

# SOLICITATION, OFFER AND AWARD

1.

RATING

PAGE

OF

PAGES

2. CONTRACT NUMBER	3. SOLICITATION NUMBER	4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFP)	5. DATE ISSUED	6. REQUISITION/PURCHASE NUMBER
7. ISSUED BY	CODE	8. ADDRESS OFFER TO (If other than item 7)		

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

## SOLICITATION

9. Sealed offers in original and \_\_\_\_\_ copies for furnishings the supplies or services in the Schedule will be received at the place specified in item 8, or if hand carried, in the depository located in \_\_\_\_\_ until \_\_\_\_\_ local time \_\_\_\_\_ (Hour) \_\_\_\_\_ (Date)

CAUTION - LATE Submissions, Modifications, and Withdrawals: See Section L, PPM Section 9-18 or 10-14. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL:	A. NAME	B. TELEPHONE (NO COLLECT CALLS)			C. E-MAIL ADDRESS
		AREA CODE	NUMBER	EXTENSION	

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## OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes PPM Section 9-6, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within \_\_\_\_\_ calendar days (90 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13.	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
14. ACKNOWLEDGMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated):				
15A. NAME AND ADDRESS OF OFFEROR	CODE	FACILITY	16. NAME AND THE TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)	
15B. TELEPHONE NUMBER		<input type="checkbox"/> 15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.	17. SIGNATURE	18. OFFER DATE
AREA CODE	NUMBER			

## AWARD (To be completed by WMATA)

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION	
22. AUTHORITY FOR USING OTHER THAN FULL OPEN COMPETITION: <input type="checkbox"/> WMATA Compact, Section 73(c) <input type="checkbox"/> PPM, Section 11-3		23. SUBMIT INVOICES TO ADDRESS SHOWN IN	ITEM
24. ADMINISTERED BY (If other than Item 7)		25. PAYMENT WILL BE MADE BY	CODE
26. NAME OF CONTRACTING OFFICER (Type or print)		27. WMATA  (Signature of Contracting Officer)	28. AWARD DATE

## SECTION I: CONTRACT CLAUSES

ALL CONTRACTUAL CLAUSES REQUIRED BY THE WMATA COMPACT, DOT, AS SET FORTH IN FTA CIRCULAR 4220.1 OR ANY REVISION THERETO, ARE HEREBY INCORPORATED BY REFERENCE. PLEASE SELECT THE APPLICABLE CLAUSE:

### I.1 ACCESS TO THIRD PARTY CONTRACT RECORDS – FTA

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

### I.2 ALL NECESSARY FEDERAL PROVISIONS DEEMED INCLUDED

It is the intent of the parties that each and every provision of law required to be inserted in this Contract should be and is hereby inserted herein.

### I.3 AMERICANS WITH DISABILITIES ACT ACCESSIBILITY

- (a) The Contractor agrees that it will operate public transportation services in compliance with 42 U.S.C. § 12101 *et. seq.*; DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)" using facilities and equipment that comply with 49 C.F.R. Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38. Private entities must comply with the requirements of 49 CFR Part 37 applicable to public entities with which they contract to provide public transportation services.
- (b) Facilities to be used in public transportation service must comply with 42 U.S.C. § 12101 *et. seq.*; DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37; and Joint ATBCB/DOT regulations,

“Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. Part 1192 and 49 C.F.R. Part 38.

**I.4 ASSIGNMENT**

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

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

- (a) Authorized persons. The Contracting Officer and his or her representatives, including representatives of the Authority’s governing jurisdictions, any 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.
- (b) Examination of costs. The Contractor shall maintain, and the Contracting Officer shall have the right to examine and audit, all records sufficiently to properly reflect all costs incurred or anticipated to be incurred, directly or indirectly in performance of this Contract. This right of examination shall include inspection of the Contractor’s facilities at all reasonable times while engaged in performing this Contract.
- (c) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this Contract, the Contracting Officer shall have the right to examine and audit all of the Contractor’s records related to: (1) any proposal for this Contract, subcontract, or modification; (2) any clarifications or discussions conducted on the proposal; (3) pricing of the Contract,

subcontract or modification; or (4) performance of the Contract, subcontract or modification.

- (d) Availability. The accounts, records and cost information required to be originated under this Contract, together with all other accounts, records and cost information related to this Contract, shall be maintained and made available by the Contractor and subcontractor(s):
  - (1) At their offices, at all reasonable times, for inspection, audit, reproduction or such other purposes as may be required by the Contracting Officer, by anyone he or she authorizes or pursuant to any other provision of this Contract; and
  - (2) Except to the extent otherwise expressly set forth in this Contract, until three (3) years from the date of final payment under this Contract. If this Contract is completely or partially terminated, such records shall be maintained for a period of three (3) years from either the date of any resulting final settlement or the date of final payment, whichever is later. If a pricing adjustment results in any dispute or litigation related to this Contract, such records shall be maintained for a period equal to the later of three (3) years from the date of final payment or one (1) year following the final disposition of the dispute or litigation.
- (e) Subcontracts. The Contractor shall insert this clause, in all subcontracts that exceed \$150,000.

**I.6 THE AUTHORITY'S DELAY**

- (a) If the performance of all or any part of the Contract is delayed in a material manner or extent by an act or omission of the Authority that is not expressly or impliedly authorized by this Contract or by applicable provisions of law, the Contracting Officer shall make an adjustment (excluding profit) for any increase in the cost of performance of this Contract caused by such delay and shall modify the Contract, in writing. The Contracting Officer shall make an adjustment to the delivery or performance dates and any other Contractual provision, if such delay or interruption affected Contract compliance. The Contracting Officer shall make no adjustment under this Contract for any delay or interruption, if performance was or could have been delayed by any other cause, including, without limitation: (i) the fault or negligence of the Contractor or any subcontractor; (ii) an act constituting a force majeure event pursuant to this Contract; or (iii) any other cause for which an adjustment is provided under any other clause of this Contract, at law or in equity..
- (b) An adjustment pursuant to paragraph (a) shall not be allowed:
  - (1) For any costs incurred more than twenty (20) days before the Contractor notifies the Contracting Officer, in writing, of the delay.
  - (2) Unless the claim, in a sum certain, is asserted in writing as soon as practicable after the termination of the delay. In no event, shall a Contractor assert a delay claim later than thirty (30) days after its termination. The delay claim shall be accompanied by appropriate documentation, specifically supporting the nature and extent of the claimed impact upon the cost and/or

time required for performance. In any instance where it is not possible for the Contractor to fully project such impact within the thirty (30) day period, it shall support the claim with such documentation as is then reasonably available along with a statement of the anticipated time frame when the Contractor expects to provide the additional materials. The Contracting Officer shall maintain the right throughout the process to request such additional materials as he or she shall reasonably require in consideration of the claim and shall be under no obligation to conclude his or her consideration of the claim prior to review of all relevant materials. Any adjustment to the Contract price pursuant this clause must be determined prior to final payment under this Contract.

**I.7 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR**

Funds are not guaranteed for performance under this Contract beyond the current fiscal year that ends on June 30th. The Authority's obligation for performance of this Contract beyond that date is contingent upon the availability of funds from which payment for Contract purposes can be made. The Authority will not be liable for any payment under this Contract, until funds are made available to the Contracting Officer and until the Contractor receives notice in writing. Any option that the Authority may exercise, in whole or in part, in a subsequent fiscal year is subject to availability of funds in that fiscal year and will be governed by the terms of this clause.

**I.8 BONDING FOR CONSTRUCTION PROJECTS EXCEEDING \$150,000**

NOT APPLICABLE

**I.9 BUS TESTING – FTA**

Contractor shall comply with 49 U.S.C. § 5323(c), applicable amendments of MAP-21, and FTA's implementing regulations at 49 C.F.R. Part 665 and shall perform the following:

- (a) A manufacturer of a new bus model or a bus produced with a major change in components or configuration, shall provide a copy of the final test report to WMATA prior to WMATA's final acceptance of the first vehicle.
- (b) A manufacturer who releases a report under paragraph (1) above shall provide notice to the operator of the testing facility that the report is available to the public.
- (c) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold must have the identical configuration and major components as the vehicle in the test report, which must be provided to WMATA prior to its final acceptance of the first vehicle. If configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

**I.10 BUY AMERICA ACT – FTA**

The Contractor agrees to comply with 49 U.S.C. § 5323(j) and 49 C.F.R. Part 661, which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7, and include final assembly in the United States for fifteen (15) passenger vans and fifteen (15) passenger wagons produced by the Chrysler Corporation, microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11. Rolling stock must be assembled in the United States and have a sixty percent (60%) domestic content.

**I.11 CARGO PREFERENCE – FTA**

The Contractor agrees:

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

**I.12 CHANGES TO FEDERAL REQUIREMENTS – FTA**

- (a) Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation, those listed directly or by reference in the FTA Master Agreement (Form FTA MA (21) dated October 1, 2014) between the Authority and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.
- (b) Flow-down requirement. The Contractor agrees to include this clause in each subcontract financed, in whole or in part, with federal assistance provided by FTA. It is further agreed that this clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**I.13 CHARTER BUS REQUIREMENTS – FTA**

NOT APPLICABLE

**I.14 CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE**

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

**I.15 CLEAN AIR ACT – FTA**

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

**I.16 CLEAN WATER ACT – FTA**

- (a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act, as amended, 33 U. S. C. §§1251-1377.. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (b) The Contractor will protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§300 (f)-(j).
- (c) The Contractor will comply with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C.§ 1368.

- (d) The Contractor will facilitate compliance with Executive Order 11738, "Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants or Loans," 42 U.S.C. §7606 note.
- (e) Flow-down requirement. The Contractor also agrees to include this clause in each subcontract exceeding \$150,000 financed, in whole or in part, with federal assistance provided by FTA.

**I.17 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION**

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

- (a) Overtime requirements. No Contractor or subcontractor contracting for any part of the work that may involve the employment of laborers, mechanics, apprentices, trainees, watchmen, and guards shall require or permit any such employee in any workweek in which he or she is so employed to work in excess of forty (40) hours on work subject to the provisions of the Contract Work Hours and Safety Standards Act, unless such employee receives compensation at a rate not less than one and one-half (1 1/2) times his or her basic rate of pay for all hours worked in excess of forty (40) hours in such work week.
- (b) Violation. Liability for Unpaid Wages - Liquidated damages. In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible therefore shall be liable to any affected employee for his or her unpaid wages. In addition, such Contractor and subcontractor shall be liable to the Authority for liquidated damages. Liquidated damages shall be computed with respect to each individual laborer, mechanic, apprentice, trainee, watchman or guard employed in violation of the provisions of paragraph (a), in the sum of \$10 for each calendar day on which such employee was employed on such work in excess of his or her standard work week of forty (40) hours without payment of the overtime wages required by paragraph (a).
- (c) Withholding for unpaid wages and liquidated damages. The Contracting Officer may withhold from the Contractor, such sums as the Contracting Officer determines to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).
- (d) Subcontracts. The Contractor shall insert this clause in all subcontracts at any tier.
- (e) Records. The Contractor shall maintain payroll records containing the information specified in 29 C.F.R. § 516.2(a). Such records shall be preserved for three (3) years from the completion of this Contract.

**I.18 CONTRACTOR PERSONNEL**

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

### **I.1 PRIVACY ACT REQUIREMENTS – FTA**

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the federal government under any Contract:

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

### **I.20 CONVICT LABOR**

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

Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if:

- (i) The worker is paid or is in an approved work or training program on a voluntary basis;
- (ii) Representatives of the local union's 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 where 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 where 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.

**I.21 COVENANT AGAINST CONTINGENT FEES**

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

If fraud is suspected, the Authority's only remedy is to report the matter to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any agency providing funding under this Contract and/or appropriate federal, state and/or local law enforcement authorities.

**I.22 DAVIS-BACON ACT**

NOT APPLICABLE

**COPELAND ANTI-KICKBACK ACT**

The Contractor agrees to comply with section 1 of the Copeland "Anti-Kickback Act," 18 U.S.C. § 874 that prohibits anyone from inducing, by any means, any person employed on construction, prosecution, completion or repair of a federally assisted building or work, to give up any part of his or her compensation to which he or she is entitled. Contractor further agrees to comply with section 2 of the Act, 40 U.S.C. §3145, as amended, and implementing DOL regulations, "Contractors and Subcontractors on Public Building or Public Works Financed in Whole or in Part, by Loans or Grants from the United States." Contractor agrees

to comply with 29 C.F.R. Part 3 which imposes record keeping requirements for all such contracts in excess of \$2,000.

**I.23 DISPUTES**

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

**I.24 DRUG AND ALCOHOL TESTING (FOR SAFETY SENSITIVE FUNCTIONS ONLY)**

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

- (a) To certify its compliance with 49 C.F.R. Parts 40 and 655 and to submit a Management Information System (MIS) report, as required by federal regulations, to WMATA's Medical Compliance Monitor (MCM) and the Contracting Officer before February 15th of each year. To certify compliance, the Contractor shall use the "Alcohol and Controlled Substances Testing" certification contained in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," that is published annually in the Federal Register.

- (b) To submit to the MCM and the Contracting Officer before February 15th of each year, a copy of the Policy Statement developed to implement its drug and alcohol testing program.
- (c) To provide to the MCM and the Contracting Officer before February 15th of each year the following:
  - (1) Employee and supervisor training documentation;
  - (2) The name and location of the collection site(s), laboratory(ies), Medical Review Officer(s), Breath Alcohol Technician(s), Collector(s), and Substance Abuse Professional(s); and a description of their random selection drug and alcohol testing process.
- (d) The Contractor further agrees to submit quarterly management reports summarizing test results to the MCM and the Contracting Officer by the 15th of the month following the end of each quarter.

**I.25 EMPLOYMENT RESTRICTION WARRANTY**

- (a) The Contractor warrants that it will not offer employment to, solicit or discuss the interest of prospective employment of, or otherwise engage in substantive employment related discussions or communications with, any present or former Board member or employee of the Authority who has been involved, directly or indirectly, in any matter of financial interest to the Contractor until at least one (1) year after the Board member or employee has ceased involvement in the matter. The Contractor shall not knowingly engage in communications of the nature described above with any immediate family member or member of the household of any Authority employee or Board member during the period when such employee or Board member is involved in any matter of financial interest to the Contractor.
- (b) If a former Board member or employee of the Authority is eventually hired, the Contractor shall ensure that the former Board member or employee is not involved in negotiating or otherwise dealing with the Authority on any particular matter over which he or she had responsibility during his or her tenure.
- (c) Should the Contractor fail to comply with the provisions hereof, and no fraud is suspected, the Contracting Officer shall have the right to withhold payment under this Contract in an amount not to exceed two percent (2%) of the total Contract amount as liquidated damages to the Authority, such withholding to be in addition to any other withholding or retainage under this Contract. Any dispute shall be settled in accordance with the "Disputes" clause of this Contract.
- (d) If fraud is suspected, the Authority's only remedy prior to a final decision by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any state or federal agency providing funding under this Contract and/or appropriate federal, state and/or local law enforcement authorities.

**I.26 ENERGY CONSERVATION**

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

**I.27 EXTENSIONS OF TIME/FORCE MAJEURE**

- (a) For purposes of this clause, the term "force majeure" shall mean an unforeseen event or circumstance, beyond the control of, and not occasioned by the fault or negligence of, the Contractor or the Authority, that gives rise to a delay in the progress of the Contract, including, without limitation, acts of God, acts of war or insurrection, unusually severe weather, fires, floods, strikes, freight embargoes or other events or circumstances of like nature.
- (b) Notwithstanding the provisions of the "Liquidated Damages" clause of this Contract (if applicable), if the Contractor is delayed at any time during the performance of the Contract, by the Authority's negligence or by a force majeure event, then the time for completion and/or affected delivery date(s) shall be extended by the Contracting Officer, in the following circumstances:
  - (1) The cause of the delay arises after the award of the Contract and neither was nor could have been anticipated by the Contractor by reasonable investigation before such award;
  - (2) The Contractor demonstrates to the Contracting Officer that the completion of the work and/or affected delivery(ies) will be actually and necessarily delayed;
  - (3) The delay cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures available to the Contractor, whether before or after the cause of delay; and
  - (4) The Contractor makes a written request and provides other information to the Contracting Officer as described below.
- (c) In the event the Contractor will be delayed at any time or for any period by two (2) or more of the above-mentioned causes, the Contractor shall not be entitled to a separate extension for each cause, but shall be entitled to only one (1) period of extension for the cumulative effects of the delay.
- (d) The Contracting Officer may rescind or shorten any extension previously granted, if he or she subsequently determines that any information provided by the Contractor in support of a request for an extension of time was erroneous, if, accurate information would have resulted in a denial of the request for an excusable delay. The Contracting Officer will not rescind or shorten any extension previously granted, if the Contractor acted in reliance upon it and if, in the judgment of the Contracting Officer, such extension was based on information that , the Contractor submitted in good faith, even if it is later determined to be erroneous.
- (e) The request for an extension of time pursuant to paragraph (a) shall be made within ten (10) days after the Contractor knows or should know of any cause for which it

may claim an excusable delay. The Contractor's request shall contain any actual or potential basis for an extension of time, describing, as fully as possible, the nature and projected duration of the delay and its effect on the completion of the work identified in the request. Within thirty (30) days of his or her receipt of all such information, the Contracting Officer shall advise the Contractor of his or her decision on such requested extension. Where it is not reasonably practicable for the Contracting Officer to render his or her decision in the thirty (30) day period, he or she shall, prior to the expiration of such period, advise the Contractor that he or she will require additional time and state the approximate date upon which her or she expects to render a decision.

- (f) In no event shall a delay in performance of the Contract occasioned solely by a force majeure event or the acts or omissions of any party outside the control of the Contractor be the basis for a "Termination for Default" pursuant to this Contract. In no event shall a subcontractor at any tier be deemed a party outside the control of the Contractor.

#### **I.28 FALSE STATEMENTS OR CLAIMS CIVIL AND CRIMINAL FRAUD**

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

#### **I.29 FALSE STATEMENTS, CLAIMS OR SUBMISSIONS**

- (a) The Contractor acknowledges its responsibility to undertake its obligations under this publicly funded contract with full integrity and, to take all reasonable steps to ensure that statements, claims and submissions made pursuant to the Contract are provided

in good faith and with a reasonable belief as to their truthfulness, accuracy and completeness.

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

**I.30 FEDERAL, STATE, AND LOCAL TAXES**

- (a) Except as may be otherwise provided in this Contract, the Contract price shall be deemed to include all applicable federal, state and local taxes and duties.
- (b) Notwithstanding paragraph (a), with respect to any federal excise tax or duty on the transactions or property covered by this Contract, if a statute, court decision, written ruling or regulation takes effect after the Contract date, and:
  - (1) Results in the Contractor being required to pay or bear the burden of any such federal excise tax or duty or increase in the rate thereof that would not otherwise have been payable on such transactions or property, the Contract price shall be increased by the amount of such tax or duty or rate increase, provided that the Contractor warrants in writing that no amount for such newly imposed federal excise tax or duty or rate increase was included in the Contract price as a contingency reserve or otherwise; or
  - (2) Results in the Contractor not being required to pay or bear the burden of, or in its obtaining a refund or drawback of, any federal excise tax or duty that would otherwise have been payable on such transactions or property or that was the basis of an increase in the Contract price, the Contract price shall be decreased by the

amount of the relief, refund, or drawback, or that amount shall be paid to the Authority, as directed by the Contracting Officer. The Contract price shall be similarly decreased, if the Contractor, through its fault or negligence or his failure to follow the Contracting Officer's instructions, is required to pay or bear the burden of, or does not obtain a refund or drawback of, any such federal excise tax or duty.

- (c) Paragraph (b) above shall not be applicable to social security taxes or to any other employment tax.
- (d) No adjustment of less than \$250 shall be made in the Contract price pursuant to paragraph (b).
- (e) As used in paragraph (b) the term "Contract date" means the date the Contract was executed by the Authority. As to additional services, supplies or construction procured by modification to this Contract, the term "Contract date" means the effective date of such modification.
- (f) The Contractor shall promptly notify the Contracting Officer of matters that may result in either an increase or decrease in the Contract price under this clause and shall take action as the Contracting Officer directs. 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.

**I.31 FLY AMERICA REQUIREMENTS**

- (a) The Contractor agrees to comply with 49 U. S. C. § 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. § 301-10, which provide that recipients and sub-recipients of federal funds and their contractors are required to use U. S. flag carriers for U. S. government financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. If a foreign air carrier was used, the Contractor shall submit, an appropriate certification or memorandum adequately explaining why service by a U. S. flag carrier was not available or why it was necessary to use a foreign air carrier and shall, , provide a certificate of compliance with the Fly America Act's requirements.
- (b) Flow-down requirement. The Contractor agrees to include the requirements of this clause in all subcontracts that may involve international air transportation.

**I.32 GOVERNMENT-WIDE DEBARMENT OR SUSPENSION**

- (a) The Contractor is bound by its certification contained in its offer to the Authority that neither the Contractor, its principals, or affiliates, are suspended, debarred, proposed for debarment or otherwise excluded or disqualified. The certification is a material representation of fact, relied upon by the Authority in entering into this Contract. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the Authority, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. The

Contractor agrees to comply with the requirements of 2 C.F.R, part 180, subpart C as adopted and supplemented by U.S. DOT regulations at 2 C.F.R, part 1200 “Nonprocurement Suspension and Debarment,” including any amendments thereto, Executive Orders Nos. 12549 and 12689 “Debarment and Suspension” 31 U.S.C. §6101 note, and other applicable federal laws, regulations or guidance regarding participation with debarred or suspended contractors throughout the term of this Contract.

- (b) Flow-down requirement. The Contractor agrees to include this clause in all subcontracts at all tiers under this Contract requiring lower tier contractors to comply with federal suspension and debarment requirements, and review the System for Award Management (SAM) at [www.sam.gov](http://www.sam.gov) in order to comply with U.S. DOT regulations at 2 C.F.R,part 1200 prior to awarding any subcontract under this Contract.

**I.33 GRATUITIES**

- (a) In connection with performance of this Contract, or any changes or modifications relative thereto, the giving of or offering to give gratuities (in the form of entertainment, gifts or otherwise) by the Contractor, or any agent, representative or other person deemed to be acting on behalf of the Contractor, or any supplier or subcontractor furnishing material to or performing work under this Contractor, to any Board member, employee or agent of the Authority; with a view toward securing this Contract or securing favorable treatment regarding this Contract is expressly forbidden. The terms of this “Gratuities” clause shall be strictly construed and enforced in the event of violations hereof.
- (b) Reported instances of the giving or offering to give gratuities within the context of this “Gratuities” clause will be investigated by the Authority’s Board of Directors or its duly authorized representative. A preliminary investigation will be made to determine whether there is probable cause to suspect that a violation of this clause exists. If such probable cause exists, the Board of Directors, or its duly authorized representative, shall formally notify WMATA’s Office of Inspector General (OIG), the U.S. Department of Transportation’s Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any state or federal agency providing funding under this Contract and/or appropriate federal, state and/or local law enforcement authorities.
- (c) The rights and remedies of the Authority provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided under this Contract, at law or in equity.

**I.34 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA**

- (a) The Contractor agrees to submit a Material Safety Data Sheet (Department of Labor Form OSHA-20), as prescribed in Federal Standard No. 313B, for all hazardous materials five (5) days before delivery of the material, whether or not listed in Appendix A of the Standard. This obligation applies to all materials delivered under this Contract that involve exposure to hazardous materials or items containing these materials.

- (b) "Hazardous material," as used in this clause, is defined in Federal Standard No. 313B, in effect on the date of this Contract.
- (c) Neither the requirements of this clause nor the Authority's acts or omissions shall relieve the Contractor of any responsibility or liability for the safety of the Authority's, personnel or property.
- (d) Nothing contained in this clause shall relieve the Contractor from complying with applicable federal, state, and local laws, codes, ordinances, and regulations (including the requirement to obtain licenses and permits) in connection with hazardous materials.
- (e) The Authority's rights in data furnished under this Contract regarding hazardous materials are as follows:
  - (1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to (i) apprise personnel of the hazards that they may be exposed to in using, handling, packaging, transporting, or disposing of hazardous materials (ii) obtain medical treatment for those affected by the materials; and (iii) have others use, duplicate, and disclose the data for the Authority for these purposes.
  - (2) To use, duplicate, and disclose data furnished under this clause in accordance with subparagraph (e)(1) above, in precedence over any other provision of this Contract providing for rights in data.
  - (3) The Authority is not precluded from using similar or identical data acquired from other sources.
  - (4) The data shall not be duplicated, disclosed, or released outside the Authority, in whole or in part, for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this Article applies -  
  
"This data furnished under this Contract shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of the Contracting Officer. This legend shall be marked on any reproduction of this data."
  - (5) The Contractor shall not place any restrictive legend on any data that (i) the Contractor or any subcontractor previously delivered to the Authority without limitations; or (ii) should be delivered without limitations under the "Rights in Technical Data" clause.
- (f) The Contractor shall insert this clause, including this paragraph, with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase orders) under this Contract involving hazardous materials.

**I.35 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

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

Circular 4220.1F and FTA Master Agreement (21), October 1, 2014 or any revision thereto, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all DOT or FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests that would cause the Authority to be in violation of the FTA's terms and conditions.

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

**I.36 LAWS AND REGULATIONS**

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

**I.37 LIVING WAGE**

The Authority's Living Wage Policy and implementing regulations apply with respect to all contracts for services (including construction) awarded in an amount that exceeds \$150,000 in a twelve (12) month period. If this Contract meets those criteria, the following requirements are applicable:

- (a) The Authority's Living Wage Rate is \$13.48 per hour, and may be reduced by the Contractor's per-employee cost for health insurance.
- (b) The Contractor shall:
  - (1) Pay the Authority's Living Wage Rate, effective during the time the work is performed, to all employees who perform work under this Contract;
  - (2) Include this Living Wage clause in all subcontracts that exceed \$15,000 in a twelve (12) month period awarded under this Contract;
  - (3) Maintain payroll records, in accordance with the requirements of this Contract, and include a similar provision in affected subcontracts that requires the subcontractor to maintain its payroll records for the same length of time; and
  - (4) Certify with each monthly invoice that the Authority's Living Wage Rate was paid to affected employees, or if applicable, certify prior to Contract award or Contract extension, if any, that one or more of the exemptions in paragraph (d) below applies.
- (c) The Contractor shall not split or subdivide this Contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor to avoid compliance with this Living Wage clause .
- (d) Exemptions to this Living Wage clause include:

- (1) Contracts and agreements subject to higher wage rates required by federal law or collective bargaining agreements;
  - (2) Contracts or agreements for regulated utilities;
  - (3) Emergency services to prevent or respond to a disaster or imminent threat to public health and safety;
  - (4) Contractor employees who work less than full time; and
  - (5) Contractors who employ fewer than ten (10) employees.
- (e) The Authority may adjust the Living Wage Rate effective in January of each year. The adjustment will reflect the average Living Wage Rate among Metro's Compact jurisdictions with Living Wage Rates. If after Contract award the Living Wage Rate increases, the Contractor is entitled to an equitable adjustment to the Contract price in the amount of the increase for employees who are affected by the escalated wage.
- (g) Failure to comply with the Authority's Living Wage Policy shall result in the Authority's right to exercise available contract remedies, including contract termination, where no fraud is suspected.
- (h) If fraud is suspected, the Authority's only remedy prior to adjudication by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any state or federal agency providing funding under this Contract and/or appropriate federal, state and/or local law enforcement authorities.

**I.38 LOBBYING**

- (a) The Contractor agrees that it will not use federal funds to influence any officer or employee of a federal agency, member of Congress or an employee of a member of Congress or an officer or employee of Congress on matters that involve this Contract or the underlying grant or agreement, including any award, extension or modification.
- (b) Contractor agrees that it will comply with 31 U.S.C. § 1352, as amended, U.S. DOT regulations "New Restrictions on Lobbying" 49 C.F.R, part 20, to the extent consistent with 31 U.S.C. § 1352, as amended and other applicable federal laws, regulation and guidance prohibiting the use of federal funds for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature unless an exception exists in current federal law.
- (b) Flow-down requirement. The Contractor agrees to include these requirements in all subcontracts at all tiers under this Contract.

**I.39 METRIC SYSTEM**

To the extent the federal government directs, the Contractor agrees to use the metric system of measurement in performance of this Contract, in accordance with the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. § 205(a) *et. seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205(a) note; and applicable U.S. DOT or FTA regulations in accordance with applicable federal directives. As practicable and feasible, the Contractor agrees to supply

products and services with dimensions expressed in the metric system of measurement. Metric usage shall not be required if such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms.

**I.40 NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS**

The Contractor agrees to:

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

**I.41 NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES**

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

**I.42 NONDISCRIMINATION ASSURANCE**

- (a) Nondiscrimination Assurance: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000 (d), section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the American with Disabilities Act of 1990, 42 U.S.C. §12132, D.C. law and federal transit law at 49 U.S.C. §5332, the Contractor, sub-recipient, or subcontractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, sexual preference or disability. In addition, the Contractor, sub-recipient, or subcontractor agrees to comply with applicable federal implementing regulations and other regulations that FTA may issue.
- (b) Equal Employment Opportunity: The following equal employment opportunity requirements apply to this Contract.

- (1) Race, Color, Creed, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000(e), and federal transit laws at 49 U.S.C. §5332, the Contractor agrees to comply with all applicable equal opportunity requirements of the U. S. Department of Labor (U.S. DOL) including, but not limited to "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, " 41 C.F.R. Part 60 *et. seq.*, [implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note], and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of this Contract. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements that FTA may issue.
  - (2) Age: In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements that FTA may issue.
  - (3) Disabilities: In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the Contractor agrees that it will comply with the requirements of U. S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements that FTA may issue.
- (c) The Contractor also agrees to include all of these requirements in each subcontract financed, in whole or in part, with federal assistance provided by FTA, modified only, if necessary, to identify the affected parties.
  - (d) Failure by the contractor, sub-recipient, or subcontractor to carry out these requirements is a material breach of this Contract, that may result in the termination or such other remedy as the Authority deems appropriate.

**I.43 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT**

- (a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on this Contract once the Contractor is notified thereof.

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

**I.44 NOTICE TO THE AUTHORITY OF LABOR DISPUTES**

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

**I.45 NOTIFICATION OF FEDERAL PARTICIPATION**

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

**I.46 OFFICIALS NOT TO BENEFIT**

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

**I.47 ORDER OF PRECEDENCE**

- (a) Any inconsistency in this Contract shall be resolved by giving precedence in the following order: (a) The Schedule consisting of Sections A-H, but excluding the Specifications in Section C; (b) Representations and other instructions in Sections K-M; (c) Contract Clauses in Section I; (d) Other documents, exhibits and attachments in Section J; and (e) the Specifications in Section C.
- (b) Notwithstanding paragraph (a), in the event that this Contract is funded, in whole or in part, by the federal government, all Contract terms it mandates for inclusion shall be deemed to supersede any other conflicting or inconsistent provision in this Contract.

**I.48 ORGANIZATIONAL CONFLICTS OF INTEREST**

- (a) An organizational conflict of interest (OCI) exists when the nature of the work to be performed under a proposed contract or a subcontract may, without some restriction on future activities result in an unfair competitive advantage to the Contractor or subcontractor; because of (1) unequal access to information, (2) biased ground rules or (3) impaired objectivity. An unequal access to information OCI may exist if in performing a contract, a contractor obtains access to non-public information that provides a competitive advantage to it in a later competition. A biased ground rules OCI may exist if the contractor has a role in setting rules for a source selection in which the contractor will compete. An impaired objectivity OCI may exist if, in performing a contract, a contractor is called upon to evaluate an offer from or performance by itself or an affiliated entity.
- (b) In the event that the Contractor believes that it or any of its potential subcontractors may have an OCI, it shall notify the Contracting Officer, in writing, within five (5) work days after it becomes aware of the potential or actual OCI. The written notification shall identify the nature and circumstances of the perceived conflict and propose appropriate measures to eliminate or mitigate the OCI. The Contracting Officer will review the circumstances and the proposed mitigation plan and notify the Contractor stating whether: (1) no mitigation is required; (2) the conflict cannot be mitigated; or (3) the conflict can be mitigated and he or she accepts the proposed measures, or recommends other and/or additional measures.
- (c) The failure of the Contractor to identify such perceived conflicts may result in the Contract award being rescinded or the Contract being terminated.
- (d) Should the Contractor identify or become aware of a conflict during the term of this Contract, including any extension thereof, that it could not reasonably anticipate prior to award, it shall notify the Contracting Officer in accordance with paragraph (b) above, or request an exception to the restriction with supporting rationale. The Contracting Officer shall consider the Contractor's proposed measures to mitigate or eliminate the conflict, or the request for an exception.
- (e) If the proposed measures are not determined to be feasible or are otherwise not acceptable to the Contracting Officer, the Contracting Officer may terminate the Contract. If the Contracting Officer does not grant a request for an exception, and the Contract is not terminated for convenience, the Contractor shall be notified in writing and be given ten (10) days from the date of the written notification to take all necessary actions to comply with this clause.
- (f) If the proposed measures are determined to be acceptable to the Contracting Officer, he or she may grant a specific exception to this restriction, when in the Contracting Officer's judgment, the exception will not create a conflict between the Contractor's duties and obligations under this Contract and the duties and obligations imposed on the Contractor under another contractual or other relationship.
- (g) If the Contractor fails to comply with the terms of this clause, and no fraud is suspected, the Contracting Officer, may withhold payments due under this Contract until such time as the Contractor is in compliance or, should the noncompliance remain uncorrected at the expiration of ten (10) days from written notice from the

Contracting Officer as provided in subparagraph (d)(2), terminate the contract for default pursuant to this Contract.

- (h) If fraud is suspected, the Authority's only remedy prior to a final determination by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any state or federal agency providing funding under this Contract and/or appropriate federal, state and/or local law enforcement authorities.
- (i) The Contractor, in performing this Contract, shall avoid any conduct that might result in or give the appearance of creating for Board members or employees of the Authority in their relationship with the Contractor, any conflicts of interest or favoritism and/or the appearance thereof and shall avoid any conduct that might result in a Board member, or employee failing to adhere to the Standards of Conduct adopted by the Authority's Board of Directors.
- (j) Any determination by the Contracting Officer under this clause shall be final and shall be considered a question of fact within the meaning of the "Disputes" clause of this Contract.

## **PATENT RIGHTS- FTA**

Depending on the nature of the project, the federal government may acquire patent rights when the Contractor produces a patented or patentable invention, improvement or discovery. The federal government's rights arise when the patent or patentable information is conceived, or first reduced to practice. When a patent is issued or patentable information becomes available, the Contractor will report the same to the Authority, to enable it to notify the FTA and provide a detailed report satisfactory to FTA.

Unless the federal government determines otherwise in writing, regardless of the status of any contractor, WMATA will transmit the federal government's patent rights to FTA as specified in 35 U.S.C. § 200, *et. seq.* and the Department of Commerce's regulations "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements," 37 C.F.R. Part 401.

### **I.49 PAYMENT DEDUCTIONS - NONCOMPLIANCE WITH DBE REQUIREMENTS**

- (a) For federally funded contracts that exceed \$150,000 and to which the Disadvantaged Business Enterprise (DBE) Requirements (Appendix B) apply, the failure to perform in accordance with requirements of Appendix B may result in a partial or full suspension of payment, including progress payments, if applicable.
- (b) If the Contractor is found to be in noncompliance with the DBE requirements of Appendix B, the progress of the work shall also be deemed to be unsatisfactory, and an amount equal to the DBE participation in the Contract shall be retained from payment (or progress payments, if any) made to the Contractor.

- (c) If the contract value is over \$150,000, the prime contractor will be responsible for submitting a monthly report of the status of its DBE subcontractors, as outlined in Appendix B, to the Contracting Officer.
- (d) If the Contractor fails to submit the required monthly DBE reports, the Contracting Officer may suspend payment (or progress payments), until such time as the monthly reports are submitted and accepted by the Authority.

**I.50 PERFORMANCE/PAYMENT BONDS**

[OPTIONAL]

The successful proposer shall, within the time established in the Contract and as a condition to issuance of a Notice to Proceed, furnish performance and payment bonds, if applicable, on forms acceptable to the Authority in the amounts indicated in the Contract.

**I.51 PRE-AWARD AND POST DELIVERY AUDIT REQUIREMENTS – FTA**

The successful Proposer agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

- (a) Buy America Act Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with the Buy America Act. If the offeror certifies compliance with the Buy America Act, it shall submit documentation that lists 1) component and subcomponent parts of the rolling stock to be purchased, identified by manufacturer of the parts, their country of origin and cost; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- (b) Solicitation specification requirements: The Contractor shall submit evidence that it will be capable of meeting the proposed specifications.
- (c) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

**I.52 PRE-EMPLOYMENT CRIMINAL BACKGROUND CHECK REQUIREMENT**

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

**I.53 PUBLIC COMMUNICATION**

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

**I.54 RECOVERED MATERIALS/RECYCLED PRODUCTS**

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

**I.55 RIGHTS IN DATA AND COPYRIGHTS — FTA**

- (a) The term "subject data" used in this clause 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 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 Contractor may not publish or reproduce subject data, in whole or in part, in any manner or form, nor may the Contractor 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 the federal government's purposes:

- (i) Any subject data developed under this Contract whether or not a copyright has been obtained; and
  - (ii) Any rights of copyright to which the Contractor 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 Contractor 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 contractor, or third party subcontractor, 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 Contractor agrees to indemnify, save, and hold harmless WMATA and the federal government, their officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor 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 Contractor shall not be required to indemnify WMATA and the federal government for any such liability arising out of the wrongful acts of employees or agents of WMATA and the federal 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 paragraphs (b) and (c), do not apply to material furnished by the Authority to the Contractor and incorporated in the work carried out under the Contract provided that the Contractor identifies the incorporated material at the time of delivery of the work.
- (g) Any dispute arising 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 payments due and owing the Contractor up to ten 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 Price Schedule or the Contract specification.

**I.56 RIGHTS IN TECHNICAL DATA – LIMITED**

- (a) The Authority shall have the limited 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 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 drawings; For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulae, and flow charts of the software);
  - (3) Other technical data that was , or is normally furnished without restriction by the Contractor or subcontractor;
  - (4) Other specifically described technical data that the parties have agreed will be furnished without restriction.
- (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 manufacturing, or
  - (3) used by a party other than the Authority except for emergency repair or overhaul work , by or for the Authority where the item or process concerned is not otherwise reasonably available to enable timely performance of the work. Release or disclosure 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 with a legend that suitably recites this 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 writings, computer software, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether or not copyrighted, that are specified to be delivered pursuant to this Contract. The term does not include financial reports, cost analyses, and other information incidental to Contract administration. "Computer software" as used in this clause means computer programs, computer data bases, and documentation thereof.
- (e) Material covered by copyright:
- (1) The Contractor agrees to and does hereby grant to the Authority, and to its Board members , agents and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for the Authority's purposes to publish, translate, reproduce,

deliver, perform, dispose of, , all technical data now or hereafter covered by copyright.

- (2) No such copyrighted matter shall be included in technical data furnished hereunder without the written permission of the copyright owner for the Authority to use such copyrighted matter in the manner above described.
- (3) The Contractor shall report to the Authority promptly and in reasonable, written detail, each notice or claim of copyright infringement it receives 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 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 ten percent (10%) 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 Price Schedule or the Contract Specification.

**I.57 RIGHTS IN TECHNICAL DATA – UNLIMITED**

- (a) The term "technical data" as used in this clause means technical writings, computer software, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether or not copyrighted, that are required pursuant to this Contract. The term does not include financial reports, cost analyses, and other information incidental to Contract administration. "Computer software" as used in this clause means commercial off-the-shelf (COTS) software, specially developed computer software, computer programs, computer data bases, data and documentation thereof.
- (b) The Authority or its designated representative, shall have the unlimited right to use, duplicate or disclose technical data, including computer software, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so:
  - (1) Any manuals, instructional materials prepared for installation, operation, maintenance or training purposes;
  - (2) Technical data pertaining to end items, components or processes that were prepared for the purpose of identifying sources, sizes, configurations, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data; e.g., specification control drawings, catalog sheets, outline drawings. Except for the computer software, it means data identifying sources, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulae, and flow charts of the software);
  - (3) Other technical data that was or is normally furnished without restriction by the Contractor or subcontractor;

- (4) Other specifically described technical data that the parties have agreed will be furnished without restriction;
  - (5) All computer software regardless of whether it is technical data as defined in this clause including the source code, algorithms, processes, formulae, and flow charts, that the Contractor develops or materially modifies for the Authority or for which the Authority is required by federal law to provide a royalty-free, irrevocable and nonexclusive license to the federal government.
- (c) The Authority shall have the right to use, duplicate, or disclose technical data other than as defined in paragraph (a), in whole or in part. Such technical data shall not, without the written permission of the party furnishing it be:
- (1) Released or disclosed, in whole or in part, outside the Authority;
  - (2) Used, in whole or in part, by the Authority for manufacturing, or
  - (3) Used by a party other than the Authority except for: (i) emergency repair or overhaul, (ii) where the item or process concerned is not otherwise reasonably available to the Authority to enable timely performance of this Contract, or (iii) administration of this Contract or the inspection of any products produced under this Contract where the third party has a written contract with the Authority to perform these efforts. In all cases described in this clause, the release or disclosure outside of the Authority shall be subject to a nondisclosure agreement.
- (d) Technical data provided in accordance with this clause shall be identified by a legend that suitably recites the any limitations. This clause shall not impair the Authority's right to use similar or identical data acquired from other sources.
- (e) Where any item is purchased as a separate line item in this Contract, that purchase includes all integral parts of that item, including any computer software, source codes, algorithms, processes, formulae, and flow charts. The Authority has full rights to use, duplicate or disclose any or all parts of the item, including computer software, in any manner and for any purpose whatsoever, and to permit others to do so. Should disclosure of the computer software be required only under this paragraph, then the Contracting Officer may waive the provisions of this paragraph, if he or she certifies, in writing, that the item is commercially available from multiple sources and will be fully compatible with existing Authority property.
- (f) Material covered by copyright:
- (1) The Contractor hereby grants to the Authority, and to its Board members employees and agents acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license for the Authority's purposes to publish, translate, reproduce, deliver, perform, dispose of, all (i) technical data and (ii) computer software covered by subsection (b) (5) now or hereafter covered by copyright.
  - (2) No such copyrighted matter shall be included in (i) technical data or (ii) computer software covered by subsection (b)(5), without the written permission of the copyright owner.

- (3) The Contractor shall report to the Authority, promptly and in reasonable written detail, each notice or claim of copyright infringement it receives regarding any technical data or computer software covered by subsection (b)(5) provided to the Authority.
- (g) Relation to patents: Nothing contained in this clause shall imply a license to the Authority under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Authority under any patent.
- (h) Any dispute under this clause shall be subject to the “Disputes” clause of this Contract.
- (i) The Contracting Officer may retain from payment up to ten percent (10%) of the Contract price until final acceptance of the technical data defined in this clause and as required to be furnished in the Price Schedule or the Contract Specification.

**I.58 SCHOOL BUS REQUIREMENTS**

NOT APPLICABLE

**I.59 SEAT BELT USE POLICY**

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

**I.60 SEISMIC SAFETY**

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation’s Seismic Safety Regulations, 49 C.F.R. Part 41 and will certify compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract, including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

**I.61 SENSITIVE SECURITY INFORMATION**

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

**I.62 SET-OFF**

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

- (a) When satisfactory progress has not been achieved by a Contractor during any period for which a progress payment is to be made, a percentage of the progress payment may be retained. Retainage should not be used as a substitute for good contract management, and the Contracting Officer should not withhold funds without cause. Determinations to retain and the specific amount to be withheld shall be made by the Contracting Officer on a case-by-case basis. Such decisions will be based on the Contracting Officer's assessment of past performance and the likelihood that such performance will continue. The amount of retainage withheld shall not exceed ten percent (10%) of the approved estimated amount in accordance with the terms of this Contract and may be adjusted as the Contract approaches completion to recognize better than expected performance, the ability to rely on alternative safeguards, and other factors. Upon completion of all Contract requirements, retained amounts shall be paid promptly.

**I.63 SEVERABILITY**

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

**I.64 STOP WORK ORDERS**

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

- (1) The SWO results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and
- (2) The Contractor submits a written claim for such adjustment within thirty (30) days after the end of the work stoppage. At the Contracting Officer's discretion, the Authority may act upon any claim submitted before final payment under this Contract.
- (c) If an SWO is not cancelled and the work covered by the Contract is terminated for the convenience of the Authority, the Contracting Officer shall allow reasonable costs, if any, resulting from the SWO in arriving at the termination settlement pursuant to this Contract.

**I.65 SURVIVAL**

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

**I.66 TERMINATION FOR CONVENIENCE**

- (a) The Authority may terminate this Contract in whole, or, in part, if the Contracting Officer determines that a termination is in the Authority's interest. The Contracting Officer shall terminate by delivering a "Notice of Termination" to the Contractor, specifying the extent of termination and the effective date.
- (b) Upon receipt of a Notice of Termination, except as otherwise directed by the Contracting Officer, the Contractor shall immediately:
  - (1) Stop work as specified in the Notice of Termination;
  - (2) Complete performance of the work not terminated;
  - (3) Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the remaining portion of the Contract;
  - (4) Terminate all subcontracts to the extent that they relate to the work terminated;
  - (5) Assign to the Authority, as directed by the Contracting Officer, all of its right(s), title, and interest under the subcontracts terminated. The Authority shall have the right to settle or pay any termination costs arising out of the subcontracts and shall have no further liability to the Contractor for the work that was the subject of such subcontracts;
  - (6) With approval of the Contracting Officer, settle all outstanding liabilities and settlement costs arising from the termination of subcontracts;
  - (7) As directed by the Contracting Officer, transfer title and deliver to the Authority:

- (i) 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 would have been required to be furnished to the Authority, if the Contract had been completed.
- (8) Take any action that may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Contract that is in the Contractor's possession and in which the Authority has or may acquire an interest;
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (b)(7). The Contractor is not required to extend credit to any purchaser and may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce payments to be made by the Authority under this Contract, credited to the price or cost of the Work, or paid in any other manner that the Contracting Officer directs.
- (c) The Contractor shall submit complete termination inventory schedules not later than one hundred twenty (120) days from the effective date of termination, unless such time is extended, in writing, by the Contracting Officer.
- (d) As soon as reasonably practicable, and in any event not later than twenty (20) business days following the Authority's issuance of a "Notice of Termination" pursuant to paragraph (a), the Contractor shall submit a termination settlement proposal (TSP) to the Contracting Officer in the form he or she prescribes pursuant to this clause. . If the Contractor fails to submit the TSP within the time prescribed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor as a result of the termination and shall pay the amount so determined.
- (e) Following submission of the Contractor's TSP pursuant to paragraph (d), the parties shall agree upon the whole, or any part, of the amount to be paid or remaining to be paid as a result of the termination. The amount may include a reasonable allowance for profit on work completed. In no event shall the total amount to be paid to the Contractor exceed the total Contract price as reduced by (1) payments previously made and (2) the Contract price of the remaining work, not terminated.
- (f) If the parties fail to agree on the whole amount to be paid because of the termination, the Contracting Officer shall pay the Contractor the amounts he or she determines as follows, without duplication of any amounts agreed upon under paragraph (e):
  - (1) The Contract price for supplies or services accepted by the Authority [or sold or acquired under paragraph (b)(9)] not previously paid for, adjusted for any saving of freight and other charges.
  - (2) The total of:
    - (i) The costs incurred prior to termination for performance of the work terminated, including initial costs and preparatory expenses allocable

- thereto, but excluding any costs attributable to items compensated or to be paid for under subparagraph (f)(1);
- (ii) Termination costs under terminated subcontracts that are properly chargeable to the terminated portion of the Contract, if not excluded in subparagraph (f)(2)(i); and
  - (iii) A sum, representing profit on the items described in subparagraph (f)(2)(i), determined by the Contracting Officer pursuant to Section 49.202 of the Federal Acquisition Regulation (FAR), in effect on the date of this Contract, determined to be fair and reasonable. If it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the Contracting Officer shall allow no profit under this subparagraph and shall reduce the settlement to reflect the projected rate of loss.
- (3) The reasonable indirect costs of settlement of the work terminated, including:
- (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of the TSP(s);
  - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
  - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (g) Except for normal spoilage, and except to the extent that the Authority expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f), the fair value, as he or she determines of property that is unavailable or damaged and undeliverable to the Authority or to a third party.
- (h) The cost principles and procedures of FAR Part 31 effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this clause, except that the Authority shall not be obligated to pay interest, however represented, on any claimed costs.
- (i) The Contractor shall have the right to appeal, any determination made by the Contracting Officer under paragraphs (d) or (f) under the "Disputes" clause. The Contractor's failure to submit a TSP within the time provided in paragraph (d), or to timely request an extension thereof, shall constitute a waiver of its right to appeal the Contracting Officer's determination pursuant to the "Disputes" clause or any otherwise applicable contractual, legal or equitable remedy.
- (j) In determining any sum due to the Contractor under this clause, there shall be deducted:
- (1) All unliquidated advances or other payments to the Contractor under the terminated portion of the Contract;

- (2) The value, as determined by the Contracting Officer, of any claim that the Authority has against the Contractor under this Contract, including any third party claim, if the Contracting Officer is not satisfied that sufficient insurance coverage is in place; and
  - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other items that the Contractor procured or sold under this clause, not recovered by or credited to the Authority.
- (k) If the Contractor asserts that any partial termination has rendered enforcement of the remainder of the Contract at the remaining Contract price inequitable, the Contractor may file a proposal with the Contracting Officer for an adjustment of the price(s) for the continued portion of the Contract. Such proposal shall be submitted within ninety (90) days from the effective date of termination, unless the Contracting Officer extends it in writing, and shall be accompanied by appropriate supporting documentation.
- (l) The Contractor's responsibilities and obligations under this clause remain in full force and effect notwithstanding the pendency of any dispute or other delay relating to determination of the appropriate price adjustment or any other issue arising from the termination for convenience.
- (m) Unless otherwise provided in this Contract or by statute, the Contractor and all subcontractors whose work is encompassed in the termination settlement shall maintain all records and documents relating to the terminated portion of this Contract for three (3) years after final settlement. This includes all books, records and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to the Authority, its governing jurisdictions and any other federal, state, or local entities providing funding for this Contract, and to the Comptroller General of the United States, or the agents or representatives of any of them, at the Contractor's office, at all reasonable times, without any direct charge.

**I.67 TERMINATION FOR DEFAULT**

- (a) The Contractor shall be in default if it breaches of any of its obligations under this Contract deemed material by the Contracting Officer. In addition to those instances specifically referred to in this Contract, the Contractor shall be in default in the following circumstances:
- (1) It fails to begin, or abandons, the work of the Contract in accordance with Contractual requirements;
  - (2) It fails to deliver the supplies or perform the services within the time specified in the Contract or any extension approved by the Contracting Officer;
  - (3) It fails to make progress in a manner deemed unreasonable by the Contracting Officer so as to endanger performance of the Contract; or
  - (4) In the view of the Contracting Officer, the Contractor is willfully violating this Contract or is not executing it reasonably and in good faith.

- (b) In the event of the Contractor's material breach pursuant to paragraph (a), the Contracting Officer is authorized to direct a written notice to the Contractor, specifying the nature of the breach and stating that, the Contractor has ten (10) days (or such additional time as the Contracting Officer authorizes, to cure the breach ("Notice to Cure"). If the Contractor fails to cure the breach in the time specified in the Notice to Cure, the Authority shall terminate the Contract, in whole or designated part, for default in accordance with the provisions of this Contract, by a written "Notice of Default" to the Contractor.
- (c) Upon receipt of a "Notice of Default," the Contractor shall immediately cease performance of the work so terminated. The Authority shall have the right to take any action necessary to complete the work, including performing the work itself, or contracting with another party to do so. In the event the work is completed directly by the Authority or by a third party, the Contractor shall be liable for the additional costs and expenses necessary to complete the work, including, without limitation, labor, material costs, plant costs, tooling expenses, equipment costs, and property costs. The Authority may deduct the costs and expenses so charged from any monies otherwise payable to the Contractor. Nothing contained herein shall be deemed to relieve the Contractor of its continuing obligation to perform any portion of the Contract that was not terminated.
- (d) The Authority may, in its sole discretion, waive a default by the Contractor, but such waiver shall not be deemed a waiver of any subsequent default.
- (e) Upon any termination for default, the Authority may require the Contractor to transfer title and deliver to the Authority, as directed by the Contracting Officer (1) any completed or partially completed Supplies, and (2) , components (including data and intellectual property) and contract rights that the Contractor has specifically produced or acquired for the terminated portion of this Contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Authority may have an interest.
- (f) Upon any termination for default, the Authority shall pay for supplies or services accepted in accordance with this Contract. The Authority may also compensate the Contractor for any actions it reasonably takes at the Contracting Officer's direction, for the protection and preservation of property. The Authority may withhold from these amounts, any sum that the Contracting Officer determines to be necessary to protect the Authority against loss because of outstanding or claimed liens, or pending or anticipated claims under the Contract.
- (g) If, at any time following the Authority's issuance of a termination for default hereunder, it is determined that the Contractor was not in default or that the default was excusable, the termination shall thereupon be converted to a termination for convenience and the rights and obligations of the parties shall be determined in accordance with the "Termination for Convenience" clause of this Contract.
- (h) Any dispute with respect to any issue arising under this clause shall be subject to adjudication in accordance with the "Disputes" clause of this Contract. In no event shall the Authority's issuance of a "Notice to Cure" pursuant to paragraph (b) be the basis of a dispute pursuant this Contract or otherwise. The pendency of any dispute shall not constitute a basis for the delay of, or otherwise affect, the Authority's right to proceed in accordance with this clause, including without limitation, its right to

complete the work, or the Contractor's obligation to complete any portion of the work that was not terminated.

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

**I.68 TITLE AND RISK OF LOSS**

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

**I.69 TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS**

- (a) The Contractor agrees to comply with applicable transit employee protective requirements as follows:
  - 1. General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on this Contract in compliance with terms and conditions determined by the U.S. Secretary of Labor, to be fair and equitable, to protect the interests of employees employed under this Contract and to meet the employee protective requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to WMATA's grant from which federal assistance is provided to support work on this Contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
  - 2. Transit employee protective requirements for projects authorized by 49 U.S.C. § 5310(a)(2) for elderly individuals and individuals with disabilities - If

this Contract involves transit operations financed, in whole or in part, with federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub-recipient for which work is performed on thisContract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth grant agreement or cooperative agreement with the state. The Contractor agrees to perform transit operations in connection with thisContract in compliance with the conditions stated in that U.S. DOL letter.

3. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas - If this Contract involves transit operations financed, in whole or in part, with federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the "Special Warranty for the Non-urbanized Area Program" agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, the procedures implemented by U.S. DOL or any revision thereto.

- (b) The Contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed, in whole or in part, with federal assistance provided by FTA.

#### **I.70 WALSH-HEALEY PUBLIC CONTRACTS ACT**

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

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

#### **I.71 WHISTLEBLOWER PROTECTION - FEDERAL**

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

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

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

the Contactor or subcontractor of the condition and of his or her intent not to perform or authorize work.

- (d) The Contractor shall include, or shall cause to be included, the substance of this clause, including this paragraph (d), in its subcontracts at all tiers.
- (e) The Contractor and its subcontractors shall comply with the National Transit Systems Security Act (NTSSA) 6 U.S.C. §1142, which prohibits discharging, demoting, suspending, reprimanding or in any other way discriminating against an employee as a reprisal for the employee lawfully and in good faith:
  - (1) reporting a hazardous safety or security condition;
  - (2) refusing to work when a hazardous safety or security condition presents an imminent danger of death or serious injury, there is no reasonable alternative to refusal, there is not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, has notified the Contractor or subcontractor of the condition and of his or her intent to not perform work;
  - (3) refusing to authorize the use of any safety or security related equipment, track or structures, if the individual is responsible for their inspection or repair and reasonably believes they are in a hazardous safety or security condition, there is no reasonable alternative to refusal, there is not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, has notified the Contractor or subcontractor of the condition and of his or her intent not to authorize use of hazardous equipment or infrastructure unless corrected;
  - (4) providing information for or directly assisting in an investigation of conduct that the individual reasonably believes to be in violation of federal law regarding safety, security or fraud, waste or abuse of funds intended for safety or security;
  - (5) refusing to violate or assist in violation of federal public transportation safety or security law;
  - (6) cooperating with a safety or security investigation by the U.S. Secretary of Transportation, U.S. Secretary of Homeland Security or the National Transportation Safety Board;
  - (7) furnishing information to law enforcement agencies relating to an accident or incident resulting in damage to property, injury or death; or
  - (8) filing a complaint under the NTSSA (6 U.S.C. §1142), or testifying regarding such complaint.
- (f) The Contractor shall notify the Authority of any instance, related to this Contract, of a report under subparagraph (e)(1) or refusal under subparagraphs (e)(2), (3) or (5).
- (g) The enforcement, filing and investigation of complaints, and remedies under this clause shall be governed by the NTSSA (6 U.S.C. §1142), applicable federal regulations and federal law.

- (h) This clause shall be interpreted in accordance with the NTSSA (6 U.S.C. §1142),. If any provision is found to be in conflict with the NTSSA, the NTSSA shall govern.
- (i) The Contractor shall include, or shall cause to be included, this clause, including this paragraph, in its subcontracts at all tiers.

**I.72 WHISTLEBLOWER PROTECTION – NON-FEDERAL**

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

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

**I.73 WORKPLACE VIOLENCE/ZERO TOLERANCE**

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

**1.74 MOST FAVORED CUSTOMER**

The Contractor 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.