENTS.....	GP-28
32. PAYMENT DEDUCTIONS - NONCOMPLIANCE WITH DBE REQUIREMENTS	GP-29
33. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA — PRICE ADJUSTMENTS	GP-29
34. PRICING OF ADJUSTMENTS	GP-30
35. RESPONSIBILITY FOR INSPECTION	GP-30
36. RETENTION OF DOCUMENTS	GP-30
37. RIGHTS IN TECHNICAL DATA.....	GP-30
38. ROYALTY INFORMATION	GP-32
39. SEAT BELT USE POLICY	GP-33
40. SENSITIVE SECURITY INFORMATION.....	GP-33
41. STOP WORK ORDER	GP-33
42. SUBCONTRACT PAYMENTS	GP-34
43. SUBCONTRACTOR COST AND PRICING DATA-PRICE ADJUSTMENTS	GP-35
44. TERMINATION FOR CONVENIENCE OF THE AUTHORITY	GP-35
45. TITLE AND RISK OF LOSS	GP-40
46. VARIATION IN QUANTITY.....	GP-40
47. WALSH-HEALEY PUBLIC CONTRACTS ACT	GP-40
48. SUPPLEMENTAL PROVISIONS REQUIRED IN FEDERALLY FUNDED CONTRACTS	GP-41
49. ACCESS TO RECORDS	GP-41
50. BUY AMERICA	GP-41
51. CARGO PREFERENCE REQUIREMENTS	GP-41
52. CLEAN AIR	GP-42
53. CLEAN WATER	GP-42
54. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS	GP-42
55. ENERGY CONSERVATION	GP-43
56. FEDERAL CHANGES.....	GP-43
57. FLY AMERICA REQUIREMENTS	GP-43
58. GOVERNMENT-WIDE DEBARMENT OR SUSPENSION.....	GP-43
59. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS	GP-44
60. LOBBYING	GP-44
61. NO OBLIGATION BY THE FEDERAL GOVERNMENT	GP-44
62. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS	GP-44
63. RECOVERED MATERIALS	GP-45
64. RIGHTS IN DATA AND COPYRIGHTING - FTA.....	GP-45

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meanings set forth below:

- (a) “Authority” means the Washington Metropolitan Area Transit Authority created effective February 20, 1967, by Interstate Compact by and between Maryland, Virginia and the District of Columbia, pursuant to Public Law 89-774, approved November 6, 1966.
- (b) “Contracting Officer” means the person executing this Contract on behalf of the Authority and his or her successor. The term includes, except as otherwise provided in this Contract, the authorized representative of a Contracting Officer acting within the limits of his authority.
- (c) “Subcontract” means, except as otherwise provided in this Contract, a contract or contractual action entered into by a prime Offerors or sub-Offerors for the purpose of obtaining supplies, materials, equipment, or services under a prime contract. Subcontracts include purchase orders under this Contract, as well as changes and modifications to purchase orders.
- (d) Wherever in the scope of the work the words directed, ordered, designated, prescribed or words of like import are used, it shall be understood that the direction, requirement, order, designation or prescription of the Contracting Officer is intended and similarly the words approved, acceptable, satisfactory or words of like import shall mean approved by, or acceptable to, or satisfactory to the Contracting Officer, unless otherwise expressly stated.
- (e) “Offerors” means the party (i.e., individual person or legal entity) that enters into a contract with the Authority to provide supplies or perform services to fulfill Authority requirements. With respect to subcontracting, “prime Offerors” means “Offerors.”
- (f) “Services” means the performance of work by an individual person or legal entity under Contract with the Authority. Examples of services: maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment; routine recurring maintenance of real property; housekeeping; advisory and assistance; operation of authority-owned equipment, facilities, and systems; communication services; Architect-Engineering services; and transportation and related services.
- (g) “FTA” means the U.S. Department of Transportation, Federal Transit Administration.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

2. ACCOUNTING AND RECORD KEEPING

- (a) Applicability. This clause shall become effective for and shall apply to any adjustment in the price of this Contract initiated by the Offerors or the Authority. However, where the original amount of this Contract is less than \$1,000,000, paragraph (c) of this clause does not apply unless the adjustment is expected to exceed \$50,000.
- (b) Forward Priced Adjustments. Unless expressly waived in writing in advance by the Contracting Officer, the Offerors shall furnish to the Contracting Officer a cost proposal in advance of performance of any work for which a price adjustment is requested under this Contract. The Offerors shall originate such records as are necessary to substantiate all elements of the pricing proposal, current to the date of agreement on the pricing adjustment. Such records supporting the costs of each pricing adjustment request shall be specifically segregated and identified in the Offeror's accounting system as being applicable to the pricing adjustment request.
- (c) Post Pricing Adjustments. In addition to the records required to be originated under paragraph (b) above, in the event pricing of an adjustment under this Contract is not agreed upon between the Offerors and the Contracting Officer prior to the commencement of work for which the pricing adjustment is requested, the Offerors and any sub-Offerors engaged in work for which the pricing adjustment is requested, shall maintain accounts and original cost records specifically segregated and identified by job order or other appropriate accounting procedures approved by the Contracting Officer of all incurred segregable costs related to the work for which the pricing adjustment is requested. The Offerors shall maintain accounts and records which segregate and account for the costs of all work associated with that part of the project for which the pricing adjustment is requested and shall allocate the costs so accumulated between: (1) work required under the base Contract; (2) work requested to be reimbursed under the pricing adjustment; and (3) other claim, including but not limited to, changes, differing site conditions, and the like. The accounts and records so established shall accumulate such costs under logical costs groups, such as material, labor, equipment, subcontracts, field overhead and the like. The Offerors shall record these costs on a form approved by the Contracting Officer.
- (d) Availability. The accounts, records and costs information required to be originated under b. and c. above together with all other accounts, records and costs information related to this Contract, shall be maintained and made available by the Offerors and sub-Offerors(s):
 - (1) At the office of the Offerors or sub-Offerors(s) at all reasonable times for inspection, audit, reproduction or such other purposes as may be required by the Contracting Officer or by anyone authorized access to the records by the Contracting Officer or pursuant to any other provisions of this Contract; and
 - (2) Until the expiration of three years from the date of final payment under this Contract or such lesser time as is specified in Subpart 4.7 of the Federal Acquisition Regulations and for such longer period, if any, as is required by

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

applicable statute, or by other clauses of this contract, or by paragraphs (i) and (ii) below:

- (i) If the Contract is completely or partially terminated, for a period of three (3) years from either the date of any resulting final settlement or the date of final payment whichever is the greater period; and
 - (ii) If a pricing adjustment is involved in any appeal under the Disputes clause Article of this Contract or in any litigation related to this Contract, for a period of one (1) year following the final disposition of the appeal or litigation.
- (e) Access to Records. When asserting a claim involving a potential price adjustment under any provisions of this Contract, the Offerors 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 such costs as are deemed appropriate by the Contracting Officer. No payment shall be made to the Offerors on its claim until such records are made available and access is permitted.
- (f) Limitation on Pricing Adjustment. In the event the Offerors or any sub-Offerors fails to originate or to maintain, or to make available any accounts or records required under this or any other clause of the Contract, the Contracting Officer may, at the Contracting Officer's discretion, determine the reasonableness of the 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 existing books and records of the Offerors or sub-Offerors; or
 - (2) An Authority estimate adopted by the Contracting Officer; or
 - (3) A combination of (1) and (2);

The Offerors and sub-Offerors shall not be allowed any profit on the work which such records are not available.

- (g) Flow-down clause. The Offerors shall insert a clause containing all the provisions of this clause in all subcontracts issued under this Contract, modified as necessary, for proper identification of the contracting parties and the Contracting Officer under this Contract.

3. ASSIGNMENT

- (a) Except as otherwise provided in this provision, the Offerors shall not transfer any of its rights and obligations under this Contract to third parties without the prior consent of the Authority. The Authority may recognize a third party as successor in interest to the Contract in the event of a transfer of all or substantially all of the assets of the Offerors, a Division of the Offerors involved in the performance of the Contract, or a Parent company providing a performance guarantee under this Contract, (i.e., sales of assets;

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

transfer of assets pursuant to merger or consotation; or incorporation of a proprietorship or partnership). Such recognition of the transfer shall be within the discretion of the Contracting Officer after review of the facts and circumstances surrounding each request. At the discretion of the Contracting Officer, the Contracting Officer may conduct an evaluation of the successor party's capability to perform the Contract in the same manner and to the same extent the Contracting Officer was empowered to conduct a responsibility determination as part of the original solicitation for this Contract. Should the Contracting Officer, for any reason, not recognize such a successor in interest, it may terminate this Contract for the convenience of the Authority.

- (b) For claims for monies due, or to become due the Offerors from the Authority under this Contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any institution, upon written notice of such assignment to the Authority. Any such assignment or reassignment shall cover all amounts payable under this Contract and not already paid and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. It is the Authority's intent to recognize assignments only to bona fide lending institutions; therefore, assignment to any private corporation, business or individual which does not qualify as such is specifically prohibited.
- (c) Any attempt to transfer by assignment not authorized by this provision shall constitute a breach of the Contract and the Authority may for such cause, terminate the Contract with the DEFAULT provision of these General Provisions, and the Offerors shall be liable to the Authority under the DEFAULT provision.

4. AUDIT AND RETENTION OF RECORDS

- (a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) Authorized persons. The Contracting Officer and his 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 clause.
- (c) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price re-determinable contract, or any combination of these, the Offerors shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Offeror's plants, or parts of them, engaged in performing this contract.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

- (d) Cost or pricing data. If the Offerors has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Offerors' records, including computations and projections, related to: (1) the proposal for the contract, subcontract, or modification; (2) the discussions conducted on the proposal(s), including those related to negotiating; (3) pricing of the contract, subcontract or modification; or (4) performance of the contract, subcontract or modification.
- (e) Reports. If the Offerors is required to furnish cost, funding or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating the effectiveness of the Offerors' policies and procedures to produce data compatible with the objectives of these reports; and the data reported.
- (f) Availability. The Offerors shall make available at its offices at all reasonable times the records, materials, and other evidence described above, for examination, audit or reproduction, until three (3) years after final payment under this contract or for any shorter period specified in Subpart 4.7, Offerors Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—
- (1) If this contract is completely or partially terminated, the Offerors shall make available the records relating to the work terminated until three (3) years after any resulting final termination settlement; and
 - (2) The Offerors shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation or claims are fully resolved.
- (g) Subcontracts. The Offerors shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this Contract that exceed the simplified acquisition threshold (currently \$100,000) and –
- (1) That is cost reimbursable, incentive, time-and-material, labor-hour, or price re-determinable type or any combination of these;
 - (2) For which cost or pricing data are required; or
 - (3) That requires the Offerors to submit reports as discussed in paragraph (e) of this clause.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

5. CERTIFICATE OF CURRENT COST OR PRICING DATA

The Offerors shall provide a Certificate of Current Cost or Pricing Data as required in Subpart 15.406 of the Federal Acquisition Regulations (48 CFR 15.406) in support of any negotiated contract modification, for which the aggregate of the increase and decreases in cost are expected to exceed \$100,000. The Offerors may be requested, at the discretion of the Contracting Officer, to provide cost or pricing data and an attendant certificate of current cost or pricing data, for modifications on which cost are \$100,000 or less.

6. CHANGES

- (a) The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this Contract, in any one or more of the following:
 - (1) Description of services to be performed;
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.); or
 - (3) Place of performance of the services.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Contract, whether changed or not changed by the order, the Contracting Officer shall make an equitable adjustment in the Contract price, the delivery schedule, or both, and shall modify the Contract.
- (c) The Offerors must assert its right to an adjustment under this clause article within 30 days from the date of receipt of the written order. Any such adjustment to the contract price must be agreed upon, prior to final payment of the contract price.
- (d) If the Offerors' proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Offerors from proceeding with the contract as changed.
- (f) Notwithstanding any other provision of this Contract, the Offerors shall promptly notify the Contracting Officer of matters which will result in either an increase or decrease in the Contract price and shall take action with respect thereto as directed by the Contracting Officer.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

7. CIVIL RIGHTS

- (a) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the American with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit law at 49 U.S.C. §5332, the Offerors agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Offerors agrees to comply with applicable Federal implementing regulations and other implementing regulations that the Federal Transit Administration (FTA) may issue.
- (b) Equal Employment Opportunity. The following equal employment opportunity requirements apply to this contract.
- (1) Race, Color, Creed, National Origin or Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49 U.S.C. §5332, the Offerors agrees to comply with all applicable equal opportunity requirements of the U. S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor" 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. 2000e note), and with any applicable Federal statutes, executive orders, regulations and Federal policies that may in the future affect construction activities undertaken in the course of the Contract. The Offerors 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 Offerors agrees to comply with any implementing requirements FTA may issue.
- (2) Age. In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. §5332, the Offerors agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Offerors agrees to comply with any implementing requirements FTA may issue.
- (3) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the Offerors 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 Offerors agrees to comply with any implementing requirements FTA may issue.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

- (c) The Offerors also agrees to include 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.

8. CONFLICT OF INTEREST

- a. Neither the Contractor nor any person or company affiliated with it shall have, during the term of this contract and any extensions thereof, any contractual or other financial relationship with the Authority, with any Authority prime Contractor, or with any subcontractor or supplier to any Authority prime Contractor other than the contractual relationship established under this Contract, unless an exception is granted as described below.
- b. Upon request of the Contractor and upon full disclosure and for good cause the Contracting Officer may in his sole discretion grant an exception to the requirement of a., above, when in his judgment the exception will not create a conflict between the Contractor's duties and obligations under this contract and the duties and obligations imposed on the Contractor under the contractual or other relationship for which an exception is requested.
- c. If, during the performance of this contract and any extension thereof, the Contractor becomes aware of any relationship, financial interest, or other activity in which it or an affiliated person or company is involved which is not in compliance with the provisions of a., above, it shall promptly notify the Contracting Officer in writing and fully disclose all circumstances thereof. Should the Contracting Officer not grant an exception to the requirements of this Article, the Contractor shall, within ten (10) days of written notice from the Contracting Officer to do so, take all action necessary to comply with the terms of a., above.
- d. If the Contractor fails to comply with the terms of this Article, the Contracting Officer, may withhold payments due under the contract until such time as the Contractor is in compliance or, should the non-compliance remain uncorrected at the expiration of ten (10) days from written notice from the Contracting Officer as provided in c., above, terminate the contract for default pursuant to the Default Article of this contract.
- e. The Contractor in performing this Contract shall avoid any conduct which might result in or give the appearance of creating for Directors, Officers or employees of the Authority in their relationship with the Contractor any conflicts of interest or favoritism and/or the appearance thereof and shall avoid any conduct which might result in a Director, Officer or employee failing to adhere to the Standards of Conduct adopted by the Authority's Board of Directors.
- f. Any determination by the Contracting Officer under this Article shall be final and shall be considered a question of fact within the meaning of the Disputes Article of this Contract.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

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

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

- (a) Overtime requirements. No Offerors or sub-Offerors contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, apprentices, trainees, watchmen, and guards shall require or permit any laborer, mechanic, apprentice, trainee, watchman, or guard in any workweek in which he is employed on such work to work in excess of 40 hours in such work week on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer, mechanic, apprentice, trainee, watchman, or guard receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 40 hours in such work week.
- (b) Violation. Liability for Unpaid Wages - Liquidated damages. In the event of any violation of the provisions of paragraph (a) the Offerors and any sub-Offerors responsible therefore shall be liable to any affected employee for his unpaid wages. In addition, such Offerors and sub-Offerors shall be liable to the Authority for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, apprentice, trainee, watchman or guard employed in violation of the provision of paragraph (a) in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of his standard work week of 40 hours without payment of the overtime wages required by paragraph (a).
- (c) Withholding for unpaid wages and liquidated damages. The Contracting Officer may withhold from the Authority Offerors, from any monies payable on account of work performed by the Offerors or sub-Offerors, such sums as may be administratively determined to be necessary to satisfy any liabilities of such Offerors or sub-Offerors for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).
- (d) Subcontracts. The Offerors shall insert paragraphs (a) through (d) of this clause in all subcontracts and shall require their inclusion in all subcontracts of any tier.
- (e) Records. The Offerors shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three (3) years from the completion of this Contract.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

10. CONVICT LABOR

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

11. CORRECTION OF DEFICIENCIES

- (a) Definitions, as used in this provision:
 - (1) "Deficiency" means any condition or characteristics in any supplies (which term shall include related technical data) or services furnished hereunder, which is not in compliance with the requirements of this Contract.
 - (2) "Correction" means any and all actions necessary to eliminate any and all deficiencies.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

- (3) “Supplies” mean the end item(s) furnished by the Offerors and related services required under this Contract.
- (b) General:
- (1) The rights and remedies of the Authority provided in this provision:
- (i) Shall not be affected in any way by any other provision(s) under this Contract concerning the conclusiveness of inspection and acceptance; and
- (ii) Are in addition to and do not limit any rights afforded to the Authority by any other provision article of this Contract.
- (2) This provision shall apply only to those deficiencies discovered by either the Authority or the Offerors within one year after acceptance.
- (3) The Offerors shall not be responsible under this provision for the correction of deficiencies in Authority furnished property, except for deficiencies in installation, unless the Offerors performs or is obligated to perform any modifications or other work on such property. In that event, the Offerors shall be responsible for correction of deficiencies to the extent of such modifications or other work.
- (4) The Offerors shall not be responsible under this provision article for the correction of deficiencies caused by the Authority.
- (c) Deficiencies in accepted supplies or services:
- (1) Notice to Offerors - Recommendation for Correction. If the Contracting Officer determines that a deficiency exists in any of the supplies or services accepted by the Authority under this Contract, the Contracting Officer shall promptly notify the Offerors of the deficiency, in writing, within 30 days. Upon timely notification of the existence of such a deficiency, or if the Offerors independently discovers a deficiency in accepted supplies or services, the Offerors shall promptly submit to the Contracting Officer its recommendation for corrective actions, together with supporting information in sufficient detail for the Contracting Officer to determine what corrective action, if any, shall be undertaken.
- (2) Direction to Offerors concerning correction of deficiencies. Within 30 days after receipt of the Offerors’ recommendations for corrective action and adequate supporting information, the Contracting Officer, at his sole discretion, shall give the Offerors written notice not to correct any deficiency, or to correct or partially correct any deficiency within a reasonable time and at a specified location.
- (3) Correction of deficiencies by Offerors. The Offerors shall promptly comply with any timely written direction by the Contracting Officer to correct or partially correct a deficiency, at no additional cost to the Authority. The Offerors shall

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

also prepare and furnish to the Authority data and reports applicable to any correction required under this provision (including revision and updating of all other affected data called for under this Contract) at no additional cost to the Authority.

- (4) Proposal for correction. In the event of timely notice of a decision not to correct or only to partially correct, the Offerors shall promptly submit a technical and cost proposal for compensation to the Authority for the diminished value received. If the Contract has not been completed, this may be accomplished as a scope and price modification to the Contract.
- (d) Deficiencies in supplies or services not yet accepted. If the Offerors becomes aware at any time before acceptance by the Authority (whether before or after tender to the Authority) that a deficiency exists in any supplies or services, it shall promptly correct the deficiency. If in the Offeror's judgment such correction is not feasible or in the Authority's best interest, it shall promptly notify the Contracting Officer, in writing, of the deficiency, the reasons for its recommendation not to correct the deficiency, and a provide a detailed technical and cost proposal for recommended alternatives.
- (e) No extension in time for performance - No increase in Contract price. In no event shall the Authority be responsible for extension or delays in the schedule deliveries or periods of performance under this Contract as a result of the Offeror's obligations to correct deficiencies, nor shall there be any adjustment of the delivery schedule or period of performance as a result of such correction of deficiencies, except as may be agreed to by the Authority in a contract modification with adequate consideration. This provision shall not be construed as obligating the Authority to increase the Contract price of this Contract.
- (f) Transportation charges. If the agreed upon correction requires the Authority to ship supplies or other items to the Offerors, the Offerors shall be liable for determining the method of shipment and bearing the cost and risk of loss for such supplies or other items while in transit, and until they are redelivered to the Authority. For the purpose of this provision, the terms "supplies" and "shipment" include both tangible and intangible (e.g., electronic) items and methods.
- (g) Failure to correct. If the Offerors fails or refuses to comply with any term of this provision, or fails to exercise its professional judgment in good faith regarding the identification or correction of any deficiency, the Contracting Officer may proceed in accordance with the Termination for Default provision of this contract. In such event, the

Offerors shall be liable for all costs incurred by the Authority in connection with the Termination for Default provision, including but not by way of limitation, the employment of consultants or other Offerors to identify the deficiency, to make recommendations regarding methods of correcting the deficiency, the actual correction of the deficiency, and risk of the continued use of the defective supplies, methods of achieving the end purpose of the supplies or other items until the deficiency is corrected, and the estimated cost thereof.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

- (h) Correction of deficient replacements and re-performances. The corrected or replaced supplies and any services re-performed pursuant to this provision shall also be subject to all the provisions of the clause to the same extent as supplies or services initially accepted.
- (i) Disassembly/reassembly expense. The Offerors shall be liable for the reasonable cost of any disassembly, reassembly, repair or replacement of Authority property required to implement the correction(s) required in accordance with this provision.

12. COST OR PRICING DATA

- (a) As part of its pricing proposal for any modification to this Contract requiring a price adjustment involving an aggregate increase or decrease in excess of \$100,000 to the Contract price, the Offerors shall submit to the Contracting Officer, either actually or by specific identification in writing, cost or pricing data under the conditions described in this paragraph and certify that, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete and current as of the date of the proposal. The Offerors, at the discretion of the Contracting Officer, may be required to submit cost or pricing data for price adjustments less than \$100,000.
- (b) The submittal of certified cost or pricing data shall not be required if the price adjustment is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The Offerors agrees that the terms adequate price competition and established catalog or market prices of commercial items sold in substantial quantities to the general public shall be determined by the Contracting Officer in accordance with the guidelines as set forth in Subpart 15.4 of the Federal Acquisition Regulations (48 CFR 15.4).
- (c) Cost or pricing data consists of all facts existing up to the time of agreement on price which prudent buyers and sellers would reasonably expect to have a significant effect on the price negotiations for the modification. The definition of cost or pricing data embraces more than historical accounting data; it also includes where applicable, such factors as sub-Offerors, supplier and vendor quotations, non-recurring costs, changes in construction methods or contract performance, unit cost trends such as those associated with labor efficiency and any management decisions which could reasonably be expected to have a significant bearing on costs under the proposed modification and the Contract work. Cost or pricing data consists of all facts which can reasonably be expected to contribute to sound estimates of future costs as well as to the validity of costs already incurred. Cost or pricing data, being factual, is that type of information which can be verified. Because the certificate pertains to cost or pricing data, it does not make representations as to the accuracy of the Offeror's judgment on the estimated portion of future costs or projections. The certificate does, however, apply to the data upon which the Offeror's judgment is based.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

13. COVENANT AGAINST CONTINGENT FEES

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

14. DEFAULT

- (a) (1) The Authority may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Offerors, terminate this Contract in whole or part if the Offerors fails to:
- (i) Deliver the supplies or to perform the services within the time specified in the contract, herein or any extension thereof;
 - (ii) Make progress, so as to endanger performance of the contract; or
 - (iii) Perform any of the other provisions of this contract.
- (2) The Authority's right to terminate this contract under paragraphs (a)(1)(ii) and (a)(1)(iii) above, may be exercised if the Offerors does not cure such failures within 10 days (or more if authorized by the Contracting Officer) after receipt of notice from the Contracting Officer specifying the failure.
- (b) If the Authority terminates this Contract in whole or in part, it may procure, under the terms and in the manner as the Contracting Officer considers appropriate, supplies or services similar to those terminated in this contract, and the Offerors will be liable to the Authority for any excess costs for those supplies or services. However, the Offerors shall continue the work not terminated.
- (c) Except for defaults of sub-Offerors at any tier, the Offerors shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Offerors. Examples of such causes include (1) acts of God or of the public enemy; (2) acts of the Government in its sovereign capacity or the Authority in its contractual capacity; (3) fires; (4) floods; (5) epidemics; (6) quarantine restrictions; (7) strikes; (8) freight embargoes; and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Offerors.
- (d) If the failure to perform is caused by the default of a sub-Offerors at any tier, and if the cause of the default is beyond the control of both the Offerors and sub-Offerors, and without the fault or negligence of either, the Offerors shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

from other sources in sufficient time for the Offerors to meet the required delivery schedule.

- (e) If this Contract is terminated for default, the Authority may require the Offerors to transfer title and deliver to the Authority, as directed by the Contracting Officer (1) any completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information (including data and intellectual property) and contract rights that the Offerors has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Offerors shall also protect and preserve property in its possession in which the Authority has an interest.
- (f) The Authority shall pay contract price for completed supplies delivered and accepted. The Offerors and Contracting Officer shall agree on the amount of payment for items identified in paragraph (e) above that were delivered and accepted by the Authority and for the protection and preservation of property. Failure to agree shall be a dispute under the DISPUTES clause of this Contract. The Authority may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Authority against loss because of outstanding liens or claims of former lien holders.
- (g) If, after termination, it is determined that the Offerors was not in default or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued for the convenience of the Authority.
- (h) The rights and remedies of the Authority in this clause are in addition to any other rights and remedies provided by law or under this Contract.

15. DELAY OF WORK

- a. If the performance of all or any part of the work is delayed or interrupted by an act of the Contracting Officer in the administration of this Contract, which act is not expressly or impliedly authorized by this Contract, or by his failure to act within the time specified, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this Contract caused by such delay or interruption and the contract modified in writing accordingly. Adjustment shall be made also in the delivery or performance dates and any other contractual provision affected by such delay or interruption. However, no adjustment shall be made under this article for any delay or interruption
 - (1) to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or
 - (2) for which an adjustment is provided or excluded under any other provision of this Contract.
- b. No claim under this clause shall be allowed

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

- (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved; and
- (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such delay or interruption, but not later than the date of final payment under the Contract

16. DISPUTES

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

17. EMPLOYMENT RESTRICTION WARRANTY

- (a) The Offerors warrants that it will not offer employment to any officer or employee of the Washington Metropolitan Area Transit Authority (Authority) who has been involved, directly or indirectly, in any matter of financial interest to the Offerors until at least one (1) year after the officer or employee has ceased involvement in or responsibility for the matter.
- (b) The Offerors further warrants that it will not employ any Authority officer or employee who has had direct responsibility for any matter of financial interest to the Offerors within the year prior to the retirement or termination of the officer or employee until at

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

least one (1) full year after such officer or employee has left the employment of the Authority.

- (c) The one (1) year requirement described in this provision may be waived at the discretion of the Contracting Officer if the Authority employee or former employee has been subject to a Reduction in Force; in such case, the Contracting Officer will provide the Offerors with a letter to that effect.
- (d) If a waiver is granted, or if a former employee of the Authority is eventually hired, the Offerors shall be responsible for ensuring that the former employee is not directly involved in negotiating or otherwise dealing with Authority on any particular matter over which such employee had responsibility during his or her period of employment at Authority.
- (e) Should the Offerors fail to comply with paragraphs (a), (b) or (d) above, the Contracting Officer shall have the right to withhold payment under this Contract in an amount not to exceed 2% of the total Contract amount as liquidated damages to the Authority, such withholding to be in addition to any other withholding under this Contract. Further, the Contracting Officer shall consider such violation in evaluating the Offerors' responsibility in connection with award of any future Authority Contract.

18. EXTRAS (SUPPLIES)

Except as otherwise provided in this Contract, no payment for extras shall be made unless such extras and the prices therefore have been authorized in writing in advance by the Contracting Officer.

19. FEDERAL, STATE, AND LOCAL TAXES

- (a) Except as may be otherwise provided in this Contract, the Contract price includes all applicable Federal, State and Local taxes and duties.
- (b) Nevertheless, with respect to any Federal excise tax or duty on the transactions or property covered by this Contract, if a statute, court decision, written ruling or regulation takes effect after the Contract date, and:
 - (1) Results in the Offerors being required to pay or bear the burden of any such Federal excise tax or duty or increase in the rate thereof which would not otherwise have been payable on such transactions or property, the Contract price shall be increased by the amount of such tax or duty or rate increase, provided the Offerors warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the Contract price as a contingency reserve or otherwise; or
 - (3) Results in the Offerors not being required to pay or bear the burden of, or in his obtaining a refund or drawback of, any such Federal excise tax or duty which

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

would otherwise have been payable on such transactions or property or which was the basis of an increase in the Contract price, the Contract price shall be decreased by the amount of the relief, refund, or drawback, or that amount shall be paid to the Authority, as directed by the Contracting Officer. The Contract price shall be similarly decreased if the Offerors, through his fault or negligence or his failure to follow instructions of the Contracting Officer, is required to pay or bear the burden of, or does not obtain a refund or drawback of, any such Federal excise tax or duty.

- (c) Paragraph (b) above shall not be applicable to social security taxes or to any other employment tax.
- (d) No adjustment of less than \$250 shall be made in the Contract price pursuant to paragraph (b) above.
- (e) As used in paragraph (b) above, 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) Unless a reasonable basis to sustain an exemption does not exist, the Authority upon the request of the Offerors shall, without further liability, furnish evidence appropriate to establish exemption from any relevant Federal, State or Local tax; provided that evidence appropriate to establish exemption from any Federal excise tax or duty which may give rise to either an increase or decrease in the Contract price, will be furnished only at the discretion of the Authority.
- (g) The Offerors shall promptly notify the Contracting Officer of matters which will result in either an increase or decrease in the Contract price and shall take action with respect thereto as directed by the Contracting Officer.

20. GRATUITIES

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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

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

21.

INSPECTION OF SERVICES

- (a) “Services” as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.
- (b) The Offerors shall provide and maintain an inspection system acceptable to the Authority covering the services under this contract. Complete records of all inspection work performed by the Offerors shall be maintained and made available to the Authority during contract performance and for as long afterwards as the Contract requires.
- (c) The Authority has the right to inspect and test all services called for by this contract, to the extent practicable at all times and places during the term of the contract. The Authority shall perform inspection and tests in a manner that will not unduly delay the work.
- (d) If the Authority performs inspections or tests on the premises of the Offerors or a sub-Offerors, the Offerors shall furnish, and shall require sub-Offerors to furnish, at non-increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) If any of the services performed do not conform to contract requirements, the Authority may require the Offerors to perform the services again in conformity with contract requirements, for no additional fee. When the defects in performance cannot be corrected by re-performance, the Authority may:
 - (1) Require the Offerors to take necessary action to ensure that future performance conforms to contract requirements; or
 - (2) Reduce the contract price to reflect the reduced value of the services performed.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

- (g) If the Offerors fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Authority may:
 - (1) By contract or otherwise, perform the services and charge to the Offerors any cost incurred by the Authority that is directly related to the performance of the service; or
 - (4) Terminate the contract for default.

22. INSPECTION OF SUPPLIES

- (a) “Supplies,” as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products and lots of supplies.
- (b) The Offerors shall provide and maintain an inspection system acceptable to the Authority covering supplies under this contract and shall tender to the Authority for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Offerors to be in conformity with contract requirements. As part of the system, the Offerors shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the Authority during contract performance and for as long afterwards as the contract requires. The Authority may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Offerors of the obligations under the contract.
- (c) The Authority has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The Authority shall perform inspections and tests in a manner that will not unduly delay the work. The Authority assumes no contractual obligation to perform any inspection and test for the benefit of the Offerors unless specifically set forth elsewhere in this contract.
- (d) If the Authority performs inspection or test(s) on the premises of the Offerors or a sub-Offerors, the Offerors shall furnish, and shall require sub-Offerors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties. The Authority, except as otherwise provided in the contract, shall bear the expense of Authority inspections or tests made at other than the Offerors’ or sub-Offerors’ premises; provided, that in case of rejection, the Authority shall not be liable for any reduction in the value of inspection or test samples.
- (e) When supplies are not ready at the time specified by the Offerors for inspection or test, the Contracting Officer may charge to the Offerors the additional cost of inspection or test. The Contracting Officer may also charge the Offerors for any additional cost of inspection or test when prior rejection makes re-inspection or retest necessary.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

- (f) The Authority has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. The Authority may reject nonconforming supplies with or without disposition instructions.
- (g) The Offerors shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Offerors. The Offerors shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.
- (h) If the Offerors fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Authority may either: (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Offerors; or (2) terminate the contract for default. Unless the Offerors replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.
- (i)
 - (1) If this contract provides for the performance of Authority quality assurance at source, and if requested by the Authority, the Offerors shall furnish advance notification of the time: (i) when Offerors inspection or tests will be performed in accordance with the terms and conditions of the contract; and (ii) when the supplies will be ready for Authority inspection.
 - (2) The Authority's request shall specify the period and method of the advance notification and the Authority representative to whom it shall be furnished. Requests shall not require more than two (2) workdays of advance notification if the Authority representative is in residence in the Offerors' plant, nor more than seven (7) workdays in other instances.
- (j) The Authority shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. Authority failure to inspect and accept or reject the supplies shall not relieve the Offerors from responsibility, nor impose liability on the Authority, for nonconforming supplies.
- (k) Inspections and tests by the Authority does not relieve the Offerors of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.
- (l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the Authority, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Offerors:
 - (1) At no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Offerors' plant

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Offerors and the Contracting Officer; provided, that the Contracting Officer may require a reduction in contract price if the Offerors fails to meet such delivery schedule, or;

- (5) Within a reasonable time after receipt by the Offerors of notice of defects or nonconformance, to repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Offerors, the Offerors shall bear the transportation cost from the original point of delivery to the Offerors' plant and return to the original point when that point is not the Offerors' plant. If the Offerors fails to perform or act as required in paragraphs (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Authority shall have the right by contract or otherwise to replace or correct such supplies and charge to the Offerors the cost occasioned the Authority thereby.

23. LIMITATION ON WITHHOLDING PAYMENTS

If more than one (1) clause or schedule provision of this Contract authorizes the temporary withholding of amounts otherwise payable to the Offerors for supplies delivered or services performed, the total of the amounts so withheld at any one (1) time shall not exceed the greatest amount which may be withheld under any one such clause or schedule provision at that time; provided, that this limitation shall not apply to:

- (a) Withholdings pursuant to any clause relating to wages or hours of employees;
- (b) Withholdings not specifically provided for by this Contract;
- (c) The recovery of overpayment; and
- (d) Any other withholding for which the Contracting Officer determines that this limitation is inappropriate.

24. NEW MATERIAL (SUPPLY)

Unless this Contract specifies otherwise, the Offerors represents that the 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 Offerors believes that furnishing supplies or components which are not new is in the Authority's best interest, the Offerors shall notify the Contracting Officer immediately in writing. The Offerors' notice shall include the reasons for the request, along with a proposal for any consideration to the Authority if the Contracting Officer authorize to the use of such supplies or components.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

25. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (SUPPLY)

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

26. NOTICE TO THE AUTHORITY OF LABOR DISPUTES

- (a) Whenever the Offerors has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Offerors shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.
- (b) The Offerors agrees to insert the substance of this clause, including this paragraph (b), in any subcontract hereunder as to which a labor dispute may delay the timely performance of this Contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the sub-Offerors shall immediately notify his next higher tier sub-Offerors, or the Offerors, as the case may be, of all relevant information with respect to such dispute.

27. OFFICIALS NOT TO BENEFIT

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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

28. ORDER OF PRECEDENCE

Any inconsistency in this solicitation or Contract shall be resolved by giving precedence in the following order: (a) Contract Amendments/Modifications; (b) Solicitation Offer and Award Forms; (c) Representations and Certifications; (d) Price Proposal as Negotiated; (e) General Provisions; (f) WMATA Standard Specifications and Technical Specifications of the Contract, whether incorporated by reference or otherwise; (g) other documents, exhibits, and attachments; and (h) drawings, if any. In the event of a conflict within, between or among all the above listed order of precedent, the more stringent requirement shall apply.

29. ORGANIZATIONAL CONFLICT OF INTEREST

- (a) An organizational conflict of interest exists when the nature of the work to be performed under a proposed contract or subcontract may, without some restriction on future activities (1) result in an unfair competitive advantage to the Offerors or sub-Offerors; or (2) impair the Offerors' objectivity in performing the contracted work. Most typically this would arise when a Offerors prepares a design or specification for work that is to be procured competitively. It may also arise when a Offerors or one of its affiliates would have an economic interest in the outcome of a contract or project. Conflicts of interest may be either real or apparent.
- (b) In the event that an Offerors believes that it or any of its potential sub-Offerors may have an organizational conflict of interest, it shall notify the Contracting Officer, in writing, within five (5) work days after it becomes aware of the potential or actual organizational conflict of interest. The written notification shall identify the nature and circumstances of the perceived conflict and propose appropriate measures to eliminate or mitigate the situation. The Contracting Officer will review the circumstances and the proposed mitigation and notify the Offerors accordingly, determining that: (1) no mitigation is required; (2) the conflict cannot be mitigated; or (3) the conflict can be mitigated and accepts the proposed measures, or recommends additional measures.
- (c) The failure of an Offerors to identify such perceived conflicts may result in: (1) the Offerors being disqualified from the competition; or (2) any contract award being rescinded or terminated for default.
- (d) Should a successful Offerors identify or become aware of a conflict after award, including any extension of the contract, which it could not reasonably have anticipated prior to award, it shall notify the Contracting Officer in accordance with paragraph (b) above, or request an exception to the restriction with supporting rationale. The Contracting Officer shall consider the Offerors' proposed measures to mitigate or eliminate the conflict, or the request for an exception.
 - (1) If the proposed measures are not determined feasible nor acceptable to the Contracting Officer, the Contracting Officer may terminate the contract in accordance with the TERMINATION FOR CONVENIENCE OF THE AUTHORITY provisions of the contract; or

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

- (2) If the request for an exception is not granted by the Contracting Officer, and the contract is not terminated for convenience, the Offerors shall be notified in writing and be given ten (10) days from the date of the written notification to take all necessary action to comply with the requirements of this clause.
- (3) If the proposed measures are determined acceptable to the Contracting Officer, the Contracting Officer may grant a specific exception to this restriction, when in the Contracting Officer's judgment, the exception will not create a conflict between the Offerors' duties and obligations under this contract and the duties and obligations imposed on the Offerors under the contractual or other relationship for which an exception is requested.
- (e) If the Offerors fails to comply with the terms of this clause, the Contracting Officer, may withhold payments due under the contract until such time as the Offerors 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 §(d)(2) of this clause, terminate the contract for default pursuant to the Default clause of this contract.
- (f) The Offerors, in performing this Contract, shall avoid any conduct which might result in or give the appearance of creating for Directors, Officers, or employees of the Authority in their relationship with the Offerors, any conflicts of interest or favoritism and/or the appearance thereof and shall avoid any conduct which might result in a Director, Officer, or employee failing to adhere to the Standards of Conduct adopted by the Authority's Board of Directors.
- (g) 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.

30. PATENT INDEMNITY

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

- (1) An infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner or performance of the Contract not normally used by the Offerors;

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

- (2) An infringement resulting from addition to, or change in, such supplies or components furnished or construction work performed that was made subsequent to delivery or performance by the Offerors; or
- (3) A claimed infringement which is unreasonably settled without the consent of the Offerors, unless required by final decree of court of competent jurisdiction.

31. PAYMENTS

The Authority shall pay the Offerors, normally within 30 days of receipt of a properly prepared invoice or voucher, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract.

32. PAYMENT DEDUCTIONS - NONCOMPLIANCE WITH DBE REQUIREMENTS

- (a) **For** federally funded contracts that exceed \$100,000 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 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.

33. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS

- (a) This clause shall become operative only with respect to any modification of this Contract which involves aggregate increases and/or decreases in costs plus applicable profits in excess of \$100,000 unless the modification is priced on the basis of adequate competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The right to price reduction under this clause is limited to defects in data relating to such modification.
- (b) If any price, including profit, or fee, negotiated in connection with any modification for price adjustment under this Contract, was increased by any significant amount because of (b)(1) or (3) of this clause, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

- (1) The Offerors or a sub-Offerors furnished cost or pricing data that were which was not complete, accurate, and current as certified in the Offerors' Certificate of Current Cost or Pricing Data;
 - (2) A sub-Offerors or prospective sub-Offerors furnished the Offerors cost or pricing data that were not complete, accurate, and current as of the date certified in the Offerors' Certificate of Current Cost or Pricing Data; or
 - (3) Any reduction in the Contract price due to defective subcontract data of a prospective sub-Offerors, when the subcontract was not subsequently awarded to such sub-Offerors, shall be limited to the amount (plus applicable overhead and profit markup) by which the actual subcontract, or the actual cost to the Offerors, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Offerors, provided that the actual subcontract price was not affected by defective cost or pricing data.
- (c) If the Offerors includes a clause an article similar to this clause in any subcontract, such subcontract clause shall be solely between the Offerors and the sub-Offerors and not binding on the Authority.

34. PRICING OF ADJUSTMENTS

- (a) When costs are a factor in any determination of a Contract price adjustment pursuant to the CHANGES AND CHANGED CONDITIONS clause or any other provision of this Contract, such costs shall be in accordance with the Subpart 31.1 of the Federal Acquisition Regulations (48 CFR 31.1).
- (b) Notwithstanding any interpretation of the aforementioned contract cost principles and procedures 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 said claim, request, proposal or adjustment, including equitable adjustments, arises under the Contract or otherwise.
- (d) Where general and administrative expense is recoverable as part of any pricing adjustment under this contract, the adjustment shall be based on the relationship between the Offerors' total general and administrative expenses allowable under FAR cost principles for all construction-type operations, during the fiscal or calendar year covering the actual performance period of the work included in this pricing adjustment, and the Offerors' total cost input (excluding General and Administrative costs) for construction-type operations during the same period, expressed as a percentage, applied to the direct and overhead contract costs included in the pricing adjustment.

(e)

35. RESPONSIBILITY FOR INSPECTION

Notwithstanding the requirements for any Authority inspection and test contained in Specifications applicable to this Contract, except where specialized inspections or tests are

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

specified for performance solely by the Authority, the Offerors shall perform or have performed the inspections and tests required to substantiate that the supplies and services provided under the Contract conform to the Drawings, Specifications and Contract requirements.

36. RETENTION OF DOCUMENTS

Except where this Contract specifically requires otherwise, the Offerors shall retain for a period of three (3) years from final payment, all research and supporting documentation, work papers and other documents, whether written or electronic, used in the performance of services for this Contract.

37. RIGHTS IN TECHNICAL DATA

- (a) The Authority shall have the right to use, duplicate, or disclose technical data, which includes computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so:
- (1) Any manuals, instructional materials prepared for installation, operation, maintenance or training purposes;
 - (2) Technical data pertaining to end items, components or processes which were prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data; e.g., specification control drawings, catalog sheets, outline drawing; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software);
 - (3) Other technical data which has been, or is normally furnished without restriction by the Offerors or sub-Offerors; or
 - (4) Other specifically described technical data which the parties have agreed will be furnished without restriction.
- (b) The Authority shall have the right to use, duplicate, or disclose technical data other than that defined in paragraph (a) in whole or in part, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be
- (1) Released or disclosed in whole or in part outside the Authority;
 - (2) Used in whole or in part by the Authority for manufacture; or
 - (3) Used by a party other than the Authority except for emergency repair or overhaul work only, by or for the Authority where the item or process concerned is not otherwise reasonably available to enable timely performance of the work;

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

provided, that the release or disclosure thereof outside the Authority shall be made subject to a prohibition against further use, release or disclosure.

- (c) Technical data provided in accordance with the provisions of paragraph (b) shall be identified by a legend which suitably recites the aforesaid limitation. Nothing herein shall impair the right of the Authority to use similar or identical data acquired from other sources.
- (d) The term technical data as used in this clause means technical writing, computer software, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether or not copyrighted, which are specified to be delivered pursuant to this Contract. The term does not include financial reports, cost analyses, and other information incidental to Contract administration. Computer software as used in this clause means computer programs, computer data bases, and documentation thereof.
- (e) Material covered by copyright:
 - (1) The Offerors agrees to and does hereby grant to the Authority, and to its officers, agents and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Authority purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all technical data now or hereafter covered by copyright.
 - (2) No such copyrighted matter shall be included in technical data furnished hereunder without the written permission of the copyright owner for the Authority to use such copyrighted matter in the manner above described.
 - (3) The Offerors shall report to the Authority (or higher-tier Offerors) promptly and in reasonable written detail each notice or claim of copyright infringement received by the Offerors with respect to any technical data delivered hereunder.
- (f) 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.
- (g) Any dispute under this clause article shall be subject to the Disputes clause of this contract.
- (h) Notwithstanding any other payment provision in this contract, the Contracting Officer may retain from payment up to 10 percent of the contract price until final delivery and acceptance of the technical data defined in this clause and as required to be furnished by the bid schedule or the contract specification.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

38. ROYALTY INFORMATION

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

39. SEAT BELT USE POLICY

The Offerors 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.

40. SENSITIVE SECURITY INFORMATION

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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

41. STOP WORK ORDER

- (a) The Contracting Officer may, at any time, by written order to the Offerors, require the Offerors to stop all, or any part of the work called for by this Contract for a period of 90 days after the order is delivered to the Offerors, and for any further period to which the parties may agree. The order shall be specifically identified as a STOP WORK ORDER issued under this clause. Upon receipt of the order, the Offerors shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the Offerors, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either:
 - (1) Cancel the stop work order; or
 - (2) Terminate the work covered by such order as provided in the DEFAULT or TERMINATION FOR CONVENIENCE OF THE AUTHORITY clauses of this Contract.
- (b) If a stop work order issued under this clause is cancelled or the period of the order or any extension thereof expires, the Offerors shall resume work. An equitable adjustment shall be made in the delivery schedule or Contract price, or both, and the Contract modified in writing accordingly, if:
 - (1) The stop work order results in an increase in the time required for, or in the Offerors' cost properly allocable to, the performance of any part of this Contract; and
 - (2) The Offerors asserts a claim for such adjustment within 30 days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify such action, he may receive and act upon any such claim submitted at any time before final payment under this Contract.
- (c) If a stop work order is not cancelled and the work covered by the order is terminated for the convenience of the Authority, the Contracting Officer shall allow reasonable costs resulting from the stop work order shall be allowed in arriving at the termination settlement.
- (d) If a stop work order is not cancelled and the work covering by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

42. SUBCONTRACT PAYMENTS

- a. The Contractor shall, under this contract, establish procedures to ensure timely payment of amounts due pursuant to the terms of their subcontracts. The Contractor shall pay each subcontractor for satisfactory performance of its contract, no later than ten (10) days from the date of the Contractor's receipt of payment from the Authority for work by that

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

subcontractor. The Contractor shall also release, within ten (10) days of satisfactory completion of all work required by the subcontractor, any retention withheld from the subcontractor.

- b. The Contractor shall certify on each payment request to the Authority that payment has been or will be made to all subcontractors in accordance with paragraph a above. The Contractor shall notify the contracting officer or other delegated authority representative with each payment request, of any situation in which scheduled subcontractor payments have not been made.
- c. If a subcontractor alleges that the Contractor has failed to comply with this provision, the Contractor agrees to support any Authority investigation, and, if deemed appropriate by the Authority, to consent to remedial measures to ensure subcontractor payment that is due.
- d. The Contractor agrees that the Authority may provide appropriate information to interested subcontractors who want to determine the status of Authority payments to the Contractor.
- e. Nothing in this provision is intended to create a contractual obligation between the Authority and any subcontractor or to alter or affect traditional concepts of privity of contract between all parties.

43. SUBCONTRACTOR COST AND PRICING DATA-PRICE ADJUSTMENTS

- a. Paragraphs b. and c. of this article shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this Contract which involves a price adjustment in excess of \$100,000. The requirements of this article shall be limited to such price adjustments.
- b. The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances:
 - (1) prior to award of any cost-reimbursement type, incentive, or price re-determinable subcontract;
 - (2) prior to the award of any subcontract the price of which is expected to exceed \$100,000;
 - (3) prior to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed \$100,000; except in the case of (2) or (3) where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.
- c. The Contractor shall require subcontractors to certify that to the best of their knowledge and belief the cost and pricing data submitted under paragraph b. above is accurate,

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

complete, and current as of the date of execution, which date shall be as close as possible to the date of agreement on the negotiated price of the Contract modification.

- d. The Contractor shall insert the substance of this clause including this paragraph d. in each subcontract which exceeds \$100,000.

44. TERMINATION FOR CONVENIENCE OF THE AUTHORITY

- (a) The Authority may terminate performance of work under this Contract in whole, or from time to time, in part, if the Contracting Officer determines that a termination is in the Authority's interest. The Contracting Officer shall terminate by delivering to the Offerors a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Offerors shall immediately proceed with the following obligations, regardless of any delays in determining or adjusting any amounts due under the clause:
- (1) Stop work as specified in the Notice of Termination;
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract;
 - (3) Terminate all subcontracts to the extent that they relate to the work terminated;
 - (4) Assign to the Authority, as directed by the Contracting Officer, all right(s), title, and interest of the Offerors under the subcontracts terminated, in which case the Authority shall have the right to settle or pay any termination settlement proposal arising out of those terminations;
 - (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for all the purposes of this clause;
 - (6) As directed by the Contracting Officer, transfer title and deliver to the Authority:
 - (i) The fabricated or un-fabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
 - (ii) The completed or partially completed plans, drawings, information and other property that, if the Contract had been completed, would be required to be furnished to the Authority.
 - (7) Complete performance of the work not terminated;

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

- (8) Take any action that may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Offerors 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)(6) of this clause; provided, however, that the Offerors (a) is not required to extend credit to any purchaser and (b) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce payments to be made by the Authority under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (c) The Offerors shall submit complete termination inventory schedules not later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Offerors within the 120-day period.

After expiration of the plant clearance period (as defined in Subpart 49.001 of the Federal Acquisition Regulation), the Offerors may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Offerors may request the Authority to remove those items or enter into an agreement for their storage. Within 15 days thereafter, the Authority will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

- (e) After termination, the Offerors shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Offerors shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Offerors within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted upon after 1 year or any extension. If the Offerors fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Offerors because of the termination and shall pay the amount determined.
- (f) Subject to paragraph (e) this clause, the Offerors and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in paragraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payment previously made and (2) the contract of price of work not terminated. The contract shall be modified, and the

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

Offerors paid the agreed amount. Paragraph (g) of this clause does not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

- (g) If the Offerors and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Offerors the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:
- (1) The contract price for completed supplies or services accepted by the Authority (or sold or acquired under paragraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.
 - (2) The total of:
 - (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to items compensated or to be paid for under paragraph (g)(1) of this clause;
 - (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not excluded in subsection (g)(2)(i) of this clause; and
 - (iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer pursuant to Section 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however if it appears that the Offerors would have sustained a loss on the entire Contract had it been completed, the Contracting Officer shall allow no profit under this subsection (g)(2)(iii) and reduce the settlement to reflect the indicated rate of loss.
 - (3) The reasonable costs of settlement of the work terminated, including:
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

Offerors under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Authority or to a buyer.

- (i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
- (j) The Offerors shall have the right of appeal, under the DISPUTES clause, from any determination made by the Contracting Officer under paragraph (e), (g) or (1) of this clause, except that if the Offerors failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (1) respectively, and failed to request a time extension, there is no right of appeal.
- (k) In arriving at the amount due the Offerors under this clause, there shall be deducted:
 - (1) All un-liquidated advances or other payments to the Offerors under the terminated portion of the Contract;
 - (2) Any claim which the Authority has against the Offerors under this contract; and
 - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things procured by the Offerors or sold under the provisions of this clause and not recovered by or credited to the Authority.
- (l) If the termination is partial, the Offerors may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the Contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Offerors for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.
- (m)
 - (1) The Authority may, under such terms and conditions it prescribes, make partial payments and payments against costs incurred by the Offerors for the terminated portion of the Contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Offerors will be entitled.
 - (2) If the total payments exceed the amount finally determined to be due, the Offerors shall repay the excess to the Authority upon demand, together with interest computed at the rate established by the Secretary of Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Offerors to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Offerors' termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

or disposition, or a later date determined by the Contracting Officer because of circumstances.

- (n) Unless otherwise provided in this Contract or by statute, the Offerors shall maintain all records and documents relating to the terminated portion of this contract for three (3) years after final settlement. This includes all books and other evidence bearing on the costs and expenses of the Offerors under this Contract. The Offerors 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 Offerors' office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproduction may be maintained instead of original records and documents. This requirement shall be passed through to all sub-Offerors whose compensation is included in the termination settlement.

45. TITLE AND RISK OF LOSS

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 formal acceptance, regardless of when or where the Authority takes physical possession. The risk of loss remains with the Offerors until the transfer of title.

Unless this Contract specifically provides otherwise, risk of loss of or damage to supplies covered by this Contract shall remain with the Contractor until, and shall pass to the Authority upon:

1. Delivery of the supplies to a carrier, if transportation is FOB origin;
2. Acceptance by the Authority or delivery of possession of the supplies to the Authority at the destination specified in this Contract, whichever is later, if transportation is FOB destination.
3. Notwithstanding b. (1) above, the risk of loss of or damage to supplies which so fail to conform to the Contract as to give a right of rejection shall remain with the Contractor until cure or acceptance, at which time (1) above shall apply.
4. Notwithstanding b. above, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Authority acting within the scope of their employment.

46. VARIATION IN QUANTITY (SUPPLIES)

No variation in the quantity of any item called for by this Contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this Contract.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

47. WALSH-HEALEY PUBLIC CONTRACTS ACT

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

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

SUPPLEMENTAL PROVISIONS REQUIRED IN FEDERALLY FUNDED CONTRACTS

48. ACCESS TO RECORDS

- a. The Contractor agrees to provide the Authority, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 CFR. 633.17 to provide the FTA Administrator or his authorized representatives including any 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, which 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 years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case the Contractor agrees to maintain same until the Authority, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11). .

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

49. BUY AMERICA

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

50. CARGO PREFERENCE REQUIREMENTS

The Offerors agrees:

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

51. CLEAN AIR

- a. The Offerors agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U. S. C. §§ 7401 et seq. The Offerors 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 Offerors also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

52. CLEAN WATER

- a. The Offerors agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U. S. C. 1251 et seq. The Offerors agrees to report each violation to the Authority and understands and agrees that

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

- b. The Offerors also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

53. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS

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

- (1) The Offerors 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. § 552a. Among other things, the Offerors agrees to obtain the express consent of the Federal Government before the Offerors or its employees operate a system of records on behalf of the Federal Government. The Offerors 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.
- (2) The Offerors also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

54. ENERGY CONSERVATION

- a. The Offerors agrees to comply with mandatory standards and policies relating to the energy efficiency which are contained in the applicable state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- b. The Offerors agrees to include the requirements of this clause in all subcontracts under this contract.

55. FEDERAL CHANGES

- a. Offerors shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (14) dated October 1, 2007) between the Authority and FTA, as they may be amended or promulgated from time to time during the term of this contract. Offerors' failure to so comply shall constitute a materiel breach of this contract.
- b. The Offerors 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 sub-Offerors who will be subject to its provisions.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

56. FLY AMERICA REQUIREMENTS

The Offerors agrees to comply with 49 U. S. C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their Offerors 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. The Offerors shall submit, if a foreign air carrier was used, 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, in any event, provide a certificate of compliance with the Fly America requirements. The Offerors agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

57. GOVERNMENT-WIDE DEBARMENT OR SUSPENSION

- a. The Offerors is bound by its certification contained in its offer to the Authority that neither the Offerors, its principals, or affiliates, are excluded or disqualified, as defined at 49 C.F.R. 29.940 and 29.945. The certification is a material representation of fact, relied upon by the Authority in entering into this Contract. If it is later determined that the Offerors 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 Offerors agrees to comply with the requirements of 49 C.F.R. 29, Subpart C, throughout the term of this Contract.
- b. The Offerors agrees to include this requirement in all subcontracts at all tiers under this Contract.

58. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

- a. The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E or any revisions 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 Agreement. The Offerors shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests which would cause the Authority to be in violation of the FTA terms and conditions.
- b. The Offerors 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 sub-Offerors who will be subject to the provisions.

59. LOBBYING

- a. The Offerors is bound by its certification contained in its offer to the Authority regarding the use of federal or non-federal funds to influence, or attempt to influence any Federal officer or employee regarding the award, execution, continuation, or any similar action of any Federal grant or other activities as defined in 31 U.S.C. 1352, 49 CFR Part 19, or 49 C.F.R. Part 20. The Offerors agrees to comply with this requirement throughout the term of the Contract.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

- b. The Offerors agrees to include these requirements in all subcontracts at all tiers under this Contract.

60. NO OBLIGATION BY THE FEDERAL GOVERNMENT

- a. The Authority and the Offerors acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Authority, Offerors or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b. The Offerors 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 sub-Offerors who will be subject to its provisions.

61. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

- a. The Offerors acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U. S. C. 3801 et seq and U. S. DOT Regulations, “Program Fraud Civil Remedies,” 49 C.F. R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Offerors certifies and affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Offerors 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 Offerors to the extent the Federal Government deems appropriate.
- b. The Offerors 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 Offerors, to the extent the Federal Government deems appropriate.
- c. The Offerors 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 sub-Offerors who will be subject to the provisions.

62. RECOVERED MATERIALS

- a. The Offerors agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA) as amended (42 U. S. C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

- b. The Offerors also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA.

63. RIGHTS IN DATA AND COPYRIGHTING - FTA

- a. The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists; specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to Project administration.
- b. The following restrictions apply to all subject data first produced in the performance of this contract.
 - (1) Except for its or WMATA's own internal use, the Offerors may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Offerors authorize others to do so, without the written consent of the U.S. Government, until such time as the Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to Agreements with academic institutions.
 - (2) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. 19.36, the Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, the following subject data for Federal Government purposes:
 - (a) Any subject data developed under this contract whether or not a copyright has been obtained; and
 - (b) Any rights of copyright to which the Offerors purchases ownership with Federal assistance.
- c. When the Federal Transit Administration (FTA) provides financial assistance for a planning, research, development, or a demonstration project, it is FTA's general intention to increase mass transportation knowledge, rather than limit the benefits of the Project to participants in the Project. Therefore, unless FTA determines otherwise, the Offerors agrees that, in addition to the rights set forth in subsection (b)(2) of this clause, FTA may make available to any FTA recipient, sub-recipient, third party Offerors, or third party sub-Offerors, either FTA's license in the copyright to the subject data derived under this contract or a copy of the subject data first produced under this contract. If this contract is not completed for any reason whatsoever, all data developed under this contract shall become subject data as defined in subsection a. of this clause and shall be delivered as the Government may direct.
- d. Unless prohibited by state law, the Offerors agrees to indemnify, save, and hold harmless WMATA and the Government, their officers, agents, and employees acting within the scope of

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Offerors of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Contract. The Offerors shall not be required to indemnify WMATA and the Government for any such liability arising out of the wrongful acts of employees or agents of WMATA and the Government.

- e. Nothing contained in this section on rights in data shall imply a license to WMATA or the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to WMATA or the Government under any patent.
- f. The requirements of subsections b. and c., do not apply to material furnished by the Authority to the Offerors and incorporated in the work carried out under the contract provided that the Offerors identifies the incorporated material at the time of delivery of the work.
- g. Any dispute under this clause shall be subject to the Disputes clause of this contract.
- h. Notwithstanding any other payment provision in this contract, the Contracting Officer may retain from payment up to 10 percent (10 %) of the contract price until final delivery and acceptance of the subject data defined in this clause and as required to be furnished by the bid schedule or the contract specification.

* * *

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

PART II

SECTION 2 - SPECIAL PROVISIONS

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)**

Production Spot Tamping Machine

RFP NO: FQ12120/MC

TABLE OF CONTENTS

PART II, SECTION 2 - SPECIAL PROVISIONS	
1.	PERIOD OF PERFORMANCE SP-2
2.	DELIVERY SCHEDULE SP-2
3.	OPTIONS/OPTION QUANTITIES SP-2
4.	AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR SP-3
5.	PRICING SP-3
6.	PAYMENT TERMS SP-3
7.	BILLING AND PAYMENT SP-3
8.	POINT OF CONTACT SP-4
9.	F.O.B. DESTINATION SP-4
9.	OFFERORS PERSONNEL SP-4
11.	PRE-EMPLOYMENT CRIMINAL BACKGROUND CHECK REQUIREMENT SP-5
12.	MOST FAVORED CUSTOMER SP-6
13.	CONDITIONS AFFECTING THE WORK SP-6
14.	WARRANTY SP-6
15.	INSURANCE INDEMNIFICATION SP-7
16.	GENERAL INSURANCE REQUIREMENTS SP-8
17.	BOND REQUIREMENTS GP-13
18.	PROPOSAL SECURITY GP-13
19.	LAWS AND REGULATIONS GP-13
20.	FEDERAL/LOCAL/STATE SALES TAX GP-13
21.	PRIME CONTRACTOR DBE RESPONSIBILITIES GP-14
22.	CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR) GP-14
23.	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA GP-16
24.	BUY BACK GP-17
25.	BUY AGAINST GP-17
26.	INSPECTION, TESTING AND ACCEPTANCE GP-17
27.	FIRST ARTICLE GP-18
28.	ORGANIZATIONAL CONFLICT OF INTEREST GP-18
29.	RIGHTS IN TECHNICAL DATA - UNLIMITED GP-18
30.	LIQUIDATED DAMAGES SP-21
31.	FORCE MAJEURE CLAUSE SP-21
32.	SITE VISIT/INSPECTION SP-21
33.	GARNISHMENT OF PAYMENTS SP-21
34.	GOVERNING LAW SP-21
35.	SAFETY REQUIREMENTS SP-22
36.	LIVING WAGE SP-23
37.	METRIC SYSTEM SP-24
38.	NOTIFICATION OF FEDERAL PARTICIPATION SP-24
39.	REQUIREMENTS SP-24
40.	ORDERING SP-24
41.	WHISTLEBLOWER PROTECTION SP-25
42.	DRUG AND ALCOHOL TESTING SP-26
43.	PACKAGING AND MARKING SP-26
44.	TECHNOLOGY FOR SOURCING SP-27
45.	DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS SP-27
46.	METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS RIDER CLAUSE SP-28

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

PART II, SECTION 2 - SPECIAL PROVISIONS

1. PERIOD OF PERFORMANCE

The period of performance is as follows:

- a. The period of performance shall take place 240 days after Notice to Proceed (NTP).
- b. If applicable, all required safety, insurance, bonds and pre-employment background checks must be complete before commencing work on site.

2. DELIVERY SCHEDULE

1. Equipment shall be constructed, prepared, and loaded so that it will withstand without damage, handling likely to be encountered during delivery. Valuable and easily pilfered parts such as batteries, tools, and loose and small items shall be shipped in such a manner as to reset pilferage.
2. Contractor shall be responsible for FOB destination and offloading the Unit Track designed by WMATA.
3. Complete parts and instructions books shall be delivered according to the address below as outline in the following:

ALL DELIVERED WILL BE FORWARDED TO:

WMATA
Attention: James Barrett
Branch Ave Rail Yard
5700 Gateway Drive
Suitland, Maryland 20746

3. OPTION QUANTITIES

- a. The Authority has the unilateral right to extend the contract by exercising the option or options (as applicable) subject to all terms and conditions herein.
- b. The Authority may exercise the option(s) (if any) by written notice to the Offerors prior to commencement of the option period; provided, that the Authority shall give the Offerors a preliminary notice of its intent to extend at least 30 days before the contract expires. The preliminary notice does not commit the Authority to an extension.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

4. AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR

Funds are not presently available for performance under this contract beyond the fiscal year which ends June 30, 2012. The Authority's obligation for performance of this contract beyond that date is contingent upon the availability of funds from which payment for contract purposes can be made. No legal liability on the part of the Authority for any payment may arise for performance under this contract until funds are made available to the Contracting Officer for performance and until the Offerors receives notice of availability, to be confirmed in writing, by the Contracting Officer. Any option exercised by the Authority which will be performed in whole or in part in a subsequent fiscal year is subject to availability of funds in the subsequent fiscal year is subject to availability of funds in the subsequent fiscal year and will be governed by the terms of this Article.

5. PRICING

Prices on the Unit Price Schedule Sheet submitted must include all associated costs, including but not limited to labor, material, travel, markups, overhead, profit, transportation, and delivery. All material provided under this contract shall be delivered F.O.B. Destination.

6. PAYMENT TERMS

- a. Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the Offerors.
- a. Partial payments are authorized upon receipt of supplies or services, acceptance by the COTR, and a properly executed invoice.

7. BILLING AND PAYMENT

- a. Payment will be made after receipt of a properly completed invoice. Mail original and one copy of all invoices to Office of Accounting, WMATA, 6th Floor, 600 Fifth Street, NW, Washington DC 20001. Also mail one copy of each invoice to the Contracting Officer's Technical Representative (COTR).
- b. Invoices shall contain the following information: date, contract and order number (if any), item numbers, description of supplies or services, sizes, quantities, unit prices, and extended totals. Final invoices must clearly be marked "FINAL" and cite the amount of the contract, amount previously paid, and the balance due.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

8. POINT OF CONTACT

All inquiries are to be directed to:

Washington Metropolitan Area Transit Authority
Attn: Ms. Mariana Coefield, Contract Administrator
8201 Ardwick Ardmore Road
Landover, MD 20785
Phone: (202) 962-5552
E-Mail: macoefield@wmata.com

9. F.O.B. DESTINATION

a. The term "f.o.b. destination," as used in this clause, means:

1. Free of expense to WMATA on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and
2. Supplies shall be delivered to the destination consignee's warehouse unloading platform, or receiving dock, at the expense of the Offerors. WMATA shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of WMATA acting in its contractual capacity. If the Offerors uses rail carrier or freight forwarder for less than carload shipments, the Offerors shall assure that the carrier will furnish tailgate delivery if transfer to truck is required to complete delivery to consignee.

b. The Offerors shall:

1. Pack and mark the shipment to comply with contract specification;
2. In the absence of specifications, prepare the shipment in conformance with carrier requirements;
3. Prepare and distribute commercial bills of lading;
4. Deliver the shipment in good order and condition to the point of delivery specified in the contract;

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

5. Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;
6. Furnish a delivery schedule and designate the mode of delivering carrier; and
7. Pay and bear all charges to the specified point of delivery.

10. OFFERORS PERSONNEL

- a. The Offerors shall replace employees who the Authority judges to be incompetent, careless, unsuitable or otherwise objectionable, or whose continued use is deemed contrary to the best interests of the program. The reason for replacement will be discussed between the Offerors and the Authority before a replacement request is issued. Upon receipt of a written request from the Authority, the Offerors shall proceed with the replacement unless the Offerors is able to demonstrate that the Authority's request is unreasonable. The replacement request will include the desired replacement date and the reason for the request. The Offerors shall effect the replacement in a manner that does not impact quality, cost or schedule.
- b. Offerors personnel required to work on WMATA property must obtain a WMATA vendors badge and successfully complete the mandatory safety training which must be renewed yearly. To obtain a vendors badge a signed waiver to perform a background check will be required.

11. PRE-EMPLOYMENT CRIMINAL BACKGROUND CHECK REQUIREMENT

Criminal background checks of all Offerors employees working at a WMATA facility on this contract will be required. Eligibility for access to WMATA property will be based on WMATA's pre-employment Criminal Background Check criteria. WMATA will provide the Offerors employees with background check consent forms that the Offerors employees must complete and sign. The forms will require the Offerors employees to appear in person, provide their full legal names, including middle initials if applicable, as well as their Social Security numbers, in addition to other information that will be necessary to conduct the background checks. The operating hours are Monday through Friday from 7:30AM B 3:30PM except holidays. Upon receipt of the completed, signed forms, WMATA will conduct background checks including criminal court searches and Social Security Number verifications of the Offerors employees. If there is derogatory information that would disqualify a Offerors employee from receiving a badge to access WMATA property, the Offerors and its Offerors employee will be notified that the background check failed. The completed forms are secured in a locked file cabinet and are destroyed one year after the expiration date on the Offerors employee's badge. These background checks are expected to take one (1) business day for processing, so the Offerors employee must allow sufficient time for completion. The background check is free of charge.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

Background checks are conducted to promote a safe work environment and to protect our company's most important assets: the people we serve and the people with whom we serve. This enables WMATA management in making prudent decisions and maintaining a high quality workforce. Offerors employees who successfully complete the background checks are eligible to enter WMATA property once they are issued a Offerors badge. On the other hand, Offerors employees who do not authorize background checks or whose background checks are unsatisfactory will not be granted Offerors badges or access to WMATA property. The records generated by these background checks that contain private information will not be disclosed unless disclosure is required under the PARP/Privacy Policies.

12. MOST FAVORED CUSTOMER

The Offerors shall voluntarily provide the Authority with the benefits of any more favorable terms it has, or negotiates, with any organization or facility whose circumstances and operations are substantially the same as those of the Authority.

13. CONDITIONS AFFECTING THE WORK

The Offerors shall be responsible for having taken steps reasonably necessary to ascertain the nature and extent of the work, and the general and local conditions which can affect the work or the cost thereof. Any failure by the Offerors to do so will not relieve the Offerors from responsibility for successfully performing work without additional expense to the Authority. The Authority assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations are expressly stated in the Contract.

14. WARRANTY

- a. Any failure of the work in compliance with the procedures that does not conform to the part order, and or defects of material for a period of two (2) years shall be repaired or replaced by the Offerors at his expense.
- b. Damage to equipment or the contents thereof in fulfilling this contract and warranty shall be the responsibility of the Offerors. The Offerors shall be liable for any and all damages, including consequential damages, arising from a breach of this warranty. No other provision of this contract shall be construed to limit the Offerors' liability for a breach of this warranty.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

15. INSURANCE INDEMNIFICATION

Indemnification

- a. Contractor shall indemnify, defend and hold harmless the Authority, its directors, officers, employees and agents, from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, and for loss or damage to any property, including the property of the Contractor and the Authority, occurring in connection with, or in any way arising out of the use, occupancy and performance of the work and/or any acts in connection with activities to be performed under this contract, unless the loss or damage is due to the sole negligence of the Authority. Nothing in the preceding sentence shall be deemed to relieve Contractor from ultimate liability for any obligation of Contractor under this Contract.
- b. Contractor shall indemnify, defend and hold harmless the Authority, its directors, officers, employees and agents, against any and all claims, liabilities, losses, demands, damages, penalties, costs, charges, remedial costs, environmental claims, fees or other expenses including attorneys fees, related to, arising from or attributable to any effluent or other hazardous waste, residue, contaminated soil or other similar material discharged from, removed from, or introduced on, about or under the job site; provided, however, that the foregoing indemnity does not apply to loss or damage due to preexisting conditions, whether known or unknown.
- c. If any action or proceeding relating to the indemnification required is brought against the Authority, then upon written notice from the Authority to the Contractor, the Contractor shall, at the Contractor's expense, resist or defend such action or proceeding by counsel approved by the Authority in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same. The Authority reserves the right to use its own counsel under this indemnity at Contractor's sole cost and expense.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

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

16. Insurance - General Provisions

Contractor shall procure, at its sole cost and expense, and shall maintain in force at all times during the term of this Contract, including the Warranty Period if applicable, the insurance outlined in the section below. All insurance companies must have an A.M. Best rating of "A-/VII" or better and be approved by the Authority. All required insurance policies must:

1. State or be endorsed to provide that the coverage afforded under Contractor's policies shall apply on a primary basis and not on an excess or contributing basis with any policies that may be available to the Authority, and
2. Have self-insurance retentions or policy deductibles no greater than \$100,000, unless approved in writing by the Authority, whose approval shall not be unreasonably withheld.

Contractor shall give at least thirty (30) days prior written notice to the Authority's Office of Insurance if any required insurance policy is canceled, materially changed, or nonrenewed; or if policy limits have been exhausted.

The insurance limits required herein may be met through Contractor's primary and umbrella/excess policies. Policies must be written on an occurrence basis; a claims made basis is not acceptable, except for Professional Liability.

Contractor shall furnish evidence of all required insurance prior to the start of any work on Authority property. Certificates of insurance (COI) and all applicable endorsements may be submitted to the Authority in lieu of copies of insurance policies; if Railroad Protective Liability insurance and/or Builder's Risk insurance is required, the entire insurance policy must be sent to the Authority. However, the Authority reserves the right to request copies of policies of any required insurance as denoted below. If requested by the Authority, the Contractor shall deliver to the Authority within thirty (30) days of the request, a copy of such policies, certified by the insurance carrier as being true and complete.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

COIs shall 1) disclose any deductible, sublimit, self-insured retention, aggregate limit or any exclusions to the policy that materially change the coverage; 2) show the Authority as an additional insured for Commercial General Liability and Automobile Liability; 3) reference the contract number, and 4) expressly reference the inclusion of all required endorsements, including but not limited to the Additional Insured endorsement. All endorsements must include policy numbers.

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

Evidence of insurance coverage – insurance certificates and endorsements (and the complete Railroad Protective Liability policy, if applicable) – stating the work to be performed shall be submitted to the Authority at least ten (10) business days prior to commencement of operations and from time to time at the Authority’s request. Contractor shall not be allowed to proceed until the evidence of insurance has been received and approved in writing by the Authority. All evidence of insurance shall be sent to:

Washington Metropolitan Area Transit Authority
Office of Procurement, File Room 3C-02
600 5th Street, NW
Washington, DC 20001

With a copy to:

Washington Metropolitan Area Transit Authority
Office of Insurance, Room 8F
600 5th Street, NW
Washington, DC 20001

Required Insurance

Commercial General Liability Insurance: with minimum limits of \$2,000,000 per occurrence/aggregate, written on an occurrence form. If the required minimum limits can only be met when applying an umbrella/excess liability policy, the umbrella/excess liability policy must follow form of the underlying policy and be extended to “drop down” to become primary in the event the primary limits are reduced or aggregate limits are exhausted. The coverage under such an insurance policy or policies shall be maintained throughout the contract period and for three (3) years following acceptance of the work, and shall include Terrorism coverage.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

WMATA shall be named an Additional Insured with respect to this agreement on all certificates of insurance (COI), and the Additional Insured endorsement shall include completed operations and be submitted to the Authority.

Workers' Compensation Insurance: meeting the statutory requirements of the jurisdiction where the work will be performed, including Employer's Liability coverage with minimum limits of \$1,000,000 each accident or disease.

Business Automobile Liability Insurance: with minimum combined single limits of \$2,000,000 per occurrence covering contractor against claims for bodily injury and property damage arising out of the ownership, maintenance or use of any owned, hired, or non-owned motor vehicle. WMATA shall be added as an additional insured on the policy.

Railroad Protective Liability Insurance (RRP): issued to WMATA as the Named Insured with minimum limits of \$2,000,000 per occurrence/\$6,000,000 aggregate and covering the liability of the Authority arising from all Contracting Parties' work to be performed within fifty (50) feet (on, above, adjacent to or underneath) of the Authority 's railroad tracks or within Authority rail stations for any personal injuries or deaths or any damage to the property, equipment and facilities caused by the activities of any Contractor or Subcontractor resulting from performance of this contract work. **THE ORIGINAL POLICY SHOULD BE FORWARDED TO WMATA.**

WMATA Blanket RRP Program Option: The Authority may offer to waive the requirement for the Contractor to procure RRP if 1) the work can be covered under the Authority's blanket RRP program, and 2) the Contractor prepays the premium which shall be determined by the rate schedule promulgated by the insurer in effect as of the effective date of this Contract. Contractor shall be advised of and pay the applicable premium, or procure a standalone RRP policy on the Authority's behalf.

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)**

Production Spot Tamping Machine

RFP NO: FQ12120/MC

**WMATA BLANKET RAILROAD PROTECTIVE
 LIABILITY INSURANCE PROGRAM
 APPLICATION FORM**

Contractor/Permittee shall complete this form, sign and return to RISK, attn Sharrone Scott, sscott@wmata.com (202-962-1236). Applicant will be advised if project can be covered under the WMATA RRP program and the cost. If coverage is desired under the WMATA program, an invoice will be sent to the applicant.

Contractor/Permittee and Address	
Job Description	PRODUCTION SPOT TAMPER
Unique Job Characteristics (e.g., tunneling, blasting)	The Spot Tamper shall be utilized as a work unit to support the tie gang and other wayside related maintenance. The Spot Tamper shall contain a fully enclosed cab for one (1) operator; a hydraulic or approved work head for tamping up cross ties tight to the rail; driven by the main engine source; a stand-alone diesel powered engine, and controls for the braking systems. This equipment will meet all requirements as defined in Technical Specification Section 3.0. This requirement includes on-track training and initial on-track in-service operation by contractor personnel. As such, contractor employees will be subject to WMATA regulations including RWP Training, ID issuance, Background Checks, Drug Testing and Railroad Liability Insurance.
Est. # Days on Metro Property	80 HOURS – 2 weeks
Project Solely for the Benefit of Metro? (Yes/No)	
Joint Development Project? (Yes/No)	
Adjacent Construction Project (i.e., no benefit to Metro)? (Yes/No)	
Contract/PR/PO Number	FQ12120
Job Location (i.e., address, station name, mile markers)	
Total Contract Value	
Value within 50' of WMATA Railroad Right-of-Way	
WMATA Dept. Contact/Phone Number	
RRP Waiver Fee (to be completed by RISK)	

Signature of authorized Contractor/Permittee representative: _____
 Date _____
 Printed Name/Title _____

17. BOND REQUIREMENTS – (NOT APPLICABLE)

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

18. PROPOSAL SECURITY - (NOT APPLICABLE)

19. LAWS AND REGULATIONS

Each Offerors shall be responsible to fully inform themselves of the requirements for and to comply with any applicable State of Maryland, Commonwealth of Virginia, District of Columbia, Federal and jurisdictional laws and regulations governing the service to be provided under the contract. Further, each Offerors shall be responsible to obtain, at its own cost and expense, any and all licenses/permits required to transact business in any political jurisdictions to be serviced.

20. FEDERAL/LOCAL/STATE SALES TAX

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

“the Authority and the Board shall not be required to pay taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession or supervision, or upon its activities in the operation and maintenance of any transit facility or upon any revenues there from, and the property and income derived there from 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 Offerors for physical incorporation into the project work. This has not been the practice in either Maryland or Virginia. The Authority does not represent or warrant that the District of Columbia practice applies to this project or, if it does, that it will continue in effect during the term of this project. It is the responsibility of the Offerors to determine its liability for any and all taxes applicable to this project. Assessment or payment of taxes by the Offerors, 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 Section 00779, FEDERAL, STATE AND LOCAL TAX.
- c. By submission of its proposal, the proposer certifies that none of the taxes as to which the Authority is exempt are included in its proposal price(s) or the final Contract Price. In the event that the Authority learns that any taxes to which the Authority is exempt are

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

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.

21. PRIME CONTRACTOR DBE RESPONSIBILITIES

- a. If the contract value is over \$100,000, the prime contractor will be responsible for submitting a monthly report of the status of its DBE subcontractors as outlined in Appendix B.
- c. Reports shall be submitted monthly to the Authority Representative, who in turn, will forward a copy to the Office of Civil Rights, WMATA, Jackson Graham Building, 600 Fifth Street NW, Washington DC 20001.

22. CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)

- a. 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 Offerors. Submit a copy of each item of incoming correspondence and a copy of any enclosures shall also be submitted to the Contract Administrator;
 - (2) Approve in writing the Offerors' progress schedule and submittals when required;
 - (3) Inspect the work for compliance with the contract;
 - (4) Review and approve invoices and payment estimates. Forward invoices and receipts to accounting. Bring to the attention of the Contracting Officer any significant discrepancies in, or disputes concerning, Offerors invoices of payments. In those cases requiring release of final retained percentages of payment, the COTR will make his 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 Offerors' technical letters and proposals for the Contracting Officer;
 - (7) Advise the Contracting Officer of potential problems that may affect contract performance;

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

- (8) Advise the Contracting Officer whenever the COTR has reason to believe that the contractual not-to-exceed amount will be exceeded;
 - (9) Prepare the Authority estimate for Proposed Contract Modifications. Participate in negotiations of modifications;
 - (10) Approve, in writing, the Offerors' progress schedule when required.
 - (11) Receive from the Offerors, monthly, if applicable, DBE status reports and forward them to the Office of Civil Rights (CIVR);
 - (12) Maintain a comprehensive file record of documents and correspondence concerning contract activities and actions;
 - (13) 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 the contract is ready for closeout. Return the file, containing all records, correspondence, etc., to the Contract Administrator;
 - (14) Execute Standard Form 1420, which contains a detailed performance evaluation of the Offerors. Note that if, there is one or more categories in which the Offerors is deemed unsatisfactory, these evaluations must be provided to the Offerors for comment; and
 - (15) Provide the Contract Administrator with a written request (and requisition) to exercise option(s) (if any) a minimum of 90 days prior to the time established in the contract for exercise of the option.
- b. There are certain actions which are reserved for only the Contracting Officer. They are:
- (1) Approval of contract modification proposals and/or other unilateral actions.
 - (2) Issuance of written orders to stop and/or resume work under Article 10, "Stop Work Orders", of the General Provisions.
 - (3) Negotiation with the Offerors for adjustment of contract price and/or time.
 - (4) The COTR is not authorized to render final decision under the DISPUTES article of the General Provisions.
 - (5) The COTR is not authorized to issue Termination Notices pursuant to the terms of this contract.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

- c. The presence or absence of the COTR or his inspectors shall not relieve the Offerors from any requirements of the contract.

23. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

“This is furnished under Authority Contract No. FQ12120/MC and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of The Washington Metropolitan Transit Authority. This legend shall be marked on any reproduction of this data.” (End of legend)

(5) That the Offerors shall not place the legend or any other restrictive legend on any data which (i) the Offerors or any sub-Offerors previously delivered to the Authority without limitations or (ii) should be delivered without limitations under the conditions specified in the clause Rights in Technical Data.

e. The Offerors 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 material.

24. BUY BACK (NOT APPLICABLE)

25. BUY AGAINST

a. If the Offerors fails to perform in accordance with this Contract, the Contracting Officer may obtain such goods or any part thereof from other sources with or without public letting, as s/he may deem advisable, and, with no obligation to the Authority to mitigate damages. If the price paid in obtaining the goods from other sources is greater than this Contract price, the difference, plus the re-letting cost and the liquidated damages, if any, will be charged against the Offerors. If such price is less, the Offerors shall have no claim to the difference, but the re-letting cost and the liquidated damages will become charges against the Offerors.

b. The re-letting cost is hereby determined to be two-hundred and fifty (\$250) dollars.

26. INSPECTION, TESTING AND ACCEPTANCE

a. The Authority shall complete its acceptance and testing of all inventory items when applicable and issue to the Offerors a written acceptance or rejection within ten (10) calendar days from the date of each installation. The Authority may issue such acceptance or rejection via email or facsimile.

b. **CORRECTION OF DEFICIENCY:** In the event that the Authority notifies the Offerors that the installation is, in whole or in part, rejected, the Offerors shall correct all deficiencies within fifteen (15) calendar days from the date of notification. Within ten (10) calendar days following completion of all corrections to the installation, the Authority shall issue a written acceptance or rejection to the Offerors.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

27. FIRST ARTICLE (NOT APPLICABLE)

28. ORGANIZATIONAL CONFLICT OF INTEREST

Unless specifically exempted from the conditions of this provision by the Contracting Officer, any Authority Offerors, sub-Offerors, subsidiary, or other entity which is legally related and which develops or drafts specifications, requirements, statements of work, invitation for bids, will be excluded from competing for the directly ensuing procurement.

29. RIGHTS IN TECHNICAL DATA - UNLIMITED

[This article, when used, supersedes General Provision Article No. 35, "Rights in Technical Data"].

- a. The Authority or any third party designated by the Authority to assist it in the administration of this contract or the inspection or verification of the product produced under this contract, shall have the right to use, duplicate or disclose technical data, which includes computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so:
 - (1) Any manuals, instructional materials prepared for installation, operation, maintenance or training purposes;
 - (2) Technical data pertaining to end items, components or processes which were prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data; e.g., specification control drawings, catalog sheets, outline drawing; except for the computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software);
 - (3) Other technical data which has been, or is normally furnished without restriction by the Offerors or sub-Offerors;
 - (4) Other specifically described technical data which the parties have agreed will be furnished without restriction;
 - (5) All computer software regardless of whether it is technical data as defined in this Article 25, including the source code,

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

algorithm, process, formulae, and flow charts, which is developed or materially modified by the Offerors for the Authority or for which the Authority is required by federal law or regulation to provide a royalty-free, irrevocable and nonexclusive license to the federal government.

- b. The Authority shall have the right to use, duplicate, or disclose technical data other than that defined in paragraph a. in whole or in part, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be
- (1) Released or disclosed in whole or in part outside the Authority,
 - (2) Used in whole or in part by the Authority for manufacture, or
 - (3) Used by a party other than the Authority except for: (i) emergency repair or overhaul, (ii) where the item or process concerned is not otherwise reasonably available to the Authority to enable timely performance of the work, or:
 - (iii) administration of this contract or the inspection or verification of the product produced under this contract where the third party has a written contract with the Authority to perform these efforts. In all cases described in this subsection, the release or disclosure outside of the Authority shall be subject to a written prohibition against further use, release or disclosure by the party receiving the technical data.
- d. Technical data provided in accordance with the provisions of paragraph b. shall be identified by a legend which suitably recites the aforesaid limitation. Nothing herein shall impair the right of the Authority to use similar or identical data acquired from other sources.
- e. Where any item is purchased as a separate line item in the contract, that purchase includes all integral parts of that item, including any computer software, source codes, algorithms, processes, formulae, and flow charts. As such, the Authority has full rights to use, duplicate or disclose any or all parts of the item, including computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so. Should disclosure of the computer software be required only under this paragraph, then the Contracting Officer may waive the provisions of this paragraph if he certifies in writing that the item is commercially available from multiple sources and the product from any of those sources will be fully compatible with existing Authority property.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

- f. The term technical data as used in this article means technical writing, computer software, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether or not copyrighted, which are specified to be delivered pursuant to this Contract. The term does not include financial reports, cost analyses, and other information incidental to Contract administration. Computer software as used in this article means computer programs, computer data bases, and documentation thereof.
- g. Material covered by copyright:
- (1) The Offerors agrees to and does hereby grant to the Authority, and to its officers, agents and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Authority purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all (i) technical data and (ii) computer software covered by Article 25.a.(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 Article 25.a.(5) furnished hereunder without the written permission of the copyright owner for the Authority to use such copyrighted matter in the manner above described.
 - (3) The Offerors shall report to the Authority (or higher-tier Offerors) promptly and in reasonable written detail each notice or claim of copyright infringement received by the Offerors with respect to any (i) technical data or (ii) computer software covered by Article 25.a.(5) provided to the Authority.
- g. Relation to patents: Nothing contained in this article shall imply a license to the Authority under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Authority under any patent.
- h. Any dispute under this article shall be subject to the Disputes article of this contract.
- h. Notwithstanding any other payment provision in this contract, the Contracting Officer may retain from payment up to 10 percent of the contract price until final delivery and acceptance of the technical data defined in this article and as required to be furnished by the bid schedule or the contract specification.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

30. LIQUIDATED DAMAGES (NOT APPLICABLE)

31. FORCE MAJEURE CLAUSE

The Offerors' right to proceed shall not be so terminated nor did the Offerors charge with resulting damage under the following circumstances:

- a. If the delay in performing this work arises from unforeseeable causes beyond the control and without the fault or negligence of the Offerors, including, but not restricted to, acts of God, acts of the public enemy, acts of the Authority in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of sub-Offerors or suppliers at any tier arising from causes other than normal weather beyond the control and without the fault or negligence of both the Offerors and such sub-Offerors or suppliers.
- b. The rights and remedies of the Authority provided in this Section are in addition to any other rights and remedies provided by law or under this Contract.

32. SITE VISIT/INSPECTION

Offerors must provide and maintain sufficient facilities that will allow them to adequately perform contract functions as specified herewith. WMATA may make site visits prior to contract award to examine the Offerors' facilities. This will include **evaluation of the Offerors' capabilities**, and also to verify that proper equipment, supplies, etc. are readily available. Facilities(s) must demonstrate that Offerors has the capability to perform the work described in the Scope of Services.

33. GARNISHMENT OF PAYMENTS

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

34. GOVERNING LAW

This contract shall be deemed to be an agreement under and shall be governed by the law of the District of Columbia, exclusive of its conflict of law principles, and the common law of the U.S. Federal contracts including precedents of the Federal Boards of Contract Appeals.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

35. SAFETY REQUIREMENTS

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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

- f. The Offerors shall follow all appropriate RAIL Operational Rules, OAPs, SOPs and General and Special Orders while on the operational railroad and all Start-Up Rules and Manager's Notices when in a declared start-up area.

36. LIVING WAGE

This contract is subject to the Authority's Living Wage Policy and implementing regulations. The Living Wage provision is required in all contracts for services (including construction) awarded in an amount that exceeds \$100,000 in a 12-month period.

- a. The Authority Living Wage Rate is \$12.81 per hour, and may be reduced by the Offerors' per-employee cost for health insurance.
- b. The Offerors shall:
- (1) Pay, at a minimum, the Authority Living Wage Rate, effective during the time the work is performed, to all employees who perform work under this contract, except as otherwise provided in paragraph (d) below;
 - (2) Include the Living Wage clause in all sub-Offerors that exceed \$15,000 in a 12-month period awarded under this contract;
 - (3) Maintain payroll records, in accordance with the retention and examination of records requirements in the General Provisions, and shall include a similar provision in affected subcontracts that requires the sub-Offerors to maintain its payroll records for the same length of time; and
 - (4) Submit records with each monthly invoice supporting payment of the Living Wage Rate.
- c. The Offerors shall not split or subdivide a contract, pay an employee through a third party, or treat an employee as a sub-Offerors or independent Offerors to avoid compliance with the Living Wage provisions.
- d. Exemptions to the Living Wage provisions include:
- (1) Contracts and agreements with higher negotiated wage rates,
 - (2) Contracts that are subject to higher wage rates required by federal law or collective bargaining agreements (e.g., Davis Bacon);
 - (3) Contracts or agreements for regulated utilities;

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

- (4) Emergency services to prevent or respond to a disaster or imminent threat to public health and safety; and
 - (5) Offerors who employ fewer than ten (10) employees.
- e. The Authority may adjust the Living Wage rate effective in January of each year. The adjustment will reflect the average Living Wage Rate among Metro's Compact Jurisdictions with Living Wage provisions. If after contract award the Living Wage Rate increases, the Offerors is entitled to an equitable adjustment to the rate in the amount of the increase for employees who are affected by the escalated wage.
- g. Failure to comply with the Authority's Living Wage provisions shall result in the Authority's right to exercise available contract remedies, including contract termination or debarment from future contracts.

37. METRIC SYSTEM

To the extent U.S. DOT or FTA directs, the Offerors agrees to use the metric system of measurement in its Project activities, in accordance with the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. 205a et seq; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. 205a note; and applicable U.S. DOT or FTA regulations in accordance with applicable Federal directives. As practicable and feasible, the Offerors 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.

38. NOTICE OF FEDERAL PARTICIPATION

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

39. REQUIREMENTS – NOT APPLICABLE

40. ORDERING – (NOT APPLICABLE)

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

41. WHISTLEBLOWER PROTECTION

- (a) The Offerors and its sub-Offerors shall encourage their employees and independent Offerors 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
- (b) law; abuse of authority in connection with the conduct of Metro operations or contracts; or a substantial and specific danger to health, security or safety. The Offerors and its sub-Offerors 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 (202-962-2400) or email hotline.oig@wmata.com 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 Offerors reasonably believes has the authority to act on the matter.
- (c) The Offerors, its employees, independent Offerors and sub-Offerors 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
- (d) provision of this Contract, and with any enforcement or judicial proceeding arising from such inquiry or review.
- (e) The Offerors and its sub-Offerors shall not interfere with or deny the right of any employee or independent Offerors of either the Offerors or any of its sub-Offerors to make a report under paragraph (a). The Offerors and its sub-Offerors shall not recommend, take or threaten to take any action having a negative or adverse impact on any employee or independent Offerors of either the Offerors or any of its sub-Offerors because he or she:
 - (1) made or is perceived to have made a report under paragraph (a);
 - (2) sought a remedy under applicable law after making a report under paragraph (a);
 - (3) participated in or cooperated with an inquiry or review by an authorized official of Metro, or by the federal government or any other governmental entity with jurisdiction over Metro, regarding a matter that would constitute a report under

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

- 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 sub- Offerors of the condition and of the intent not to perform or authorize work.

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

42. DRUG AND ALCOHOL TESTING

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

43. PACKING AND MARKING

- Unless otherwise Authorized / Directed by WMATA or the Authorities Representative, packing and markings will, at a minimum, be compliant with industry commercial standards in accordance with ASTM-D395I-98, Practice for Commercial Packing.
- All packing slips shall contain the following information at minimum unless otherwise Authorized/Directed by WMATA or the Authorities Representative:
 - Supplier Name and Address,
 - Supplier Contact Information,
 - Delivery Order Release (DOR) Number,
 - WMATA Stock Number,
 - Item Number from the DOR,
 - Manufacturers Part Number,
 - Quantity Ordered,
 - Quantity Shipped and Unit of Measure,
 - Shipping Date, Contract Number,
 - Purchase Order Number,
 - Shipping Weight,
 - Expiration Date, if applicable
 - MSDS Identifier, if applicable
 - Serial Number, if applicable
 - Lot Traceability information, if applicable

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

44. TECHNOLOGY FOR SOURCING

WMATA uses PeopleSoft Purchasing applications to create and maintain purchase requisitions and purchase orders. WMATA also uses Purchasing Cards (P-cards) to pay suppliers for filled purchase orders. Offerors with the following capabilities will be given preference.

Technology Capabilities of Supplier(s)

WMATA has implemented PeopleSoft Purchasing and Strategic Sourcing modules for purchasing transaction processing. Suppliers(s) selected for sourcing must have the following technical capabilities:

1. Ability to provide WMATA with punch-out or transparent punch-out capabilities to the bidder's web site or through a business to business portal, such as Oracle Exchange
2. Provide WMATA with an item catalog, and a content management process to ensure current and accurate content
3. Ability to exchange data electronically for the following transactions, through EDI (Electronic Data Interchange)
 - Purchase Orders (ANSI-X12 Format, 850 Transaction Set)
 - Purchase Order Acknowledgements (ANSI-X12 Format, 855 Transaction Set)
 - Advance Shipment Notice (ANSI-X12 Format, 856 Transaction Set)
 - Invoice (ANSI-X12 Format, 810 Transaction Set)
 - Receiving Advice (ANSI-X12 Format, 861 Transaction Set)
4. Ability to accept ACH (Automatic Clearing House) payments

In addition to the above, P-Card Suppliers should have the following abilities:

1. Accept MasterCard for payment (as a P-card Transaction)
2. Pass Level II or Level III data in the credit card transaction with the purchase order number in the customer order attribute.

45. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS – NOT APPLICABLE

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS RIDER CLAUSE

USE OF CONTRACT(S) BY MEMBERS COMPRISING THE METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS PURCHASING OFFICERS' COMMITTEE.

- A. If authorized by the bidder(s), resultant contract(s) will be extended to any or all of the listed members as designated by the bidder to purchase at contract prices in accordance with contract terms.
- B. Any member utilizing such contract(s) will place its own order(s) directly with the successful contractor. There shall be no obligation on the part of any participating member to utilize the contract(s).
- C. A negative reply will not adversely affect consideration of your bid/proposal.
- D. It is the awarded vendor's responsibility to notify the members shown below of the availability of the Contract(s).
- E. Each participating jurisdiction has the option of executing a separate contract with the Awardee. 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. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the Awardee, the Awardee may withdraw its extension of the award to that jurisdiction.
- F. The issuing jurisdiction shall not be held liable for any costs or damages incurred by another jurisdiction as a result of any award extended to that jurisdiction by the Awardee.

BIDDER'S AUTHORIZATION TO EXTEND CONTRACT:

YES NO JURISDICTION

- Alexandria, Virginia
- Alexandria Public Schools
- Alexandria Sanitation Authority
- Arlington County, Virginia
- Arlington County Public Schools
- Bladensburg, Maryland
- Bowie, Maryland
- Charles County Public Schools
- College Park, Maryland
- Culpeper County, Virginia
- District of Columbia
- District of Columbia Courts
- District of Columbia Public Schools

YES NO JURISDICTION

- Gaithersburg, Maryland
- Greenbelt, Maryland
- Herndon, Virginia
- Leesburg, Virginia
- Loudoun County, Virginia
- Loudoun County Public Schools
- Loudoun County Sanitation Authority
- Manassas, Virginia
- City of Manassas Public Schools
- Manassas Park, Virginia
- Maryland-National Capital Park & Planning Comm.
- Metropolitan Washington Airports Authority

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT
TRACK PRODUCTION (TRST)

Production Spot Tamping Machine

RFP NO: FQ12120/MC

___ ___ District of Columbia Water & Sewer Auth.
___ ___ Fairfax, Virginia
___ ___ Fairfax County, Virginia
___ ___ Fairfax County Water Authority
___ ___ Falls Church, Virginia
___ ___ Fauquier County Schools & Government,
Virginia
___ ___ Frederick, Maryland
___ ___ Frederick County, Maryland

___ ___ Metropolitan Washington Council of
Governments
___ ___ Montgomery College
___ ___ Montgomery County, Maryland
___ ___ Montgomery County Public Schools
___ ___ Northern Virginia Community College
___ ___ Omni Ride
___ ___ Potomac & Rappahannock Trans. Comm.
___ ___ Prince George's County, Maryland

YES NO JURISDICTION

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

Vendor Name

DATE