



Request For Proposal

Executive Search Services

RFP No.: CQ15221

**Publish Date June 12, 2015
Proposal Due Date July 10, 2015**

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

RFP: CQ15221

Date: June 12, 2015

SUBJECT: RFP No. CQ15221, Executive Search/Recruitment Services

Dear Sir/Madam:

The Washington Metropolitan Area Transit Authority (WMATA) requires the services of one or more qualified contractors to provide Executive Search/Recruitment services. We are seeking firms and/or individuals to assist WMATA in its searches for various senior executive level positions within the following vertical segments: Transit/Transportation, Information Technology, Legal, Finance/Accounting, Administrative Professional Services, Engineering/Construction, and/or Police/Law Enforcement. These searches should be conducted nationally. WMATA is interested in proposals from Executive Search/Recruitment firm(s) of all segments/categories on a "Retained Search Firm" basis. The Executive Search/Recruitment firms that are selected will work on behalf of WMATA's search committees and human resources. The Director of Talent Acquisition will be the primary contact at WMATA for the Executive Search/Recruitment firm(s) selected. The Executive Search/Recruitment firm(s) will be expected to provide WMATA with the services described below:

- provide input to WMATA on the job description/job posting & advertising;
- provide advice on the salary to be offered to a candidate based on industry trends and best practices;
- screen candidates as appropriate, such as via telephonic, virtual or in-person interviews; and present information on those candidates to WMATA;
- find and provide at least three to five candidates for WMATA to interview;
- coordinate and make arrangements for WMATA's telephonic, virtual and in person interviews with the candidates;
- make presentations to WMATA's search committees, Board members, and executive leadership team as requested;
- perform thorough reference checks on the top candidates/finalists;
- work with WMATA on conflict of interest screening for the candidates;
- work with WMATA's Chief Human Resource Officer and/or Director of Talent Acquisition regarding the benefit package to be offered; and
- work with the Chief Human Resources Officer and/or Director of Talent Acquisition to present candidates for consideration.

If you have any questions, Technical, Contractual, or Administrative, please e-mail them to GGCopeland@wmata.com no later than Close of Business, June 30, 2015. WMATA will provide written answers, by e-mail to all those who obtain the RFP and provide their e-mail addresses. Your proposal must be received with all required submittals as stated in the RFP, no later than **2:00PM, July 10, 2015**, at WMATA, Office of Procurement and Materials, 600 Fifth Street, NW, Room 3C-02, Washington, DC 20001-2651.

Sincerely,

Contracting Officer
Office of Procurement and Materials

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

INTRODUCTORY INFORMATION
SOLICITATION CERTIFICATIONS PAGE

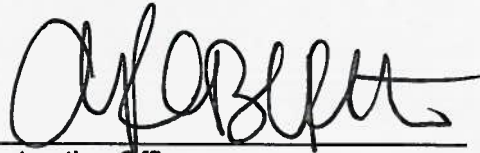
CQ15221

Executive Search Services

APPROVED FOR RELEASE


Project Manager/Office Designee

6/11/2015
Date


Contracting Officer

6/11/15.
Date


COUN

6/12/2015
Date

END OF SECTION

TABLE OF CONTENTS

DIRECTIONS FOR SUBMITTING OFFER	1
NOTICE TO OFFERORS	2
NOTICE TO ALL VENDORS.....	3
SOLICITATION, OFFER AND AWARD	4
PRICE SCHEDULE SHEET	6
RFP SOLICITATION INSTRUCTIONS.....	7
1. INTRODUCTION.....	7
2. GOODS TO BE FURNISHED/SERVICES TO BE SUPPLIED	7
3. COMMUNICATIONS WITH THE AUTHORITY	7
4. PREPARATION OF OFFERS	7
5. EXPLANATIONS TO OFFERORS	8
6. PRE-PROPOSAL CONFERENCE	8
7. AMENDMENTS PRIOR TO DATE SET FOR RECEIPT OF PROPOSALS	8
8. ACKNOWLEDGMENT OF AMENDMENTS	9
9. SUBMISSION OF PROPOSALS	9
10. PROPOSAL FORMAT INSTRUCTIONS/REQUIREMENTS.....	9
11. LATE SUBMISSIONS AND REVISIONS OF PROPOSALS.....	10
12. WITHDRAWAL OF PROPOSALS.....	11
13. RECEIPT AND REVIEW OF PROPOSALS BY THE AUTHORITY.....	11
14. EVALUATION CRITERIA AND BASIS FOR AWARD.....	12
15. PRICE PROPOSAL EVALUATION.....	12
16. TECHNICAL PROPOSAL EVALUATION.....	13
17. PRE AWARD INFORMATION/CONTRACTOR RESPONSIBILITY.....	13
18. PRE-AWARD MEETING	13
19. SITE VISIT/INSPECTION OFFEROR'S FACILITIES.....	14
20. CONTRACT AWARD.....	14
21. PERFORMANCE/PAYMENT BONDS	14
22. OPPORTUNITY FOR SMALL AND LOCAL BUSINESS ENTERPRISES TO PROPOSE	14
23. WMATA'S TAX EXEMPT STATUS.....	14
24. RESTRICTION ON DISCLOSURE AND USE OF DATA	15
25. ENGLISH LANGUAGE AND UNITED STATES CURRENCY	15
26. BRAND NAME OR EQUAL	16
REPRESENTATIONS AND CERTIFICATIONS	17
REPRESENTATIONS.....	17
1. TYPE OF BUSINESS ORGANIZATION.....	17
2. AFFILIATION AND IDENTIFYING DATA	17
CERTIFICATIONS.....	18
3. COVENANT AGAINST GRATUITIES.....	18
4. CONTINGENT FEE	18
5. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION.....	18
6. NONDISCRIMINATION ASSURANCE	19
7. DISCLOSURES OF INTERESTS OF WMATA BOARD MEMBERS	19
PRE-AWARD EVALUATION DATA	21

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

TERMS AND CONDITIONS	23
CHAPTER I – GENERAL PROVISIONS.....	24
1. AGREEMENT	24
2. ARRANGEMENT OF CONTRACTUAL PROVISIONS.....	24
3. ORDER OF PRECEDENCE.....	24
4. REQUIREMENTS CONTRACT	24
5. AUDIT, AVAILABILITY, AND INSPECTION OF RECORDS.....	24
6. AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR	25
7. CONTRACTING OFFICERS TECHNICAL REPRESENTATIVE (COTR)	25
CHAPTER II – TIME/DELAYS/LIQUIDATED DAMAGES	27
1. PERIOD OF PERFORMANCE	27
2. LIQUIDATED DAMAGES FOR DELAY	27
3. EXTENSIONS OF TIME/FORCE MAJEURE.....	27
4. AUTHORITY DELAY OF WORK	28
5. NOTICE TO THE AUTHORITY OF LABOR DISPUTES	29
CHAPTER III – ACCEPTANCE/INSPECTIONS/DEFICIENCIES	30
1. INSPECTION OF SERVICES	30
2. INSPECTION OF SUPPLIES.....	31
3. ACCEPTANCE OF SUPPLIES	31
4. NEW MATERIAL [SUPPLIES].....	31
5. CORRECTION OF DEFICIENCIES & WARRANTY.....	31
6. FIRST ARTICLE INSPECTION	32
7. F.O.B. DESTINATION	32
8. QUALITY ASSURANCE/QUALITY CONTROL	32
CHAPTER IV—CHANGES/ PRICING ADJUSTMENTS	33
1. CHANGE ORDERS.....	33
2. PRICING OF ADJUSTMENTS	34
3. ACCOUNTING AND RECORD KEEPING FOR ADJUSTMENTS	34
CHAPTER V – INVOICES/PAYMENTS/ DEDUCTIONS.....	36
1. BILLING AND PAYMENT	36
2. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA – MODIFICATIONS	36
3. SUBCONTRACTOR PAYMENTS	37
4. GARNISHMENT OF PAYMENTS.....	37
CHAPTER VI – CONTRACT TERMINATION/STOP WORK ORDERS/DISPUTES	38
1. STOP WORK ORDERS.....	38
3. TERMINATION FOR CONVENIENCE.....	40
4. ASSIGNMENT	44
5. DISPUTES	44
CHAPTER VII – INDEMNIFICATION/INSURANCE/RISK OF LOSS.....	46
1. INDEMNIFICATION.....	46
2. INSURANCE REQUIREMENTS	46
3. TITLE AND RISK OF LOSS	52
CHAPTER VIII – INTELLECTUAL PROPERTY RIGHTS.....	53

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

1. PATENT INDEMNITY	53
2. WITHHOLD/SET-OFF.....	53
3. RIGHTS IN TECHNICAL DATA- GENERAL.....	53
4. RIGHTS IN TECHNICAL DATA – UNLIMITED.....	55
5. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT [SUPPLIES]	55
CHAPTER IX – ADDITIONAL COVENANTS/LEGAL REQUIREMENTS.....	56
1. NONDISCRIMINATION ASSURANCE	56
2. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION	57
3. WALSH-HEALEY PUBLIC CONTRACTS ACT	58
4. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS	58
5. CONVICT LABOR	58
6. COVENANT AGAINST CONTINGENT FEES	58
7. SEAT BELT USE POLICY	59
8. SENSITIVE SECURITY INFORMATION	59
9. LAWS AND REGULATIONS.....	59
10. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA.....	59
11. LIVING WAGE.....	60
12. METRIC SYSTEM.....	61
13. WHISTLEBLOWER PROTECTION	61
14. DRUG AND ALCOHOL TESTING.....	64
15. EMPLOYMENT RESTRICTION WARRANTY	64
16. GRATUITIES	64
17. OFFICIALS NOT TO BENEFIT	66
18. ORGANIZATIONAL CONFLICT OF INTEREST.....	66
19. CONTRACTOR PERSONNEL	67
CHAPTER X – MISCELLANEOUS ADDITIONAL PROVISIONS	69
1. FEDERAL, STATE, AND LOCAL TAXES	69
2. FEDERAL/LOCAL/STATE SALES TAX	69
3. PUBLIC COMMUNICATION.....	70
4. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE	70
5. SEVERABILITY	70
6. SURVIVAL	70
7. ALL NECESSARY PROVISIONS DEEMED INCLUDED	70
CHAPTER XI-WMATA POLICIES.....	71
1. SAFETY REQUIREMENTS	71
2. PRE-EMPLOYMENT CRIMINAL BACKGROUND CHECK REQUIREMENT	72
3. WORKPLACE VIOLENCE/ZERO TOLERANCE.....	72
MID-ATLANTIC PURCHASING TEAM RIDER CLAUSE	73
TECHNICAL SPECIFICATIONS	74
SMALL BUSINESS LOCAL PREFERENCE PROGRAM (SBLPP).....	77
COMBINED GLOSSARY OF DEFINITIONS.....	100

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

DIRECTIONS FOR SUBMITTING OFFER

1. Read and comply with the Solicitation Instructions.
2. Envelopes containing Technical and Price proposals must be sealed and separately marked and addressed to:

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
600 5th Street, NW
Washington, DC 20001
Room 3C-02
Attn: Gerald G. Copeland/CA

ALL ENVELOPES OR PACKAGES MUST BE SEPARATELY MARKED WITH SOLICITATION NUMBER AS SPECIFIED HEREWITH.

PROPOSAL SHALL BE TIMELY MAILED OR HAND DELIVERED TO REACH WMATA BEFORE 2:00 P.M. ET JULY 10, 2015 ON DAY OF PROPOSAL CLOSING.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

NOTICE TO OFFERORS

IN ORDER TO ENSURE THAT YOUR PROPOSAL COMPLIES WITH THE AUTHORITY'S PROCUREMENT REGULATIONS AND THAT IT WILL BE ACCEPTABLE TO THE AUTHORITY, THE FOLLOWING FORMS MUST BE COMPLETED & SUBMITTED AS SPECIFIED BELOW WITH YOUR OFFER:

- SOLICITATION, OFFER & AWARD FORM (Must be signed.) - VOLUME III
- PRICE SCHEDULE- VOLUME I
- REPRESENTATIONS AND CERTIFICATIONS- VOLUME III
- PRE-AWARD DATA- VOLUME III
- ACKNOWLEDGMENT OF AMENDMENTS (IF ANY)- VOLUME III
- TECHICAL PROPOSAL VOLUME II
- CERTIFICATE OF INSURANCE - VOLUME III
- APPENDIX C (IF APPLICABLE) - VOLUME III

FAILURE TO SUBMIT ANY PORTION OF THESE REQUIREMENTS AS SPECIFIED MAY CAUSE YOUR PROPOSAL TO BE CONSIDERED NON-RESPONSIVE AND SUBSEQUENTLY REJECTED.

Questions concerning this Request for Proposal may be directed to Gerald Copeland on 202-962-1299 or ggcopeland@wmata.com.

NOTICE TO ALL VENDORS

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

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

Registered Vendor Benefits:

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

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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT RFP-CQ15221



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SOLICITATION, OFFER AND AWARD

CONTRACT NO.	SOLICITATION NO. RFP CQ15221	DATE ISSUED June 12, 2015	ADDRESS OFFER TO OFFICE OF PROCUREMENT Office of Procurement 600 Fifth Street NW Washington, DC 20001
	<input type="checkbox"/> ADVERTISED <input checked="" type="checkbox"/> NEGOTIATED		

SOLICITATION

Sealed offer in original and FOUR (4) copies for furnishing the supplies or services in the schedules will be received at Authority until 11:00 A.M. local time July 10, 2015
(Hour) (Date)

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

CAUTION – LATE OFFERS: See paragraph 6 of Solicitation Instructions.

All offers are subject to the following:

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

Offeror's Phone Number _____ **Offeror's Fax Number** _____

SCHEDULE

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	Executive Search Services (See continuation of schedule on page 22)				\$

DUN & BRADSTREET ID NUMBER: _____

OFFEROR

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

AWARD (To be completed by The Authority)

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

ITEM NO.	QUANTITY	UNIT	UNIT PRICE

The total amount of this award is \$ _____

Name of Contracting Officer (Print of Type)

WASHINGTON METROPOLITAN TRANSIT AUTHORITY

AWARD DATE

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SOLICITATION, OFFER AND AWARD

CONTINUATION SHEET

THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF THE FOLLOWING AMENDMENTS

TO SOLICITATION **RFP CQ15221**

Amendment Number _____	Dated _____
Amendment Number _____	Dated _____
Amendment Number _____	Dated _____
Amendment Number _____	Dated _____
Amendment Number _____	Dated _____
Amendment Number _____	Dated _____

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

Authorized Signature

Company Name

Date

PRICE SCHEDULE SHEET

Executive Search Services

		Base Year	Option 1	Option 2	Option 3	Option 4
Vertical Segment	Est Salary	Retain %	Retain %	Retain %	Retain %	Retain %
Transit / Transportation	\$ 220,000					
Information Technology	\$ 200,000					
Legal	\$ 220,000					
Finance / Accounting	\$ 180,000					
Admin. Professional Services	\$ 20,000					
Engineering / Construction	\$ 220,000					
Police / Law Enforcement	\$ 220,000					

Optional Service*	
Independent Interview + assessment	

*Optional service if used will be the same flat rate per interview + assessment for the duration of the contract term. The estimated salary (x) the (%)

The cost/price proposal should include all cost details such as a competitive cost proposal based on a fee structure and payment plan. – “Retain Search”. All proposals should include administrative expenses to be charged by the Executive Search/Recruitment firm(s) on a not to exceed basis. WMATA reserves the right to negotiate the cost of the recruitment after selecting the Executive Search/Recruitment firm(s). WMATA also reserves the right to identify individuals previously known to it who will apply for the position and to negotiate a different rate if a candidate identified by WMATA is ultimately selected.

Travel costs incurred by the Executive Search/Recruitment firm(s) and/or any candidates for their interviews will be handled and reimbursed based on WMATA travel policies. At this time it is not possible to know exactly how many in person meetings or presentations that WMATA will request the Executive Search/Recruitment firm(s) to make and whether those meetings will be in local or offsite. Therefore, travel costs should be listed as an estimated separate line item that can float independently of the rest of the proposed fees.

 Authorized Signature

 Company Name

 Date

RFP SOLICITATION INSTRUCTIONS

1. INTRODUCTION

- (a) The Authority seeks to award a contract to the responsible offeror whose offer conforms to the solicitation and will be most advantageous to the Authority cost or price and other factors, specified elsewhere in this solicitation, considered. To that end, it is issuing this RFP to solicit Proposals from qualified firms and individuals who can satisfy the requirements of the accompanying Contract Documents.
- (b) As this is a Best Value, if Technically Acceptable] solicitation, award of a Contract hereunder shall be to the Offeror whose Proposal provides the best overall value to the Authority based upon application of the evaluation criteria set forth in paragraph 14 or Offeror whose Proposal is deemed by the Authority as satisfying all technical requirements of the Solicitation and offers the best price of those satisfying all such requirements].on.
- (c) The Authority contemplates award of a firm fixed price contract. Unless otherwise specified in the Price Schedule, the Authority reserves the right to make multiple awards pursuant to this Solicitation.

2. GOODS TO BE FURNISHED/SERVICES TO BE SUPPLIED

In preparing their Proposals, Offerors are advised that:

- (a) If "Services" are to be performed pursuant to this Solicitation, they must be provided in all respects as specified in the Contract Documents and include the services to be furnished, together with any labor, material or other work necessary for satisfactory and complete performance.
- (b) If "Supplies" are to be provided pursuant to this Solicitation, they must be delivered in all respects as specified in the Contract Documents and include the items to be furnished, together with any labor, service or other work necessary for satisfactory and complete performance.

3. COMMUNICATIONS WITH THE AUTHORITY

Prospective Offerors are advised that any and all communications with WMATA relating to this Solicitation and made by, or on behalf of, a prospective Offeror at any time between release of this Request for Proposals and award of a Contract hereunder, must be directed to the Contract Administrator as follows:

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

4. PREPARATION OF OFFERS

- (a) Offerors shall furnish all information requested by the Solicitation and, in so doing, are expected to examine the Request for Proposals and all referenced documents carefully. Failure to do so will be at the risk of the Offeror.

- (b) The Offeror shall sign the Solicitation and print or type the name of the Offeror on the Price Schedule and each Continuation Sheet on which an entry has been made. Erasures or other changes must be initialed by the person signing the Offer.
- (c) Offerors must state a definite time for delivery of supplies or for performance of services unless otherwise specified in the solicitation
- (d) In preparing their Proposal, Offerors should be aware that all prices for the Work shall be deemed to include the cost of all work, labor and materials required by the Contract Documents including, without limitation, delivery charges, insurance, bond premiums or any other expenses required by the Work, as well as expenses associated with compliance with federal, state or local laws or regulatory requirements. All prices are deemed to be F.O.B. delivery point.

5. EXPLANATIONS TO OFFERORS

- (a) Any Explanation desired by an Offeror regarding the meaning or interpretation of the Solicitation or Contract Documents, including without limitation the general and special provisions, technical specifications or scope of work, and contract drawings, must be requested in writing and with sufficient time allowed for a reply to reach all Offerors before the date set for submission of Proposals. Absent extraordinary circumstances, all such inquiries should be transmitted in a time frame such as to ensure their receipt by the Contracting Officer at least ten (10) days prior to the date specified for receipt of proposals. All such requests should be submitted via e-mail or mail to the Contract Administrator identified in Paragraph 3 and include the RFP Number and contract title.
- (b) Any information furnished by the Authority to a prospective Offeror relating to the Solicitation will be provided in writing to all prospective Offerors in the form of an Amendment if, in the judgment of the Authority, the information is necessary to the preparation and/or submittal of Proposals or lack of such information would be otherwise prejudicial to other prospective Offerors.
- (c) Offerors are advised that oral explanations, representations or instructions of any kind relating to the subject matter of this Solicitation and given at any time before award of the Contract by any employee, officer or agent of the Authority, will not be binding upon the Authority; nor does the Authority assume responsibility for the accuracy of any such communication.
- (d) The failure of a prospective Offeror to request an Explanation as here provided will serve to preclude the Offeror from thereafter claiming any ambiguity, inconsistency or error which should have been discovered by a reasonably prudent Offeror.

6. PRE-PROPOSAL CONFERENCE

There will be no pre-proposal conference.

7. AMENDMENTS PRIOR TO DATE SET FOR RECEIPT OF PROPOSALS

- (a) The Authority reserves the right to amend any of the terms of this RFP or the Contract Documents prior to the date set for the opening of Proposals. Copies of any such Amendments as may be issued will be furnished in writing to all prospective proposers.

- (b) If, in the judgment of the Contracting Officer, any such Amendment(s) would require material changes in price proposals and/or other substantive element(s) of the Proposals, the date set for the opening of Proposals may be postponed for such period as in the opinion of the Contracting Officer will enable Offerors to revise their Proposals. In such instances, the Amendment will include an announcement of the new date for the opening of Proposals.
- (c) In the event of an Amendment, all other terms and conditions of the Solicitation shall remain unchanged.

8. ACKNOWLEDGMENT OF AMENDMENTS

Offerors are required to acknowledge receipt of all Amendment(s) to the Solicitation on the designated form to be submitted with their Proposal. Failure to do so may, at the discretion, jeopardize the Offeror's right to have its Proposal reviewed by the Authority.

9. SUBMISSION OF PROPOSALS

Proposals, and any Revisions to Proposal, shall be enclosed in sealed envelopes and addressed to the office specified in the Solicitation. The Proposal shall show the hour and date specified in the Solicitation for receipt, the solicitation number, and the name and address of the Offeror on the face of the envelope. Faxed proposals will not be considered.

10. PROPOSAL FORMAT INSTRUCTIONS/REQUIREMENTS

Offerors shall submit their Proposals as follows:

(a) Proposal Format

The original of Volumes I and 2 shall be unbound, all copies of Volumes 1 and 2, as well as Volume 3 will be separately bound and all copies shall have the RFP number, the Proposer's identity, volume number, and volume title printed on the cover page. Volumes may be provided in hard copy as well as USB. Volumes shall be submitted in the following order:

- (1) Volume I – Cost/Price - One (1) original and 1 copy of the cost/price proposal
 - (2) Volume II – Technical - One (1) original and 4 copies of the technical proposal
(Shall not include cost/price information)
 - (3) Volume III – Contractual - One (1) original and 1 copy of the completed signed solicitation documents to include Representations, Certifications, Pre-Award Data, Certificate of Insurance, DBE requirements per Appendix B and Amendments, if any.
- (b) **Cost/Price.** All information relating to cost or pricing data must be included in Volume I. Under no circumstances shall cost or pricing data be included elsewhere in the Proposal.
 - (c) **Technical Proposal.** The technical proposal should address the stated Evaluation Criteria and be of a nature such as to enable the Authority to engage in a thorough evaluation as to the overall technical merit of the Proposal. Technical proposals shall be specific, detailed and complete and demonstrate that the Offeror has a thorough knowledge and understanding of the requirements of the Contract Documents. Offerors shall avoid

generalized statements which, for example, paraphrase the specifications or attest that "standard procedures will be employed". The Authority wishes to be satisfied that the Offeror maintains an understanding of the specific requirements of this Solicitation and maintains the means to fully satisfy the Authority's needs.

- (d) Contractual. Contractual documents shall contain a completed signed Solicitation, Offer and Award Form and include Representations, Certifications, Pre-Award Data, Certificate of Insurance, DBE requirements per Appendix B and any Amendments. In the event that the Proposer takes any exception to any of the proposed General or Special Provisions, wishes to propose alternative contract language or is otherwise unwilling or unable to satisfy any of the requirements contained in the Contract Documents, such information should be clearly noted on the first page(s) of Volume III of the Proposal; failure to take exception shall constitute as acceptance by the Offeror.

11. LATE SUBMISSIONS AND REVISIONS OF PROPOSALS

- a. Any Proposal or Revision received at the office designated in the Solicitation after the time specified for receipt will not be considered unless it was sent, properly addressed:
- (1) By registered or certified U.S. or Canadian mail not later than the fifth Day before the date specified for receipt of Proposal (e.g. a Proposal or Revision relating to a Solicitation with a receipt date of the 20th of a month must have been placed in registered or certified mail by not later than the 15th of such month);
 - (2) By first class mail, if the Authority determines that the late receipt was due solely to mishandling by the Authority after delivery on Authority premises; or
 - (3) By U.S. Postal Service Express Mail Next Day Service , not later than 5:00 p.m. at the place of mailing two business days prior to the date specified for receipt of Proposals; or
- (b) A Revision submitted after the date and time set for opening of Proposals will only be accepted if requested, or otherwise authorized, by the Contracting Officer. A submission in the nature of a Best and Final Offer ("BAFO") received after the time and date specified in the Contracting Officer's request for BAFOs will not be considered unless received before award and, in the judgment of the Contracting Officer; the late delivery was not attributable to an act or omission of the Offeror.
- (c) The only acceptable evidence to establish the time of receipt by the Authority is the time/date stamp of that event on the proposal wrapper or other documentary evidence of receipt maintained by the Authority.
- (d) Notwithstanding sub-paragraphs "a" and "b" above, (i) a Proposal received after the time specified for receipt may be considered if it is the only Proposal received for the Solicitation; and (ii) a late Revision of any otherwise successful Proposal that makes its terms more favorable to the Authority may be considered and accepted, whenever received.

12. WITHDRAWAL OF PROPOSALS

Proposals may be withdrawn by written notice received by the Authority before award. Proposals may be withdrawn in person by an Offeror or an authorized representative if the representative's identity is appropriately demonstrated and the representative signs a receipt for the Proposal before award; except that absent approval of the Contracting Officer a proposal may not be withdrawn prior to 90 days from receipt of proposals.

13. RECEIPT AND REVIEW OF PROPOSALS BY THE AUTHORITY

- (a) There will be no public opening of Proposals in this Solicitation. Proposals will be opened by the designated Authority representative and copies of the three Volumes of the Proposal distributed for review by Authority designated personnel only, as appropriate. All reasonable efforts will be made to ensure confidentiality of the information contained in the proposals, consistent with applicable provisions of law.
- (b) The Authority may elect to award a Contract on the basis of the initial Proposals as received in accordance with the Evaluation Criteria set forth in paragraph, without Discussions. Accordingly, the initial Proposal should contain the Offeror's best terms from both a price and technical standpoint.
 - (i) Notwithstanding a determination by the Authority to proceed without conducting substantive negotiations or Discussions with Offerors, the Authority may elect to engage in communications with one or more Offerors relating to Clarification(s) of their Proposals.
- (c) As an alternative to the procedure described in sub-paragraph b above, the Authority may, in its discretion, determine to engage in oral and/or written Discussions with one or more Offerors involving information essential or useful to the Authority's understanding of the Proposals and/or to address deficiencies in the initial Proposals. In determining those Offeror(s) with which it chooses to engage in such Discussions, the Authority shall first make a determination as to those initial Proposals which it deems to be within the Competitive Range for award of the Contract and thereupon conduct Discussions with the Offerors submitting Proposals within the Competitive Range.
- (d) In the event that the Authority conducts substantive Discussions with one or more Offerors as set forth in sub-paragraph c above, the Contracting Officer may, following such Discussions, direct those Offerors who's Proposals have been deemed within the Competitive Range to submit Best and Final Offers ("BAFOs"). In such instances, the Authority shall render its determination as to award of the contract based upon its review of the BAFOs in accordance with the Evaluation Criteria; except that nothing contained herein shall be deemed to limit, modify or impair the right of the Authority to engage in any such further or additional oral or written Discussions or other communications relating to the Solicitation as may, in the judgment of the Contracting Officer, be consistent with the best interests of the Authority.
- (e) The Authority maintains the right to waive informalities and minor irregularities in Proposals at any time during the Solicitation process

14. EVALUATION CRITERIA AND BASIS FOR AWARD

BEST VALUE

The Authority will award a contract to the responsible Offeror whose Proposal conforms to the Solicitation and is judged to be the most advantageous to the Authority based on an overall assessment of technical merit and price in accordance with the Evaluation Criteria. Proposals will be evaluated based upon application of the following Evaluation Criteria:

- A. WMATA will evaluate firm's background and experience: Firm must be a professional Executive Search/Recruitment firm with a specialization in placement of senior executive leadership candidates within the Transit/Transportation, Information Technology, Legal, Finance/Accounting, Administrative Professional Services, Engineering/Construction, and/or Police/Law Enforcement industries and must have conducted, within the last five (5) years, at least three successful executive searches in at least two or more of the industry areas outlined above for organizations with more than 5,000 employees with annual budgets of at least 100 million dollars.
- B. WMATA will evaluate the qualification of Staff: Firm must have sufficient staff to provide executive search services to WMATA to meet the requirements outlined above in the Scope of Services. The staff in charge of the WMATA's account must have at least five years experience with the placement of senior executive people in leadership positions within the Transit/Transportation, Information Technology, Legal, Finance/Accounting, Administrative Professional Services, Engineering/Construction, and/or Police/Law Enforcement industries.
- C. WMATA will evaluate firm's comparable project: Firm must provide list and description of comparable clients and their Executive Search/Recruitment projects which were concluded within the last five (5) years including retention rate (stick rate) during the first twelve months following placements of candidates, average time to complete a search (average time to fill) and percentage of searches does the firm actually complete within the last five (5) years.
- D. WMATA will evaluate the firm's proposed recruitment timeline. Firm should include a detailed proposed timeline for the successful completion of the search. Time is of the essence. Therefore, suggestions, if any, for streamlining the search timeline should also be presented. Cost implications for streamlining the search process should be presented, if applicable.

Proposers should be aware that both price and overall technical merit are of extreme importance to the Authority in this Solicitation. Where its review concludes that two or more Proposals are of substantially similar overall value, the Authority will place greater weight upon the technical aspects of the Proposals.

The Authority will evaluate the technical proposal in accordance with the elements of the Evaluation Criteria set forth in paragraph 14 and render an assessment as to the overall technical merit of the proposal. The failure of a Proposal to demonstrate that it meets or surpasses an acceptable level with respect to any such element may result in a determination that the Proposal is technically unacceptable and thus ineligible for award.

15. PRICE PROPOSAL EVALUATION

- (a) With respect to both Best Value and Lowest Price-Technically Acceptable RFPs, the Authority will evaluate price proposals for reasonableness, completeness, and realism as appropriate. Proposal cost will be evaluated in terms of the following:

- (1) Submittal of proposed prices for both the base award and the options, if any;
 - (2) Any offer which is materially unbalanced may be rejected. An unbalanced offer is one which is based on prices that are significantly overstated for some items and understated for other items;
 - (3) The Authority will compare the price proposals to the Authority estimate and otherwise determine reasonableness by performing a price analysis if adequate competition exists. A cost analysis will be performed if, in the Authority's judgment, adequate price competition does not exist, in order to ascertain whether the proposed price is fair and reasonable;
- (b) The Offeror shall provide certified cost or pricing data if so requested by the Contracting Officer.

16. TECHNICAL PROPOSAL EVALUATION

The Authority will evaluate the technical proposals in accordance with the elements of the Evaluation Criteria set forth in paragraph 14 above. A Proposal which fails to demonstrate that it meets or surpasses an acceptable level with respect to each such element may be deemed technically unacceptable and thus ineligible for award regardless of price.

17. PRE AWARD INFORMATION/CONTRACTOR RESPONSIBILITY

- (a) In order to be eligible for award of a contract, a Proposer must affirmatively demonstrate to the satisfaction of the Authority that it is responsible for purposes of this Solicitation, including a showing that it maintains the requisite integrity, overall technical expertise and experience, including prior performance on other Authority contracts or other government agencies, and sufficient financial resources to perform the Work of the contract in a timely, satisfactory and appropriate manner.
- (b) The Contracting Officer or other Authority Representative(s) may conduct a pre-award survey and/or undertake other actions to obtain information regarding the responsibility of a Proposer whose offer is in the Competitive Range or is otherwise under consideration for award. The Proposer shall promptly supply information requested by the Contracting Officer regarding its responsibility in such manner and form as requested by the Authority.
- (c) Without limiting the general obligations of the Proposer to demonstrate its responsibility to the satisfaction of the Authority as set forth in subparagraphs (a) and (b) above, a Proposer shall furnish the following when so requested by the Contracting Officer or other Authority Representative:
 - (1) A completed and signed Pre-Award Evaluation Data form (copy attached), including all referenced financial statements and information;
 - (2) Evidence of good standing in the System for Award Management (SAM) at www.sam.gov.

18. PRE-AWARD MEETING

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

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

19. SITE VISIT/INSPECTION OFFEROR'S FACILITIES

THIS DOES NOT APPLY

20. CONTRACT AWARD

- (a) At the conclusion of the process described in paragraph 14 above, the Authority will award a contract resulting from this Solicitation to the responsible Offeror whose Proposal conforming to the Solicitation will be most advantageous to the Authority based upon its application of the Evaluation Criteria. Such determination shall be based upon the initial Proposals received where the Authority determines not to conduct Discussions in accordance with subparagraph 13(b) or shall be based upon the BAFOs where the Authority directs their submission in accordance with subparagraphs 13 (c) and(d).
- (b) A written award mailed or otherwise furnished to the successful Offeror at any time prior to withdrawal of the Proposal by the Offeror shall result in a binding contract without further action by either party. Discussions conducted after receipt of an Offer do not constitute a rejection or counteroffer by the Authority.
- (c) Notwithstanding the foregoing or anything to the contrary otherwise contained in this Solicitation, the Authority reserves the right to reject and any all Proposals received and decline to enter into a contract pursuant to this Solicitation if it deems such action is in the public interest.

21. PERFORMANCE/PAYMENT BONDS

THIS DOES NOT APPLY

22. OPPORTUNITY FOR SMALL AND LOCAL BUSINESS ENTERPRISES TO PROPOSE

It is the policy of the Authority that small and local businesses shall be given maximum practicable opportunity to receive and participate in performing WMATA non-federally funded contracts, including contracts and subcontracts at any tier.

23. WMATA'S TAX EXEMPT STATUS

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

"The Authority and the Board shall not be required to pay taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession or supervision, or upon its activities in the operation and maintenance of any transit facility or upon any revenues therefrom, and the property and income derived therefrom shall be

exempted from all Federal, State, District of Columbia, municipal, and local taxation. This exemption shall include without limitation, all motor vehicle license fees, sales taxes and motor fuel taxes."

- (b) It has been the practice of the District of Columbia to apply the Authority's tax exempt status to certain purchases of materials required under Authority construction contracts and acquired by contractors for physical incorporation into the project work. This has not been the practice in either Maryland or Virginia. The Authority does not represent or warrant that the District of Columbia practice applies to this project or, if it does, that it will continue in effect during the term of this project. It is the responsibility of the Contractor to determine its liability for any and all taxes applicable to this project. Assessment or payment of taxes by the Contractor, including taxes resulting from changes in existing laws or the application thereof or of new or additional taxes, shall not constitute the basis for an increase in the Contract price, except as otherwise allowed under the General Provisions Article, FEDERAL, STATE AND LOCAL TAXES, of this Contract.
- (c) The Authority's tax exempt numbers are as follows: District of Columbia – 5611 0082187001; Maryland -- 30072210; Virginia -- 5280-0067
- (d) By submission of its Proposal, the Offeror certifies that none of the taxes as to which the Authority is exempt are included in its cost proposal.

24. RESTRICTION ON DISCLOSURE AND USE OF DATA

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

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

25. ENGLISH LANGUAGE AND UNITED STATES CURRENCY

With respect to both this Solicitation and the resultant contract:

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

26. BRAND NAME OR EQUAL

DOES NOT APPLY

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

REPRESENTATIONS

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

1. TYPE OF BUSINESS ORGANIZATION

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

2. AFFILIATION AND IDENTIFYING DATA

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

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

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

Name of Parent Company

Main Office Address (including ZIP Code)

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

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

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

3. SMALL BUSINESS & LOCAL PREFERENCE PROGRAM (SBLPP)

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

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

CERTIFICATIONS

3. COVENANT AGAINST GRATUITIES

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

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

4. CONTINGENT FEE

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

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

5. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

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

- (1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or with any other competitor, as to any matter relating to such prices;
 - (2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not be knowingly disclosed by the offeror prior to award (in the case of a negotiated procurement), directly or indirectly, to any other offeror or to any competitor; and
 - (3) No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.

- (b) Each person signing this offer certifies that:

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

6. NONDISCRIMINATION ASSURANCE

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

7. DISCLOSURES OF INTERESTS OF WMATA BOARD MEMBERS

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

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

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

Name of Board Member Household Member or Business Associate	Nature of Interest
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>

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

SIGNATURE BLOCK FOR ALL REPRESENTATIONS AND CERTIFICATIONS

Name of Offeror: _____

Name and Title of Authorized
Representative: _____

Print and Sign Name

Title

Date

PRE-AWARD EVALUATION DATA

PROJECT DESCRIPTION: _____

1. Name of Firm _____

2. Address: _____

3. ☐ Individual ☐ Partnership ☐ Corporation ☐ Joint Venture

4. Date Organized _____.

State in which incorporated _____.

5. Names of Officers or Partners:

a. _____

b. _____

c. _____

d. _____

e. _____

f. _____

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

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

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

9. In the last two years have you ever been denied an award where you were the Offeror?

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

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

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

11. Financial resources available as working capital for the Contract:

a. Cash on hand: \$ _____

b. Sources of credit: _____

12. Attach as SCHEDULE FIVE financial statements and letters from banks regarding credit as required by the Pre-Award Information article.
13. What percentage of work (contract amount) do you intend performing with your own personnel? %.
14. Attach as SCHEDULE SIX a list of all principal subcontractors and the percentage and character of work (contract amount) which each will perform. Principal items of work shall include, but not be limited to, those items listed in the Pre-Award Information article of the Request for Proposal.
15. If the Contractor or subcontractor is a joint venture, submit PRE-AWARD EVALUATION DATA forms for each member of the joint venture.

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

The undersigned certifies to the accuracy of all information.

COMPANY: _____

SIGNATURE: _____

NAME: _____

TITLE: _____

DATE: _____

TERMS AND CONDITIONS

CHAPTER I – GENERAL PROVISIONS

1. AGREEMENT

The Work to be performed under this Contract may briefly be described as Executive Search/Recruitment services, including all necessary or incidental work, labor and materials. The Contractor agrees to perform the Work in accordance with requirements and terms and conditions hereinafter set forth in the Contract Documents. In consideration for the complete, satisfactory and proper performance thereof by the Contractor, the Authority agrees to pay to the Contractor, and the Contractor agrees to accept as full compensation therefor, the sums of money set forth in the Price Schedule at the time and in the manner and upon the terms and conditions set forth in the Contract Documents.

2. ARRANGEMENT OF CONTRACTUAL PROVISIONS

For ease of reference, the provisions of these Contract Documents are divided into Chapters, Articles, Paragraphs and Subparagraphs. While the Chapters and Articles are titled, it is understood that both the use of such titles and the manner and overall arrangement of the contractual provisions within the Contract Documents are intended solely for the convenience of the parties and are without independent contractual or legal significance.

3. ORDER OF PRECEDENCE

- (a) Any inconsistency in the Contract Documents shall be resolved by giving precedence in the following order: (a) Terms and Conditions (b) the specifications or scope of work; (c) drawings, if any; (d) other documents, exhibits, and attachments generated by the Authority as part of the Contract Documents; (e) the technical proposal, if any, and other submissions of the Contractor generated as part of the Contract Documents. In the event of a conflict within or between provisions entitled to equal precedence pursuant to the foregoing, the more stringent requirement shall apply.
- (b) Notwithstanding paragraph (a), in the event that this Contract is funded in whole or part through funding provided by the Federal Government, all contract terms mandated for inclusion by the Federal Government shall be deemed to supersede any other conflicting or inconsistent provision of the Contract Documents.

4. REQUIREMENTS CONTRACT

DOES NOT APPLY

5. AUDIT, AVAILABILITY, AND INSPECTION OF RECORDS

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

Contract. This right of examination shall include inspection at all reasonable times of the Contractor's facilities engaged in performing this Contract.

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

6. AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR

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

7. CONTRACTING OFFICERS TECHNICAL REPRESENTATIVE (COTR)

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

- (b) The Contractor will be furnished, upon written request, a copy of the delegation, if any, to a COTR for this Contract.

CHAPTER II – TIME/DELAYS/LIQUIDATED DAMAGES

1. PERIOD OF PERFORMANCE

The period of performance is 365 Days commencing on the date of award. This contract will have a base year and four one year option periods.

The Authority has the unilateral right to extend the contract by exercising up to FOUR (4) 12 month Option Periods (as applicable) subject to all terms and conditions herein.

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

2. LIQUIDATED DAMAGES FOR DELAY

DOES NOT APPLY

3. EXTENSIONS OF TIME/FORCE MAJEURE

- (a) For purposes of this Article, the term “Force Majeure” shall mean an unforeseen event or circumstance, beyond the control of, and not occasioned by the fault or neglect of, the Contractor (including subcontractors at any tier) or the Authority, which event gives rise to a delay in the progress or completion of the Work of the Contract, including, without limitation, acts of God, acts of war or insurrection, unusually severe weather, fires, floods, strikes, freight embargoes or other events or circumstances of like nature.
- (b) Notwithstanding the provisions of the LIQUIDATED DAMAGES article of the Contract, if the Contractor is delayed at any time during the progress of the Work by the neglect or failure of the Authority or by a Force Majeure, then the time for completion and/or affected delivery date(s) shall be extended by the Contracting Officer, subject to the following conditions:
- (1) The cause of the delay arises after the award of the Contract and neither was nor could have been anticipated by the Contractor by reasonable investigation before such award;
 - (2) The Contractor demonstrates to the Contracting Officer that the completion of the Work and/or affected delivery(s) will be actually and necessarily delayed;
 - (3) The delay cannot be avoided or mitigated by the exercise of all precautions, efforts and measures reasonably available to the Contractor, whether before or after the occurrence of the cause of delay; and
 - (4) The Contractor makes written request and provides other information to the Contracting Officer as described in paragraph (f) below.

- (c) In the event the Contractor shall be delayed at any time or for any period by two or more of the causes above-mentioned in this Article, the Contractor shall not be entitled to a separate extension for each one of the causes but only one period of extension shall be granted for the cumulative effects of the delay.
- (d) Any reference in this Article to the Contractor shall be deemed to include Suppliers and Subcontractors at any tier, whether or not in privity of contract with the Contractor.
- (e) The Contracting Officer may rescind or shorten any extension previously granted, if the Contracting Officer subsequently determines that any information provided by the Contractor in support of a request for an extension of time was erroneous; provided that such accurate information, if known, would have resulted in a denial of the request for an excusable delay. Notwithstanding the foregoing, the Contracting Officer will not rescind or shorten any extension previously granted if the Contractor acted in reliance upon the granting of such extension and if, in the judgment of the Contracting Officer, such extension was based on information which, although later found to have been erroneous, was submitted in good faith by the Contractor.
- (f) The request for an extension of time pursuant to paragraph (a) shall be made within ten (10) days after the Contractor knows or should know any cause for which it may claim an excusable delay and shall provide any actual or potential basis for an extension of time, identifying such cause and describing, as fully as then practicable, the nature and projected duration of the delay and its effect on the completion of that part of the Work identified in the request. Within thirty (30) days of its receipt of all such information, the Authority shall advise the Contractor of its decision on such requested extension; except that, where it is not reasonably practicable for the Authority to render such decision in the thirty (30) day period, it shall, prior to the expiration of such period, advise the Contractor that it will require additional time and the approximate date upon which it expects to render such decision.
- (g) In no event shall a delay in progress or performance of the Work occasioned solely by a Force Majeure or the acts or omissions of any party outside the control of the Contractor be the basis for a Termination for Default pursuant to Article titled TERMINATION FOR DEFAULT; except that in no event shall a subcontractor at any tier be deemed a party outside the control of the Contractor for purposes hereof.

4. AUTHORITY DELAY OF WORK

- (a) If the performance of all or any part of the Work is delayed or interrupted in a material manner or extent by an act or omission of the Authority in the administration of this Contract, which act or omission is not expressly or impliedly authorized by this Contract or by applicable provisions of law, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this Contract caused by such delay or interruption and the Contract modified in writing accordingly. Adjustment shall be made also in the delivery or performance dates and any other contractual provision, as to which compliance was materially affected by such delay or interruption. However, no adjustment shall be made under this Article or otherwise under this Contract for any delay or interruption to the extent that performance was or would have been delayed or interrupted by any other cause, including, without limitation: (i) the fault or negligence of the Contractor or any subcontractor; (ii) the fault or negligence of a third party to the Contract; (iii) an act constituting a Force

Majeure pursuant to Article titled EXTENSIONS OF TIME/FORCE MAJEURE; or (iv) any other cause for which an adjustment is provided or excluded under any other provision of this Contract or otherwise at law.

- (b) An adjustment pursuant to paragraph (a) shall not be allowed:
 - (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the applicable act or omission claimed; and
 - (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption and in no event later than 30 days after such termination. Such claim shall be accompanied by appropriate documentation, specifically identifying and supporting the nature and extent of the claimed impact upon the cost and/or time required for performance; except that, in any instance in which it is not reasonably practical for the Contractor to fully determine or project such impact within such 30 day period, the claim shall be accompanied by such supporting documentation as is then reasonably available to the Contractor as well as the anticipated time frame in which the Contractor projects to provide the additional materials. The Contracting Officer shall maintain the right throughout the process to request the preparation and/or submission of such additional materials as it shall reasonably require in consideration of the claim and shall be under no obligation to conclude its consideration of the claim prior to receipt and review of all relevant materials. Any adjustment to the contract price pursuant to this Article must be agreed upon or otherwise determined prior to Final Payment

5. NOTICE TO THE AUTHORITY OF LABOR DISPUTES

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

CHAPTER III – ACCEPTANCE/INSPECTIONS/DEFICIENCIES

1. INSPECTION OF SERVICES

- (a) The Contractor shall provide and maintain an inspection system acceptable to the Authority covering the Services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Authority during contract performance and in the manner and in accordance with the time periods set forth in the provisions of the AUDIT AND INSPECTION OF RECORDS article of the Contract.
- (b) The Authority has the right to inspect and test all Services called for by this Contract, at all times and places reasonably practicable during the term of the Contract. The Authority shall perform inspection and tests in a manner that will not unduly delay the work.
- (c) If the Authority performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without cost, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.
- (d) If any of the Services performed do not conform to contract requirements, the Authority may require the Contractor to perform the Services again in conformity with contract requirements, without additional cost. When the defects in performance cannot reasonably be corrected by such further performance, the Authority may:
 - (1) Direct the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and/or
 - (2) Reduce the contract price to reflect the reduced value of the Services performed.
- (e) If the Contractor fails to comply with the provisions of paragraph (d), the Authority may:
 - (1) By contract or otherwise, perform the Services and charge to the Contractor any cost thereby incurred by the Authority; and/ or
 - (2) In the event that the Contracting Officer deems such failure to comply a material breach, terminate the Contract for default.
- (f) Nothing contained herein shall be deemed to preclude the Contracting Officer from implementing a price reduction arising from the reduced value to the Authority of Services ultimately corrected in conformity with the contract requirements for the period of their non-conformity.

2. INSPECTION OF SUPPLIES

DOES NOT APPLY

3. ACCEPTANCE OF SUPPLIES

DOES NOT APPLY

4. NEW MATERIAL [SUPPLIES]

DOES NOT APPLY

5. CORRECTION OF DEFICIENCIES & WARRANTY

- (a) Notwithstanding anything to the contrary otherwise set forth in this Contract, all workmanship, parts and materials furnished for all the Work shall be unconditionally warranted against failures or defects for a period of one (1) year after the item supplied is accepted, or placed in service, by the Authority, whichever is earlier. The Contractor shall accept the Authority's records with respect to the date the item was placed in service.
- (b) In the event that any Work covered by the warranty provisions fails during the warranty period, the Contractor shall repair or replace the work within ten (10) business days without cost or expense to the Authority.
- (c) The warranty will not apply to the extent that such failure is caused by user abuse.
- (d) Should the Contractor shall fail to repair or replace any part or do any Work in accordance with the terms of the warranty, or if immediate replacement or Work is necessary to maintain operation of the item supplied, the Authority shall have the right to cause such replacement to be made, utilizing its own forces and/or those of third parties as the Authority shall reasonably deem appropriate, such work being at the expense of the Contractor.
- (e) Each piece of equipment, component or part thereof that is replaced, repaired, adjusted or serviced in any manner under the terms of warranty by the Contractor during the warranty period shall be reported to the Contracting Officer on forms supplied by the Authority. Each report shall indicate in detail all repairs, adjustments and servicing to each and every component, unit or parts thereof.
- (f) Any warranty or retrofit work shall be accomplished with minimum disruption to Authority operations and its maintenance and service facilities. The Authority shall at its sole discretion determine the availability of facilities for warranty or retrofit work.
- (g) The Contractor shall make available adequate service facilities, including spare parts, for all the items supplied. Trained technical service personnel shall be available to the Authority sufficient to meet its warranty obligations.
 - (1) The Contractor shall provide field service representatives who are competent and fully qualified in the maintenance and operation of the supplied items. These field service representatives shall assist the Authority in overcoming any difficulties in the operation or maintenance of the items supplied. They

shall further serve as on-site representatives of the Contractor for any component failure claims or warranty claims against the Contract.

- (2) During the warranty period, a field service representative shall be available within 24 hours.

- (h) The rights of the Authority set forth in this Article shall be in addition to those set forth elsewhere in this Contract or otherwise at law or equity.

6. FIRST ARTICLE INSPECTION

DOES NOT APPLY

7. F.O.B. DESTINATION

DOES NOT APPLY

8. QUALITY ASSURANCE/QUALITY CONTROL

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

CHAPTER IV—CHANGES/ PRICING ADJUSTMENTS

1. CHANGE ORDERS

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

- (f) Notwithstanding any other provision of this Contract, the Contractor shall promptly notify the Contracting Officer of matters, whether implemented as a change order in accordance with this Article or otherwise, which the Contractor believes or asserts may reasonably result in either an increase or decrease in the Contract price or the time required for performance of any part of the Work and shall take action with respect thereto as directed by the Contracting Officer. The Contractor's failure to provide such notification shall constitute a waiver of its right to seek an adjustment in the Contract price or time required for such performance.
- (g) Except to the extent, if any, otherwise expressly set forth in this Contract, in no event shall the Contractor be entitled to payment for change orders, additional or extra supplies or services or other modification to any requirement or term of the Contract unless such has been authorized in writing by the Contracting Officer.

2. PRICING OF ADJUSTMENTS

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

3. ACCOUNTING AND RECORD KEEPING FOR ADJUSTMENTS

- (a) Applicability. This Article shall apply to any adjustment in the price of this Contract initiated by the Contractor or the Authority
- (b) Forward Priced Adjustments. Unless waived in writing in advance by the Contracting Officer, the Contractor shall furnish to the Contracting Officer a proposed price adjustment in advance of performance of any Work for which a price adjustment is requested. The Contractor shall generate such records as are necessary to substantiate all elements of the proposed adjustment, which records shall be specifically segregated and identified in the Contractor's accounting system as being applicable to the pricing adjustment request.
- (c) Post Pricing Adjustments. This paragraph shall be applicable with respect to price adjustments which either (i) are expected to exceed \$50,000; or (ii) regardless of the value of the adjustment, arise in connection with a Contract with a base sum in excess of \$1,000,000. In addition to the records required pursuant to paragraph (b) above, in

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

- (e) Access to Records. As a condition to the Authority's obligation to consider any claim for a potential price adjustment under any provision of this Contract, the Contractor shall grant the Authority access to review and ascertain the validity of the accounting records being maintained for segregation of costs, including base cost records, and to audit any such costs as are deemed appropriate by the Contracting Officer.
- (f) Limitation on Pricing Adjustment. In the event the Contractor or any subcontractor fails to generate, maintain, or make available any records required under the Contract, and in addition to any and all additional rights to which the Authority may thereupon be entitled, the Contracting Officer shall determine whether such failure is willful, deliberate or otherwise precipitated by bad faith on the part of the Contractor, in which event the Contractor shall not be entitled to any price adjustment for the Work in question. Where the Contracting Officer determines that the failure was not the result of the Contractor's bad faith, the Contractor Officer shall determine the reasonable direct cost of the work for which records are not available, and add a single mark-up for indirect expenses not to exceed ten percent (10%) of the direct costs based on:
 - (1) An audit of any records of the Contractor or subcontractor made available to the Authority; and/or
 - (2) An Authority estimate as adopted or modified by the Contracting Officer.
- (g) In no event shall the Contractor and/or subcontractor be allowed any profit on claimed work for which records are not made available in accordance with its obligations under this Article and otherwise in the Contract.
- (h) Flow-down clause. The Contractor shall ensure the inclusion of all the provisions of this Article in all subcontracts issued under this Contract, modified as necessary, for proper identification of the contracting parties and the Contracting

CHAPTER V – INVOICES/PAYMENTS/ DEDUCTIONS

1. BILLING AND PAYMENT

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

WMATA-Accounts Payable
PO Box 1910
Beltsville, MD 20704-1910
- Note: This address is only for vendor invoices. Correspondence should not be sent to this address.
- (c) Invoices shall contain the vendor name, a unique invoice number for each shipment or service, invoice date, payment terms, total invoice amount, remit to address, Purchase Order Number, freight terms, description of each item being invoiced, quantity, unit item cost, extended cost by item, total freight/handling costs, and contact name and email address. Final invoices must clearly be marked "FINAL" and cite the amount of the contract, amount previously paid, and the balance due totals.
- (d) The Authority shall remit payment, generally within 30 days of its receipt of an invoice satisfying the requirements of paragraphs (b) and (c), at the prices stipulated in the Contract for Supplies delivered and accepted or Services rendered and accepted, less any applicable deductions.

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

With respect to any modification, change order, or otherwise, of this Contract which involves aggregate increases and/or decreases in costs plus applicable profit in excess of \$100,000, in the event that the Contracting Officer ultimately determines that any price, including profit

or fee, previously negotiated in connection with any such modification was based upon cost or pricing data furnished by the Contractor (including any prospective or actual subcontractor at any tier) which was not complete, accurate or current, such that the amount paid the Contractor for such price adjustment was thereby greater than that to which the Contractor would have been entitled based upon the submission and utilization of accurate and complete data, the Authority shall be entitled to an adjustment in an amount equal to such overpayment. The right granted the Authority hereunder shall be in addition to any other or additional rights it may have under this Contract or otherwise.

3. SUBCONTRACTOR PAYMENTS

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

4. GARNISHMENT OF PAYMENTS

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

CHAPTER VI – CONTRACT TERMINATION/STOP WORK ORDERS/DISPUTES

1. STOP WORK ORDERS

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

2. TERMINATION FOR DEFAULT

- (a) The Contractor shall be in default if it commits a breach of any of its obligations under the Contract deemed material by the Contracting Officer. Without limiting the generality of the foregoing and in addition to those instances specifically referred to in the Contract, the Contractor shall be in default in the following circumstances:
- (1) It fails to begin, or abandons, the Work of the Contract in accordance with the 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 progress the Work in a manner deemed unreasonable or unnecessary by the Contracting Officer or so as to endanger performance of the Contract; or
 - (4) In the view of the Contracting Officer, the Contractor is willfully violating any of the provisions or obligations of the Contract or is not executing such provisions or obligations reasonably and in good faith.
- (b) In the event of a material breach by the Contractor pursuant to paragraph (a), the Contracting Officer is authorized to direct a written notice to the Contractor, specifying the nature of the breach and providing that, if the Contractor fails to cure such failure(s) within ten days (or such additional time as authorized by the Contracting Officer), the Authority shall proceed to terminate the Contract, in whole or designated part, for default in accordance with the provisions hereof (a "Notice to Cure"). Should the Contractor fail to cure the breach to the satisfaction of the Contracting Officer within the ten day period, or such additional period as may be designated in the Notice to Cure, the Authority may thereupon, immediately upon conclusion of such period or at any reasonable time thereafter, terminate the Contract, in whole or part, by written notice to the Contractor.
- (c) Upon receipt of a notice of default, the Contractor shall immediately cease performance of the Work so terminated. The Authority shall thereupon have the right to take any action necessary to complete the Work, including performing the Work itself, or contracting with another party to do so. In the event the Work is completed directly by the Authority or by a third party, the Contractor shall be liable for the additional costs and expenses necessary to complete the Work, including, without limitation, labor, materials, plant, tools, equipment, supplies and property. The costs and expenses so charged may be deducted by the Authority and paid out of any monies otherwise payable to the Contractor. Nothing contained herein shall be deemed to relieve the Contractor of its continuing obligation to perform any portion of the Work of the Contract which has not been terminated.
- (d) The Authority may, in its sole discretion, waive a default by the Contractor, but such waiver and/or failure by the Authority to take action in respect to any default shall not be deemed a waiver of any subsequent default.
- (e) Upon any termination for default, the Authority may require the Contractor to transfer title and deliver to the Authority, as directed by the Contracting Officer of (1) any

completed Supplies, and (2) partially completed Supplies, components (including data and intellectual property) and contract rights that the Contractor has specifically produced or acquired for the terminated portion of this Contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Authority has an interest.

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

3. TERMINATION FOR CONVENIENCE

- (a) The Authority may terminate performance of Work under this Contract in whole, or from time to time, in part, if the Contracting Officer determines that a termination is in the Authority's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.
- (b) Upon receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall immediately proceed as follows:
 - (1) Stop work as specified in the Notice of Termination;
 - (2) Complete performance of the work not terminated;

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

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

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

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

Contractor shall make these records and documents available to the Authority, its governing jurisdictions and any other federal, state, or local entities providing funding for this Contract, and to the Comptroller General of the United States, or the agents or representatives of any of them, at the Contractor's office, at all reasonable times, without any direct charge.

4. ASSIGNMENT

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

5. DISPUTES

- (a) Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under or related to this Contract which is not disposed of by agreement, shall be decided by the Contracting Officer, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within thirty (30) calendar days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written notice of appeal addressed to the Authority Board of Directors. Such notice should indicate that an appeal is intended and should reference the decision and contract number. The decision of the Board of Directors or its duly authorized representative for the determination of such appeals shall be final and conclusive unless in proceedings initiated by either party for review of such decision in a court of competent jurisdiction, the court determines the decision to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or is not supported by substantial evidence. In connection with any appeal proceeding under this Article, the Contractor, or the Authority, as the case may

be, shall be afforded an opportunity to be heard and offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Contracting Officer's decision. The Armed Services Board of Contract Appeals is the authorized representative of the Board of Directors for final decisions on an appeal.

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

CHAPTER VII – INDEMNIFICATION/INSURANCE/RISK OF LOSS

1. INDEMNIFICATION

- (a) The Contractor shall indemnify, defend and hold harmless the Authority, its directors, officers, employees and agents, from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, and for loss or damage to any property, including the property of the Contractor and the Authority, occurring in connection with, or in any way arising out of the use, occupancy and performance of the Work and/or any acts, known or unknown, in connection with activities to be performed under this contract, *unless* the loss or damage is due to the sole negligence of the Authority. Nothing in the preceding sentence shall be deemed to relieve the Contractor from ultimate liability for any obligation under this Contract.
- (b) The Contractor shall indemnify, defend and hold harmless the Authority its directors, officers, employees and agents against any and all claims, liabilities, losses, demands, damages, penalties, costs, charges, remedial costs, environmental claims, fees or other expenses including attorneys' fees, related to, arising from or attributable to any effluent or other hazardous waste, residue, contaminated soil or other similar material discharged from, removed from, or introduced on, about or under the job site, unless the loss or damage is due to the sole negligence of the Authority.
- (c) If any action or proceeding relating to the indemnification required is brought against the Authority, then upon written notice from the Authority to the Contractor, the Contractor shall, at the Contractor's expense, resist or defend such action or proceeding by counsel approved by the Authority in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same. The Authority reserves the right to use its own counsel, at the Authority's sole cost and expense without waiving or impairing the Contractor's right to indemnification hereunder.
- (d) The Contractor understands and agrees that it is Contractor's responsibility to provide indemnification to the Authority pursuant to this Article. The provision of insurance, while anticipated to provide a funding source for this indemnification, is independent of this indemnification obligation and the failure of Contractor's insurance to fully fund any indemnification shall not relieve the Contractor of any obligation assumed under this indemnification.

2. INSURANCE REQUIREMENTS

1. General Insurance Requirements

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

- 1) Contractor is required to maintain the insurance coverage(s) outlined in this Section for a period of time commencing the sooner of the execution of this contract, or the start of Work, without interruption. The coverages shall be

maintained in force and effect for 3 years after final completion and acceptance of the Work, with the exception of Professional Liability. Professional Liability insurance requirements are outlined in Article 6.

- 2) The insurance coverage and limits of insurance outlined in this Section are minimum coverage and limits. Contractor is encouraged, at its sole cost and expense, to purchase any additional insurance coverages and or limits of insurance that Contractor deems prudent and necessary to manage risk in the completion of this contract.
- 3) Upon written request from WMATA, contractor shall provide copies of any and all policy(s), including all endorsement(s), within 5 business days of such request.
- 4) Insurance Policies must be written on admitted paper, (unless otherwise indicated herein) with an insurance company acceptable to WMATA.
- 5) Unless otherwise noted, "Claims Made" insurance policies are not acceptable.
- 6) Any insurance policy utilizing a Self-Insured Retention (SIR) requires approval from WMATA.
- 7) Contractor is required to incorporate these minimum Insurance Requirements into contract requirements of all Subcontractors of every tier.

2. Workers' Compensation and Employer's Liability

Required Minimum Limits of Coverage:

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

Required Minimum Coverage(s):

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

3. Commercial General Liability

Required Minimum Limits of Coverage:

\$50,000,000	Each Occurrence Limit
\$100,000,000	General Aggregate Limit
\$50,000,000	Products and Completed Operations Limit

Required Minimum Coverage(s):

- 1) Commercial General Liability (CGL) coverage form shall be ISO Occurrence Form CG0001 (12/04) or its equivalent. Equivalency determination shall be made in WMATA's sole and unreviewable discretion.
- 2) Required minimum limits of coverage may be achieved through a combination of the aforementioned CGL coverage form and umbrella excess liability coverage form(s), provided that the umbrella excess liability coverage form(s) provide the same or broader coverage than the prescribed CGL coverage form.
- 3) Policy shall be endorsed with Additional Insured Endorsement(s) in compliance with the "Additional Insured" Article 9 of this Section. Commercial General Liability and Umbrella Excess Liability forms must provide defense coverage for additional insureds.
- 4) Policy shall be endorsed with a Waiver of Subrogation Endorsement(s) in compliance with the Waiver of Subrogation" Article 10 of this Section.
- 5) The definition of "Insured Contract" shall be modified to provide coverage for contractual liability for contracts for construction or demolition operations that are within 50 feet of a railroad, and sidetrack agreements.
- 6) Defense Costs (Allocated Loss Adjustment Expense) must be included and in excess of the policy limits for all primary and Umbrella Excess Policies.
- 7) Policy shall be endorsed with ISO endorsement CG 25 03 03 97; "Designated Construction Project(s) General Aggregate Limit", and designate "Any and all construction projects" as the designated Construction project.
- 8) Policy shall be endorsed with ISO endorsement CG 25 04 03 97; "Designated Location General Aggregate Limit", and designate "Any and all locations" as the designated location.
- 9) The Additional Insured Endorsement shall include Products and Completed Operations Coverage with no limitation on when claims can be made.
- 10) Coverage afforded is not limited to the minimum limits of insurance. Additional insured coverage shall be afforded on all liability insurance maintained by contractor.

4. Railroad Protective Liability Insurance (RRP)

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

\$xxx	Each Occurrence Limit
\$xxx	Aggregate Limit

Required Minimum Coverage(s):

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

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

WMATA Blanket RRP Program Option

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

5. Business Auto Liability

Required Minimum Limits of Coverage:

\$5,000,000	Combined Single Limit
-------------	-----------------------

Required Minimum Coverage(s):

- 1) Business Auto Liability shall be written on ISO Business Auto Coverage Form CA 00 01 03 06, or its equivalent. Equivalency determination shall be made in WMATA's sole and unreviewable discretion.
- 2) Policy shall be endorsed with Additional Insured Endorsement(s) in compliance with the "Additional Insured" Article 9 of this Section.
- 3) Policy shall be endorsed with a Waiver of Subrogation Endorsement(s) in compliance with the "Waiver of Subrogation" Article 10 of this Section.
- 4) Business Auto Liability minimum Combined Single Limit requirements may be obtained through the combination of a Primary Business Auto Liability policy and an Umbrella Excess Liability policy provided that the Umbrella Excess Liability policy complies with items 1 through 3 above.

6. Professional Liability Insurance

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

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

7. Pollution Liability Insurance

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

- 1) Minimum Policy Limits of \$N/A, each claim.
- 2) Coverage can be written on an "Occurrence" or "Claims Made" Basis.
- 3) Coverage can be written on "Non-Admitted" paper.
- 4) Policy shall be endorsed with Additional Insured Endorsement(s) in compliance with the "Additional Insured" Article of this Section 9.
- 5) Policy shall be endorsed with a Waiver of Subrogation Endorsement(s) in compliance with the "Waiver of Subrogation" Article of this Section 10.

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

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

9. Additional Insured(s)

Contractor and Subcontractors of every tier are required to add WMATA, and the WMATA Board of Directors as additional insured(s) on all insurance policies purchased by Contractor and Subcontractors of every tier, with the exceptions of Workers' Compensation and Professional Liability.

- 1) Coverage provided to any Additional Insured shall be primary and non-contributory to any other insurance available to the Additional Insured.
- 2) Coverage provided to any Additional Insured shall be for claims arising out of both ongoing operations and products and completed operations hazard.
- 3) Coverage available to any Additional Insured under the products and completed operations hazard can only be limited to the applicable statute of repose in the jurisdiction where the contract scope of work takes place.
- 4) Coverage available to the additional insureds is not limited to the minimum limits of coverage outlined in this document.

10. Waiver of Subrogation

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

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

11. Certificate of Insurance (COI)

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

Additionally;

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

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

3. TITLE AND RISK OF LOSS

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

CHAPTER VIII – INTELLECTUAL PROPERTY RIGHTS

1. PATENT INDEMNITY

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

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

2. WITHHOLD/SET-OFF

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

3. RIGHTS IN TECHNICAL DATA- GENERAL

- (a) The term "technical data" as used in this Article means technical writing, computer software, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether or not copyrighted, which are specified to be delivered pursuant to this Contract. The term does not include financial reports, cost analyses, and other information incidental to Contract administration. "Computer software" as used in this Article means computer programs, computer data bases, and documentation thereof.
- (b) The Authority shall have the right to use, duplicate, or disclose technical data, which includes computer software, in whole or in part, in any manner and for any purpose

whatsoever, and to have or permit others to do so, which is contained in or derived from:

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

- (2) No such copyrighted matter shall be included in technical data furnished hereunder without the written permission of the copyright owner for the Authority to use such copyrighted matter in the manner above described.
- (3) The Contractor shall report to the Authority (or higher-tier contractor) promptly and in reasonable written detail each notice or claim of copyright infringement received by the Contractor with respect to any technical data delivered hereunder.
- (f) Relation to patents: Nothing contained in this Article shall imply a license to the Authority under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Authority under any patent.
- (g) Any dispute under this Article shall be subject to the Disputes article of this contract.
- (h) Notwithstanding any other payment provision in this Contract, the Contracting Officer may retain from payment up to 10 percent of the contract price until final delivery and acceptance of the technical data defined in this Article and as required to be furnished by the Contract Documents

4. RIGHTS IN TECHNICAL DATA – UNLIMITED

DOES NOT APPLY

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

DOES NOT APPLY

CHAPTER IX – ADDITIONAL COVENANTS/LEGAL REQUIREMENTS

1. NONDISCRIMINATION ASSURANCE

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

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

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

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

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

3. WALSH-HEALEY PUBLIC CONTRACTS ACT

DOES NOT APPLY

4. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

DOES NOT APPLY

5. CONVICT LABOR

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

6. COVENANT AGAINST CONTINGENT FEES

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

7. SEAT BELT USE POLICY

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

8. SENSITIVE SECURITY INFORMATION

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

9. LAWS AND REGULATIONS

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

10. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

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

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

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

"This is furnished under Authority Contract No.CQ15221 and 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."

(End of legend)

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

11. LIVING WAGE

The Authority's Living Wage Policy and implementing regulations apply with respect to all contracts for services (including construction) awarded in an amount that exceeds \$100,000 in a 12-month period. To the extent this Contract meets those criteria, the following requirements are applicable:

- (a) The Authority's Living Wage Rate is \$13.48 per hour, and may be reduced by the contractor's per-employee cost for health insurance.
- (b) The Contractor shall:
 - (1) Pay the Authority's Living Wage Rate, effective during the time the work is performed, to all employees who perform work under this Contract;
 - (2) Include the Living Wage provision in all subcontracts that exceed \$15,000 in a 12 month period awarded under this Contract;
 - (3) Maintain payroll records, in accordance with the retention and examination of records requirements in the General Provisions, and shall

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

12. METRIC SYSTEM

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

13. WHISTLEBLOWER PROTECTION

- (a) The Contractor and its subcontractors shall encourage their employees and independent contractors to report information—without fear of actual or threatened discrimination, retaliation or reprisal—that they in good faith reasonably believe is evidence of gross mismanagement; gross misuse or waste of public resources or funds; fraud; violation of law; abuse of authority in connection with the conduct of WMATA operations or contracts; or a substantial and specific danger to health,

security or safety. The Contractor and its subcontractors shall notify their employees that they may make reports under this paragraph to:

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

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

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

14. DRUG AND ALCOHOL TESTING

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

15. EMPLOYMENT RESTRICTION WARRANTY

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

16. GRATUITIES

- (a) In connection with performance of work required under this Contract, or any changes or modifications relative thereto, the giving of or offering to give gratuities (in the form of entertainment, gifts or otherwise) by the Contractor, or any agent, representative or other person deemed to be acting on behalf of the Contractor, or any supplier or subcontractor furnishing material to or performing work under this Contract, or any agent, representative or other person deemed to be acting on behalf of such supplier or subcontractor, to any Director, Officer or employee of the Authority; or to any Director, Officer, employee or agent of any of the Authority's agents, consultants, representatives or other persons deemed to be acting for or on behalf of the

Authority with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract is expressly forbidden. The terms of this GRATUITIES Article shall be strictly construed and enforced in the event of violations hereof.

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

consonance herewith, shall be an issue and may be reviewed in any competent court.

- (d) In the event this Contract is terminated as provided in sub-paragraph (b)(5), the Authority shall be entitled:
 - (1) To pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor; and
 - (2) As a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in any amount (as determined by the Board or its duly authorized representative) which shall be not less than three (3) nor more than ten (10) times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.
- (e) The rights and remedies of the Authority provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

17. OFFICIALS NOT TO BENEFIT

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

18. ORGANIZATIONAL CONFLICT OF INTEREST

- (a) An organizational conflict of interest exists when the nature of the work to be performed under a proposed contract or subcontract may, without some restriction on future activities (1) result in an unfair competitive advantage to the contractor or subcontractor; or (2) impair the contractor's objectivity in performing the contracted work. Most typically this would arise when a contractor prepares a design or specification for work that is to be procured competitively. It may also arise when a contractor or one of its affiliates would have an economic interest in the outcome of a contract or project. Conflicts of interest may be either real or apparent.
- (b) In the event that the Contractor believes that it or any of its potential subcontractors may have an organizational conflict of interest, it shall notify the Contracting Officer, in writing, within five (5) work days after it becomes aware of the potential or actual organizational conflict of interest. The written notification shall identify the nature and circumstances of the perceived conflict and propose appropriate measures to eliminate or mitigate the situation. The Contracting Officer will review the circumstances and the proposed mitigation and notify the Contractor accordingly, determining that: (1) no mitigation is required; (2) the conflict cannot be mitigated; or

- (3) the conflict can be mitigated and accepts the proposed measures, or recommends other and/or additional measures.
- (c) The failure of the Contractor to identify such perceived conflicts may result in the contract award being rescinded or the Contract terminated for default.
- (d) Should the Contractor identify or become aware of a conflict during the term of this Contract, including any extension of the Contract, which it could not reasonably have anticipated prior to award, it shall notify the Contracting Officer in accordance with paragraph (b) above, or request an exception to the restriction with supporting rationale. The Contracting Officer shall consider the Contractor's proposed measures to mitigate or eliminate the conflict, or the request for an exception.
- (e) If the proposed measures are not determined to be feasible or are otherwise not acceptable to the Contracting Officer, the Contracting Officer may terminate the Contract in accordance with the TERMINATION FOR CONVENIENCE OF THE AUTHORITY provisions of the Contract; or
- (f) If the request for an exception is not granted by the Contracting Officer, and the Contract is not terminated for convenience, the Contractor shall be notified in writing and be given ten (10) days from the date of the written notification to take all necessary action to comply with the requirements of this provision.
- (g) If the proposed measures are determined acceptable to the Contracting Officer, the Contracting Officer may grant a specific exception to this restriction, when in the Contracting Officer's judgment, the exception will not create a conflict between the Contractor's duties and obligations under this Contract and the duties and obligations imposed on the Contractor under the contractual or other relationship for which an exception is requested.
- (1) If the Contractor fails to comply with the terms of this Article, the Contracting Officer, may withhold payments due under the contract until such time as the Contractor is in compliance or, should the non-compliance remain uncorrected at the expiration of ten (10) days from written notice from the Contracting Officer as provided in sub-paragraph (d)(2) , terminate the contract for default pursuant to the provisions of the TERMINATION FOR DEFAULT Article of the Contract.
- (2) The Contractor, in performing this Contract, shall avoid any conduct which might result in or give the appearance of creating for Directors, Officers, or employees of the Authority in their relationship with the Contractor, any conflicts of interest or favoritism and/or the appearance thereof and shall avoid any conduct which might result in a Director, Officer, or employee failing to adhere to the Standards of Conduct adopted by the Authority's Board of Directors.
- (3) Any determination by the Contracting Officer under this Article shall be final and shall be considered a question of fact within the meaning of the Disputes Article of this Contract.

19. CONTRACTOR PERSONNEL

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

20. FALSE STATEMENTS, CLAIMS OR SUBMISSIONS

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

CHAPTER X – MISCELLANEOUS ADDITIONAL PROVISIONS

1. FEDERAL, STATE, AND LOCAL TAXES

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

2. FEDERAL/LOCAL/STATE SALES TAX

The Solicitation Instructions giving rise to award of this Contract advised of the nature and extent of the Authority's exemption from Federal, State, District of Columbia, municipal and local taxation and, by submission of its Bid or Offer, the Contractor certified that none of the taxes as to which the Authority is exempt were included in its bid price(s) or the final Contract Price. In the event that the Authority learns that, notwithstanding this certification, any taxes

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

3. PUBLIC COMMUNICATION

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

4. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

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

5. SEVERABILITY

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

6. SURVIVAL

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

7. ALL NECESSARY PROVISIONS DEEMED INCLUDED

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

CHAPTER XI-WMATA POLICIES

1. SAFETY REQUIREMENTS

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

2. PRE-EMPLOYMENT CRIMINAL BACKGROUND CHECK REQUIREMENT

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

3. WORKPLACE VIOLENCE/ZERO TOLERANCE

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



MID-ATLANTIC PURCHASING TEAM RIDER CLAUSE

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

Extension to Other Jurisdictions

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

Inclusion of Governmental & Nonprofit Participants (Optional Clause)

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

Notification and Reporting

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

Contract Agreement

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

Mid-Atlantic Purchasing Team:

☐ Alexandria Public Schools
☐ Alexandria Sanitation Authority
☐ Arlington County, Virginia
☐ Arlington County Public Schools
☐ Bladensburg, Maryland
☐ Bowie, Maryland
☐ BRPC
☐ Charles County Public Schools
☐ City of Fredericksburg
☐ College Park, Maryland
☐ District of Columbia Government
☐ District of Columbia Public Schools
☐ District of Columbia Water & Sewer Auth.
☐ Fairfax, Virginia
☐ Fairfax County, Virginia
☐ Fairfax County Water Authority
☐ Falls Church, Virginia
☐ Fauquier County Schools & Government

☐ Frederick, Maryland
☐ Frederick County, Maryland
☐ Gaithersburg, Maryland
☐ Greenbelt, Maryland
☐ Herndon, Virginia
☐ Leesburg, Virginia
☐ Loudoun County, Virginia
☐ Loudoun County Public Schools
☐ Loudoun County Water Authority
☐ Manassas, Virginia
☐ City of Manassas Public Schools
☐ Manassas Park, Virginia
☐ Maryland-National Capital Park & Planning Comm.
☐ Maryland Department of Transportation
☐ Metropolitan Washington Airports Authority
☐ Metropolitan Washington Council of Governments
☐ Montgomery College
☐ Montgomery County, Maryland
☐ Montgomery County Public Schools

☐ Northern Virginia Community College
☐ Prince George's Community College
☐ Prince George's County, Maryland
☐ Prince George's Public Schools
☐ Prince William County, Virginia
☐ Prince William County Public Schools
☐ Prince William County Service Authority
☐ Rockville, Maryland
☐ Spotsylvania County
☐ Spotsylvania County Government & Schools
☐ Stafford County, Virginia
☐ Takoma Park, Maryland
☐ Upper Occoquan Service Authority
☐ Vienna, Virginia
☐ Washington Metropolitan Area Transit Authority
☐ Washington Suburban Sanitary Commission
☐ Winchester, Virginia
☐ Winchester Public Schools

TECHNICAL SPECIFICATIONS

Scope of Services Required

WMATA seeks to contract with one or more Executive Search/Recruitment firms and/or individuals to assist WMATA in its searches for various senior executive level positions within the following vertical segments: Transit/Transportation, Information Technology, Legal, Finance/Accounting, Administrative Professional Services, Engineering/Construction, and/or Police/Law Enforcement. These searches should be conducted nationally. WMATA is interested in proposals from Executive Search/Recruitment firm(s) of all segments/categories on a “Retained Search Firm” basis. The Executive Search/Recruitment firms that are selected will work on behalf of WMATA’s search committees and human resources. The Director of Talent Acquisition will be the primary contact at WMATA for the Executive Search/Recruitment firm(s) selected. The Executive Search/Recruitment firm(s) will be expected to provide WMATA with the services described below:

- provide input to WMATA on the job description/job posting & advertising;
- provide advice on the salary to be offered to a candidate based on industry trends and best practices;
- screen candidates as appropriate, such as via telephonic, virtual or in-person interviews; and present information on those candidates to WMATA;
- find and provide at least three to five candidates for WMATA to interview;
- coordinate and make arrangements for WMATA’s telephonic, virtual and in person interviews with the candidates;

- make presentations to WMATA’ search committees, Board members, and executive leadership team as requested;
- perform thorough reference checks on the top candidates/finalists;
- work with WMATA on conflict of interest screening for the candidates;
- work with WMATA’s Chief Human Resource Officer and/or Director of Talent Acquisition regarding the benefit package to be offered; and
- work with the Chief Human Resources Officer and/or Director of Talent Acquisition to present candidates for consideration.

The Executive Search/Recruitment firm(s) selected must be technically and professionally capable of providing the services in one or more of the vertical segments described in the Scope of Services and meet the Minimum Qualifications for Proposers. The Executive Search/Recruitment firm(s) must be free from actual conflicts of interest not only at the time of selection, but also throughout the term of the contract.

Qualifications Required

As evidenced by the nature of the tasks listed above, WMATA expects to have a close working relationship with its Executive Search/Recruitment firm(s), and requires that the firm(s) demonstrate a high degree of experience, training and proficiency in the conduct of the various functions performed. The Executive Search/Recruitment firm(s) should have extensive background in placement of senior executives in leadership positions within the Transit/Transportation, Information Technology, Legal, Finance/Accounting, Administrative Professional Services, Engineering/Construction, and/or Police/Law Enforcement industries. In addition, WMATA expects that its Executive Search/Recruitment firm(s) will comply with current industry standards and will maintain appropriate expertise at the firm’s own expense.

The following minimum qualifications and experience are required:

- a) Firm must be a professional Executive Search/Recruitment firm with a specialization in placement of senior executive leadership candidates within the Transit/Transportation, Information Technology, Legal, Finance/Accounting, Administrative Professional Services, Engineering/Construction, and/or Police/Law Enforcement industries.
- b) Firm must have conducted, within the last five (5) years, at least three successful executive searches in at least two or more of the industry areas outlined above for organizations with more than 5,000 employees with annual budgets of at least 100 million dollars.
- c) Firm must have sufficient staff to provide executive search services to WMATA to meet the requirements outlined above in the Scope of Services.

SMALL BUSINESS LOCAL PREFERENCE PROGRAM (SBLPP)

ATTACHMENT A

***NOTICE OF REQUIREMENTS
FOR
SMALL BUSINESS & LOCAL PREFERENCE PROGRAM (SBLPP)***

May 2015

~Applies only to contracts involving jurisdictional (operating) funds only.

SMALL BUSINESS LOCAL PREFERENCE PROGRAM (SBLPP)

SMALL BUSINESS LOCAL PREFERENCE PROGRAM (SBLPP)

Applicable in contracts involving jurisdictional (operating) funds only.

SMALL BUSINESS AND LOCAL PREFERENCE POLICY

It is the policy of the Authority to provide maximum practicable competition opportunities in its non-federal simplified acquisitions to Small Local Businesses and to encourage participation of such businesses on all other contract actions. The Authority's Contracting Officer or its designated representative shall identify in the solicitation whether the preference is for a "Small Local Business".

DEFINITIONS

To participate in SBLPP a business must be a small business and a local business.

- (a) *"Local Business"* means a firm that self-certifies its principle business office is located in the District of Columbia, State of Maryland, or Commonwealth of Virginia.
- (b) *"Small Business"* means a firm that is a Local Business and self-certifies that it is a small business, as defined by the U.S. Small Business Administration.
- (c) *"Simplified Acquisitions"* Applies to non-federal procurements up to the simplified acquisition threshold of \$150,000.00. The Authority will obtain quotes from a minimum of three Small Local Businesses registered in the Authority's SBLPP Directory and matched with the solicitation requirements. If fewer than three quotes from Small Local Businesses are obtained, the Authority will obtain quotes from Local Businesses in the Authority's vendor database.
- (d) *"Contracts Above the Simplified Acquisition Threshold"* Applies to non-federal procurements above the simplified acquisition threshold, participation by Small Local Businesses is encouraged. The procedures used to encourage participation for simplified acquisitions are also applied to these higher value contracts when practicable.

If the Authority's contracting personnel are unable to identify a minimum of three Small Local Businesses or Local Businesses, then the solicitation may be opened to other sources.

CERTIFICATION

- (a) The firm must be certified as a SBLPP before the solicitation process. The firm will send its affidavit to the Small Business Coordinator of the WMATA DBE Program Office.
- (b) The firm must be certified in Material Category Code (MCC) located on the wmata.com website or the North American Industry Classification System (NAICS) Code(s) located at the www.census.gov website, that is/are the primary activities of the business and ensuring the MCC or NAICS Code(s) have been approved by WMATA Small Business Coordinator.
- (c) Certification may be extended due to business necessity, as determined by the Authority, if certification is lost during the period of performance of the contract.

EVALUATION REQUIREMENTS

- (a) When a Small Local Business is competing, contracting personnel shall add a factor of five percent to the quotes or bids received from any firms that are not Small Local Businesses. The five percent factor shall only be added to the quote or bid for evaluation purposes. It shall not be added to the actual price reflected on any purchase order or contract.
- (b) The evaluation of quotes or bids may occur on a line item basis, groups of line items, or for the total value of the procurement, as appropriate by procurement. If individual line items are not easily separable without compromising the integrity of the total requirement or the cost effectiveness of the solicitation, then evaluation should occur for the total value of the procurement.
- (c) If a tie occurs between bids from a Small Local Business and a firm that is not a Small Local Business, the award should be made to the Small Local Business. If a tie occurs between bids from a Local Business and a firm that is not a Local Business, the award should be made to the Local Business.
- (d) Determinations of price fairness and reasonableness will be made inclusive of the five percent factor, if applicable. A procurement action shall not be awarded if the cost to the Authority exceeds the fair market price, and the price cannot be determined to be fair and reasonable.

APPENDIX C

SMALL BUSINESS & LOCAL PREFERENCE PROGRAM (SBLPP)

1. SMALL BUSINESS & LOCAL PREFERENCE PROGRAM (SBLPP) REQUIREMENT:

The requirements of the Authority's SBLPP policy and procedures shall apply to this contract. Accordingly, the Contractor shall carry out the requirements of the Authority's Procurement Procedures Manual and this Appendix in the performance of this non-federally funded contract.

2. POLICY:

The Washington Metropolitan Area Transit (WMATA) Board of Directors approved and adopted Resolution #2005-45 in May 2003 for the implementation of the Small Business and Local Preference Program (SBLPP) and its amended requirements on April 23, 2011. The Board mandated that the program provide small businesses located in the District of Columbia, the State of Maryland, and the Commonwealth of Virginia be given an opportunity to compete for non-federally funded procurement actions. WMATA is committed to ensuring that prime contractors utilize WMATA self-certified businesses in the implementation of procurement opportunities below and above the simplified acquisition threshold. In project activities to be conducted by a prime contractor and subcontractor(s), the Contractor hereby agrees to carry out this policy in the award and administration of subcontracts to the fullest extent possible consistent with efficient Contract performance.

3. CONTRACT GOAL:

- A. If the proposer is not an SBLPP, the proposer agrees that the SBLPP goal for this Contract shall be met by SBLPP subcontractors or by joint ventures with SBLPPs. The goal set forth for this Contract is _____% of the final Contract price, including amendment and modification. The amount of SBLPP participation will be determined by the dollar value of the work performed and/or supplies furnished by SBLPP firms as compared to the total value of all work performed and/or supplies furnished under this Contract. The Contractor shall have met this goal if the Contractor's SBLPP participation meets or exceeds this goal.
- B. In cases where work is added to the Contract by modification such that additional SBLPP participation is necessary to meet this goal, the Contractor shall increase the participation of one or more firms listed on the "Schedule of SBLPP Participation" (Attachment 1) or submit additional SBLPP certified firms to meet the goal. In cases where work is deleted from the Contract, the goal shall be applicable to the new Contract amount. The Contractor shall be permitted to meet the goal by revising its SBLPP participation, provided, however, that the revision shall not result in SBLPP participation that is less than the original goal.

4. DEFINITIONS:

- A. **Appendix C.** The Notice of Requirements for Small Business and Local Preference Program (SBLPP), which when attached to a solicitation, implements the requirements of the Authority's SBLPP policies and procedures in the award and administration of operating funded Authority contracts.
- B. **Certified SBLPP.** Is a for-profit small business concern, whose eligibility is evidenced by a current SBLPP certification letter issued by WMATA's Disadvantaged Business Enterprise Office.

- C. **Contractor.** One who participates, through a contract or subcontract (at any tier), in a jurisdictional (operating) funded requirement.
- D. **Commercially Useful Function (CUF).** An SBLPP performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the SBLPP must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an SBLPP is performing a commercially useful function, the Authority will consider the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing.

- (1) An SBLPP does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of SBLPP participation.
- (2) If an SBLPP does not perform or exercise responsibility for at least 51 percent of the total cost of its contract with its own work force, or if the SBLPP subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work, the Authority will presume that the SBLPP is not performing a commercially useful function.

The following factors will be used by the Authority in determining whether an SBLPP trucking company is performing a commercial useful function:

- (1) The SBLPP must be responsible for the management and supervision of the entire trucking operation for which it is responsible for on a particular contract.
 - (2) The SBLPP must itself own and operate at least one fully licensed, insured and operational truck used on the contract.
 - (3) The SBLPP may lease trucks from another SBLPP firm, including an owner-operator who is certified as an SBLPP.
 - (4) The SBLPP may also lease trucks from a non-SBLPP firm, including an owner-operator. The SBLPP who leases trucks from a non-SBLPP is entitled to credit only for the fee or commission it receives as a result of the lease arrangement.
 - (5) The lease must indicate that the SBLPP has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the terms of the lease with the consent of the SBLPP, so long as the lease gives the SBLPP absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the SBLPP.
- E. **Good Faith Efforts.** Efforts to achieve an SBLPP goal or other requirements of the Authority's SBLPP Program which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the goal program requirement.
- F. **Joint Venture.** An association of an SBLPP firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital,

efforts, skills and knowledge, and in which the SBLPP is responsible for a distinct, clearly defined portion of the work of the contract and shares in the capital contribution, control, management, risks, and profits of the joint venture commensurate with its ownership interest.

- G. **Small Business Concern.** With respect to firms seeking to participate as SBLPP's, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration implementing regulations (13 CFR Part 121).
- H. **WMATA.** Washington Metropolitan Area Transit Authority, the transit system (rail and bus) serving the metropolitan Washington area, including parts of Virginia and Maryland.

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

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

- A. When an SBLPP participates in a contract, only the value of the work actually performed by the SBLPP is counted towards the SBLPP goal.
 - (1) This amount includes the entire amount of that portion of a construction contract that is performed by the SBLPP's own forces. This amount includes the cost of supplies and materials obtained by the SBLPP for the work of the contract, including supplies purchased or equipment leased by the SBLPP (except supplies and equipment the SBLPP subcontractor purchases or leases from the prime contractor or its affiliate).
 - (2) This amount includes the entire amount of fees or commissions charged by an SBLPP firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the contract, towards the SBLPP goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (3) When an SBLPP subcontracts part of its work under the contract to another firm, the value of the subcontract work may be counted towards the SBLPP goal only if the SBLPP's subcontractor is itself an SBLPP. Work that an SBLPP subcontracts to a non-SBLPP firm does not count towards the SBLPP goal.
- B. When an SBLPP performs as a participant in a joint venture, the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that an SBLPP performs with its own forces towards the SBLPP goal may be counted.
- C. Expenditures to an SBLPP contractor towards the SBLPP goal may be counted only if the SBLPP is performing a commercially useful function on that contract.
 - (1) An SBLPP performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the SBLPP must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an SBLPP is performing a commercially useful function, the Authority will consider the amount of work

subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the SBLPP credit claimed for its performance of the work, and other relevant factors.

- (2) An SBLPP does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of SBLPP participation.
- (3) If a SBLPP does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or if the SBLPP subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work, the Authority will presume that the SBLPP is not performing a commercially useful function.

The following factors will be used to count expenditures with SBLPPs for materials or supplies:

- (1) If the materials or supplies are obtained from a SBE manufacturer, 100 percent of the cost of the materials or supplies will be counted towards the SBE. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the contract.
- (2) If the materials or supplies are purchased from an SBE regular dealer, 60 percent of the cost of the materials or supplies will be counted towards the SBE. A regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if this person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.
- (3) With respect to materials or supplies purchased from a non-SBLPP, the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials and supplies required on a job site, may be counted towards the SBLPP, provided the fees are reasonable and are not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves may not be counted towards the SBLPP.

6. BIDDER/PROPOSAL REQUIREMENTS (WITH THE BID/PROPOSAL):

The bidder/proposer shall submit the following with its bid/proposal. Any bidder/proposer who fails to complete and return this information with its bid/proposal shall be deemed to be not responsive and may be ineligible for contract award. Bidders/Proposers that fail to meet the SBLPP goal above and fail to demonstrate "good faith efforts" to justify waiver of the SBLPP goal (see

paragraph 6.C. below) shall be deemed to be not responsible and will be ineligible for Contract award.

- A. Completed "Schedule of SBLPP Participation" (Attachment 1) sufficient to meet the above goal. If the bidder/proposer is an SBLPP firm and intends to satisfy the appropriate SBLPP requirement with its own firm, it must indicate in the Schedule the area of work and percentage it will perform to satisfy the goal. All bidders/proposers must attach current WMATA SBLPP certification letters for each SBLPP listed on the Schedule.
- B. Executed "Letters of Intent to Perform as a Subcontractor/Joint Venture" (Attachment 2). If the proposer is not an SBLPP or intends to satisfy the requirements through other SBLPP firms, then it must attach these letters from each certified SBLPP listed on the Schedule.
- C. Justification for grant of relief (Appendix C waiver of SBLPP goal). If in the submittal of its bid/proposal, the bidder/proposer fails to meet the SBLPP goal above, the bidder/proposer has the burden of furnishing sufficient documentation with its bid/proposal of its "good faith efforts" to justify a grant of relief (waiver) from the goal or portion of the goal. Such justification shall be in the form of a detailed report. The following is a list of actions which shall be considered as part of the bidder's/proposer's good faith efforts to obtain SBLPP participation. This list is neither a mandatory checklist nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases:
 - (1) Soliciting through all reasonable and available means (e.g. attendance at pre-proposal meetings, advertising and/or written notices) the interest of all certified SBLPPs who have the capability to perform the work of the contract. The bidder/proposer must solicit this interest within sufficient time to allow the SBLPPs to respond to the solicitation. The proposer must determine with certainty if the SBLPPs are interested by taking appropriate steps to follow up initial solicitations.
 - (2) Selecting portions of the work to be performed by SBLPPs in order to increase the likelihood that the SBLPP goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate SBLPP participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
 - (3) Providing interested SBLPPs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
 - (4) Negotiating in good faith with interested SBLPPs. It is the bidder's/proposer's responsibility to make a portion of the work available to SBLPP subcontractors and suppliers and to select those portions of the work or material needs consistent with the available SBLPP subcontractors and suppliers, so as to facilitate SBLPP participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of SBLPPs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for SBLPPs to perform the work. "SBLPP Unavailability Certifications" (Attachment 3) shall be completed as appropriate.

A bidder/proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including SBLPP subcontractors, and would take a firm's price and capabilities as well as the contract goal into

consideration. However, the fact that there may be some additional costs involved in finding and using SBLPPs is not in itself sufficient reason for a proposer's failure to meet the contract SBLPP goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the proposer of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from SBLPPs if the price difference is excessive or unreasonable.

- (5) Not rejecting SBLPPs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of proposals in the contractor's efforts to meet the project goal.
- (6) Making efforts to assist interested SBLPPs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- (7) Making efforts to assist interested SBLPPs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (8) Effectively using the services of available state, and Federal small business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of SBLPPs.

7. PROPOSAL REQUIREMENTS (APPARENT SUCCESSFUL BIDDER/PROPOSER):

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

- A. A copy of a current SBLPP certification letter shall be attached to evidence SBLPP pre-certification. All SBLPP firms must be pre-certified. Participation by a firm that is not currently certified as an SBLPP by the Authority at the time of the due date for offers on a contract, does not count.
- B. SBLPP Manufacturer's Affidavit (Attachment 4), if applicable, must be submitted in order to receive 100 percent of the allowable credit for expenditures to SBLPP manufacturers/suppliers.
- C. SBLPP Information for Determining Joint Venture Eligibility (Attachment 5), if applicable, shall be signed by all parties, dated and notarized.
- D. Copy of Joint Venture Agreement, if applicable. Submittal shall be signed by all parties, dated and notarized.
- E. Certification letter of the SBLPP regular dealer/supplier, if applicable. If the proposer wants to receive the maximum allowable credit of its expenditures for material(s) or supplies required under this Contract, from SBLPP regular dealers/suppliers, the SBLPP must submit a signed and notarized statement on their letterhead, that they are a regular dealer of the material(s) or supplies.
- F. For Design-Build contracts, the proposer shall submit with its initial Price Proposal a list of

SBLPP-certified firms that it intends to enter into subcontract agreements with for this Contract. If no goal is specified, the proposer may still utilize SBLPPs in the performance of this Contract, the proposer shall submit with its initial Price Proposal a list of those SBLPP-certified firms. The documentation requirements of the solicitation shall be completed and submitted at the time set forth for the submittal of Best and Final Offer (BAFO) to the Authority for any Contract in which an SBLPP goal is applicable or for any Contract in which there was no goal established, but the proposer identified SBLPP-certified firms that it intends to enter into subcontract agreements with in its initial Price Proposal. Any proposer who fails to complete and return the following information, if applicable, with their BAFO Price Proposal may be deemed to be not responsible and may be ineligible for contract award. Proposers that fail to meet the SBLPP goal, if any, and fail to demonstrate a good faith effort and to justify waiver of the SBLPP goal may be deemed to be not responsible and may be ineligible for contract award.

8. CONTRACT ADMINISTRATION REQUIREMENTS:

The following requirements apply after contract award:

- A. The Contractor shall include the following provision in the General Provisions of each subcontract it awards:
“The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of WMATA’s Small Business & Local Preference Program in the award and administration of operating funded contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in termination of this contract or such other remedy as the Buyer deems appropriate.”
- B. The Contractor shall report on SBLPP performance on the attached (Attachment 6) which shall be submitted monthly with each payment request. Failure to submit these report(s) may result in suspension of contract payments. The contractor shall certify with each payment request that payment has been or will be made to all subcontractors due payment, within ten (10) days after receipt of payment from the Authority for work by that subcontractor. The Contractor shall inform the COR or COTR, with their payment request, of any situation in which scheduled subcontractor payments have not been made and the reason therefore.
The Contractor shall require each subcontractor to complete and forward to the Small Business Coordinator on a monthly basis a “Prompt Payment Report – Subcontractor’s Report (Attachment 7). The subcontractor shall certify that payment has been received.
- C. The Contractor must have the prior written approval of the contracting officer and the DBE office before substitution for an SBLPP subcontractor, regardless of the reason for substitution. Failure to obtain Authority approval could result in the Authority declaring the Contractor ineligible to receive further Authority contracts for three years from the date of the finding.
- D. The contractor shall forward copies of all subcontracts to the SBLPP office at the time of their execution.
- E. If the contracting officer or other delegated authority’s representative determines that the Contractor has failed to comply with this Appendix C, he/she will notify the Contractor of such non-compliance and the action to be taken. The Contractor shall, after receipt of such notice, take corrective action. If the Contractor fails or refuses to comply promptly, the contracting officer or other delegated authority’s representative may issue a “stop work

order” stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop work order shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor. When the Authority proceeds with such formal actions, it has the burden of proving that the Contractor has not met the requirements of this Appendix, but the Contractor’s failure to meet its Appendix C goal shall shift to it the requirement to come forward with evidence to show that it has met the good faith requirements of this Appendix.

- F. The Contractor agrees to cooperate in any studies or surveys as may be conducted by the Authority which are necessary to determine the extent of the Contractor’s compliance with this Appendix.
- G. The Contractor shall keep records and documents for two years following performance of this Contract to indicate compliance with this Appendix. These records and documents, or copies thereof, shall be made available at reasonable times and places for inspection by any authorized representative of the Authority and will be submitted upon request together with any other compliance information which such representative may require.
- H. If the Authority, has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements regarding the SBLPP Program, the matter shall be referred to WMATA’s DBE office.
- I. Failure by the Contractor to carry out the requirements of this Appendix is a material breach of this Contract, which may result in the termination of this Contract under the Default provision of this Contract or such other remedy as the Authority deems appropriate.

SUMMARY OF SUBMITTALS

With the Proposal

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

Bidder/Proposal Requirements (Apparent Successful Bidder/Proposer)

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

After Contract Award

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

SUBMIT WITH PROPOSAL
SCHEDULE OF SBLPP PARTICIPATION

Contract No. _____

Project Name _____

Name of Bidder/Proposer

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

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

 Signature & Title of Contractor Representative
 Date

Contract Number: _____
Project Name: _____

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

TO: _____
(Name of Proposer)

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

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

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

at the following price: \$ _____

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

Name of SBLPP Subcontractor/Joint Venture

Address

Signature & Title

Phone Number

WMATA Vendor ID

Date

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

To: _____
(Name of SBLPP)

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

WORK ITEMS	PROJECTED SBLPP COMMENCEMENT DATE	PROJECTED SBLPP COMPLETION DATE

(Date)

(Name of Prime Contractor &
Acceptance Signature)

SUBMIT WITH PROPOSAL
SBLPP UNAVAILABILITY CERTIFICATION

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

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

SBLPP Contractor	Work Items Sought	Form of Proposal Sought (i.e., Unit Price, Materials and Labor Only, Etc.

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

Signature: _____

Date: _____

_____ was offered an opportunity to propose on the above
(Name of SBLPP Contractor)

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

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

(Signature of SBLPP Contractor)

(Title)

SBLPP MANUFACTURER'S AFFIDAVIT

I hereby declare and affirm that I am _____ (Title)
and duly authorized representative of _____ (Name of Company),
a _____ owned and controlled enterprise
whose address is _____

I further declare and affirm that company employees (persons not on the payroll of and/or performing the same tasks for disadvantaged owned business having any interest in the affiant's business) operate the following company equipment relative to the manufacturing process:

Equipment

Type	Function	Model	Age	Make
------	----------	-------	-----	------

Number of employees involved in the manufacturing process: _____

The undersigned swears that the foregoing statements are true and correct and fully understands that WMATA may rely on these statements in determining whether a WMATA prime contractor purchasing goods from the undersigned's manufacturing concern is entitled to a 100% credit of such purchases towards its SBLPP goal. The undersigned further understands that any material misrepresentation will be grounds for initiating action under Federal or state laws concerning false statements.

_____ Signature of Affiant	_____ Printed Name
-------------------------------	-----------------------

Date: _____ State: _____ County: _____

On this _____ day of _____, 19____,

before me appeared _____

(Name)

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

(Name of Firm)

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

(Seal)

Sworn and subscribed before me _____

(Notary Public)

Commission Expires: _____

23.29 (10/99)

M

Information For Determining Joint Venture Eligibility

Page 1

.....
Name and address of Joint Venture:

Contact Person: _____ Telephone: _____

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

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

.....
Name and address of Joint Venture partner: _____

Contact Person: _____ Telephone: _____

Status of firm: ☐ SBLPP. ☐ Non-Minority.

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

.....
Name and address of Joint Venture partner: _____

Contact Person: _____ Telephone: _____

Status of firm: ☐ SBLPP. ☐ Non-Minority.

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

.....
Describe the nature of the Joint Venture business:

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

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

Information For Determining Joint Venture Eligibility

Page 2

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

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

TOTALS:

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

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

Name: _____ Race: _____

Title: _____ Sex: ☐ Male ☐ Female

Company affiliation: _____

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

Name: _____ Race: _____

Title: _____ Sex: ☐ Male ☐ Female

Company affiliation: _____

3. Supervision of field operations:

Name: _____ Race: _____

Title: _____ Sex: ☐ Male ☐ Female

Company affiliation: _____

M

23.06c (Rev 10/99)

Information For Determining Joint Venture Eligibility

Page 3

.....

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

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

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

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

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

.....

23.29 (10/99)

M

Information For Determining Joint Venture Eligibility

Page 4

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

On this _____ day of _____, 19_____,

before me appeared _____
(Name)

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

(Name of Firm)
to execute the Affidavit and did so as his or her free act and deed.

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

Commission Expires: _____

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

On this _____ day of _____, 19_____,

before me appeared _____
(Name)

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

(Name of Firm)
to execute the Affidavit and did so as his or her free act and deed.

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

Commission Expires: _____

.....
M

23.06c (Rev 10/99)

Washington Metropolitan Area Transit Authority (WMATA)

SMALL BUSINESS LOCAL PREFERENCE PROGRAM (SBLPP) PRIME CONTRACTOR MONTHLY SUBCONTRACTING PAYMENT REPORT

Page _____ of _____
Reporting Period _____
Contract Number _____

This Report is required to be submitted to the DBE Office, Attn: Coordinator, Small Business Programs, 8201 Ardwick Ardmore Road, Landover, MD 20785, pursuant to the requirements of WMATA's SBLPP Program (Board Resolution 2005-45). **A copy of this form must also be submitted with firm's monthly invoice.**

Name of Prime Contractor: _____

Prime Contract Amount: _____ SBLPP Goal: _____

Name of Sub-Contractor	SBLPP (Y/N)	Description of Work	Date Contract Awarded	Amount of Sub-Contractor Award	Amount Paid This Reporting Period	Cumulative Paid To Sub-Contractor

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

Signature & Title of Authorized Representative: _____

Date: _____

Washington Metropolitan Area Transit Authority (WMATA)

**SMALL BUSINESS LOCAL PREFERENCE PROGRAM (SBLPP)
SBLPP MONTHLY PAYMENT REPORT**

Page _____ of _____
Reporting Period _____
Contract Number _____

This Report is required to be submitted to the DBE Office, Attn: Coordinator, Small Business Programs, 8201 Ardwick Ardmore Road, Landover, MD 20785, pursuant to the requirements of WMATA's SBLPP Program (*Board Resolution 2005-45*).

SBLPP Subcontractor: _____

Prime Contractor: _____ Subcontract Amount: _____

Description of Service/Product Performed	Invoice Date	Invoice Amount	Payment Received From Prime Contractor (<i>Check # or EFT Confirmation #</i>)	Cumulative Payments Received From Prime Contractor

I certify the information furnished with respect to payment(s) by the prime contractor for the above services/products is true and accurate to the best of my knowledge.

Signature & Title of Authorized Representative: _____

Date: _____

COMBINED GLOSSARY OF DEFINITIONS

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

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

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

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

Amendment: Written instructions issued prior to the date set for receipt of Proposals or Best and Final Offers to clarify, revise, add or delete requirements of the Request for Proposals.

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

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

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

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

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

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

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

Best and Final Offers: A Revision to the initial Proposal submitted at the request of the Contracting Officer, generally following Discussions, upon review of which the Authority will render a determination as to the successful Offeror for purposes of contract award.

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

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

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

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

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

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

Clarifications: Exchanges between the Authority and one or more Offerors of a limited nature, whereby Offerors may be given the opportunity to clarify certain aspects of their Proposals or to resolve minor irregularities, informalities or clerical errors.

Competitive Range: Those initial Proposals which are determined by the Authority to have a reasonable chance of being selected for award and which may thereupon be selected for additional negotiations or Discussions to the extent deemed appropriate by the Contracting Officer. Proposals not in the competitive range are given no further consideration.

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

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

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

Contract Documents: All of the documents encompassed within and accompanying this Request for Proposals, including the Offer and Award sheets, Price Schedule, Solicitation Instructions, Representations and Certifications, General and Special Provisions, Scope of Work, Change Orders issued subsequent to award of the Contract, and the Contractor's Proposal to the extent finally accepted by the Authority.

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

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

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

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

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

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

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

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

Discussions: Negotiations or exchanges relating to the Solicitation between an Offeror and the Authority that may occur after receipt of Proposals (generally after establishment of the Competitive Range) and before award, that may, at the Contracting Officer's discretion, result in the Offeror being allowed to revise its Proposal or be followed by a request by the Contracting Officer for receipt of Best and Final Offers.

Evaluation Criteria: Those factors to be considered by the Authority, as set forth in the Solicitation Instructions accompanying this RFP, in determining the successful Proposal.

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

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

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

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

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

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

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

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

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

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

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

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

Offeror: A party submitting a Proposal in response to this Solicitation.

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

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

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

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

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

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

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

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

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

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

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

Revision: A change to a Proposal made by an Offeror, at the request of or as allowed by the Contract Administration or Contracting Officer, often as a result of Discussions. Best and Final Offers are one form of Revision.

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

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

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

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

Solicitation: This Request for Proposals (RFP) and the accompanying Contract Documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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