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Washington
Metropolitan
Area
Transit
Authority

Request For Proposal [Federal]

Mechanical Construction Services Multiple Award Task Order Contract (MATOC)

RFP NO. FQ14114/MDG

Date: December 16, 2014

**Proposals Due:
January 21, 2015**

**Book 1 of 2
Bidding and Contracting Requirements**

**Washington Metropolitan Area Transit Authority
RFP: FQ14114/MDG**

Date: December 16, 2014

SUBJECT: RFP No. FQ14114/MDG

Dear Sir/Madam:

The Washington Metropolitan Area Transit Authority (WMATA) requires the services of a qualified contractor to provide a diverse range of mechanical construction services including, but not limited to, mechanical equipment demolition, repair, replacement, modification and addition. The Work includes constructing, testing and commissioning the work of each task issued as indicated in the associated Contract Documents provided for each task. Tasks may be issued throughout the Period of Performance of this Multiple Award Task Order Contract.

If you have any questions, Technical, Contractual, or Administrative, please e-mail them to mdglimp@wmata.com no later than Close of Business, January 9, 2015. WMATA will provide written answers, by e-mail to all those who obtain the RFP and provide their e-mail addresses. If an amendment is issued resulting from questions and answers, it will be posted on our website.

Your proposal must be received with all required submittals as stated in the RFP, no later than **2:00PM, January 21, 2015**, at WMATA, Office of Procurement and Materials, 600 Fifth Street, NW, Room 3C-02, Washington, DC 20001-2651.

Sincerely,



Richard Owens
Contracting Officer
Office of Procurement and Materials

Enclosure:

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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: Michael Glimp/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. (LOCAL TIME) JANUARY 21, 2015 ON DAY OF PROPOSAL CLOSING.

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.)
- PRICE SCHEDULE
- REPRESENTATIONS AND CERTIFICATIONS
- PRE-AWARD DATA
- ACKNOWLEDGMENT OF AMENDMENTS (IF ANY)
- TECHICAL PROPOSAL
- PROOF OF INSURANCE ELIGIBILITY
- APPENDIX B (IF APPLICABLE)

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 Michael Glimp on 202-962-2086 or mdglimp@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.

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

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

Registered Vendor Benefits:

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

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



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SOLICITATION, OFFER AND AWARD

Table with 4 columns: CONTRACT NO. (FQ14114), SOLICITATION NO. (RFP), DATE ISSUED (12/16/2014), ADDRESS OFFER TO OFFICE OF PROCUREMENT (Office of Procurement, 600 Fifth Street NW, Washington, DC 20001). Includes checkboxes for ADVERTISED (checked) and NEGOTIATED.

SOLICITATION

Sealed offer in original and TWO (2) copies for furnishing the supplies or services in the schedules will be received at Authority until 2:00 P.M. local time 1/21/15

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.

Proposer's Phone Number Proposer's Fax Number

SCHEDULE

Table with 6 columns: ITEM NO., SUPPLIES/SERVICES, QUANTITY, UNIT, UNIT PRICE, AMOUNT. Includes a note: (See continuation of schedule on page 22)

DUN & BRADSTREET ID NUMBER:

OFFEROR

Form for Offeror information including Name and Address, Name and Title of Person Authorized to Sign Offer, Signature, and Offer Date.

AWARD (To be completed by The Authority)

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

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

The total amount of this award is \$

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

SOLICITATION, OFFER AND AWARD

CONTINUATION SHEET

THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF THE FOLLOWING AMENDMENTS

TO SOLICITATION **RFP FQ14114/MDG**

| | |
|------------------------|-------------|
| 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

The Estimated Amounts are for proposal purposes only. The Authority does not guarantee the Estimated Amounts. The Authority will issue the work through task orders. The actual amount shall be based upon the actual Task Orders issued and the total aggregate amounts may be lower or higher than the Estimated Amounts per contract period. No price adjustments shall be made due to variations in amounts from the Estimated Amounts to the actual amounts. The Authority's obligation is limited to the value of Task Orders issued.

This is an Indefinite Quantity Indefinite Delivery (IDIQ) type contract for a Base Period and three (3) one year renewable Option Periods.

The following estimated amounts are for proposal purposes only, and are not guaranteed:

| ORDERING PERIOD * | ESTIMATED AGGREGATE AMOUNT (for all awards) |
|---|---|
| <p align="center"><u>BASE YEAR</u> Notice to Proceed (NTP) through June 30, 2016</p> | <p align="center">\$6,000,000.00 to \$15,000,000.00</p> |
| <p align="center"><u>OPTION YEAR 1</u> 365 calendar days</p> | <p align="center">\$5,000,000.00 to \$10,000,000.00</p> |
| <p align="center"><u>OPTION YEAR 2</u> 365 calendar days</p> | <p align="center">\$5,000,000.00 to \$10,000,000.00</p> |
| <p align="center"><u>OPTION YEAR 3</u> 365 calendar days</p> | <p align="center">\$5,000,000.00 to \$10,000,000.00</p> |

The estimated amounts for option years and aggregate amounts are only rough orders of magnitude.

The **guaranteed minimum** for this contract is \$5,000 per contract, over the full term of the contract, to include option years. Task Orders will be firm fixed price and will be predominately in dollar value from \$100,000 to \$2,000,000; however, the Authority may elect to issue task orders of a higher or lower value.

The estimated aggregate value for all awarded contracts, inclusive of all option periods, is **\$21,000,000.00 to \$45,000,000.00**.

*The Ordering Period establishes date limits for the issuance of Individual Task Orders. Actual performance periods for completion of work included in Individual Task Orders may extend beyond these dates.

The actual value of each contract period is based on the cumulative amounts of Individual Task Orders and any modifications thereto.

The Authority anticipates awarding multiple contracts, but reserves the right to award a single contract. The Contractor, or Contractors, shall perform all work in accordance with the scope of work contained in individual Task Orders under this contract.

PRICE SCHEDULE SHEET
Continuation

Offerors are required to fill in the dollar amount for the SEED Project in the below section only, and submit with Volume 1 of their proposal. **The Unit Price Schedule (Seed Project) is included for proposal purposes only.**

| ITEM NO | DESCRIPTION | QUANTITIY | UNIT | UNIT PRICE | AMOUNT |
|---------|-------------|-----------|------|------------|--------|
| 0001 | | 1 | LS | | \$ |

KO5 - EAST FALLS CHURCH TPSS - SEED PROJECT

FFP

Price for the entire work, complete in accordance with the drawings and specifications.

FOB: Destination

| ITEM NO | DESCRIPTION | QUANTITIY | UNIT | UNIT PRICE | AMOUNT |
|---------|-------------|-----------|------|------------|--------|
| 0002 | | 1 | LS | | \$ |

KO5TB2 - N. 25TH ST. TBS - SEED PROJECT

FFP

Price for the entire work, complete in accordance with the drawings and specifications.

FOB: Destination

| ITEM NO | DESCRIPTION | QUANTITIY | UNIT | UNIT PRICE | AMOUNT |
|---------|-------------|-----------|------|------------|--------|
| 0003 | | 1 | LS | | \$ |

KO6TP1 - FISHER AVE. TPSS - SEED PROJECT

FFP

Price for the entire work, complete in accordance with the drawings and specifications.

FOB: Destination

TOTAL SEED PROJECT \$ -

Authorized Signature

Company Name

Date

SOLICITATION INSTRUCTIONS

1. DEFINITIONS

As used herein:

“Clarifications” are limited exchanges, between the Authority and offerors, where offerors may be given the opportunity to clarify certain aspects of their proposals or to resolve minor irregularities, informalities or clerical errors.

“Descriptive literature” means 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” are negotiations that may occur after receipt of proposals (generally after establishment of the competitive range) and before award that may, at the Contracting Officer’s discretion, result in the offeror being allowed to revise its proposal.

“Excluded Parties List System” means an electronic database maintained and posted by the General Services Administration containing the list of all parties suspended, proposed for debarment, debarred, declared ineligible, or excluded or disqualified under the nonprocurement common rule by agencies, Government corporations, or by the Government Accountability Office.

“In writing,” “writing,” or “written” means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

“May” denotes the permissive. However, the words “no person may required, authorized, or permitted to do the act described.

□” mean th

“Must” (see “shall”).

“Offer” means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to requests for proposals (negotiation) are offers called “proposals”; however, responses to requests for quotations (simplified acquisition) are “quotations,” not offers.

“Offeror” and “proposer” are synonymous and refer to the entity that submits an offer in response to this solicitation.

“Option” means a unilateral right in a contract by which, for a specified time, the Authority may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

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

“Preaward survey” means an evaluation of a prospective contractor’s capability to perform a proposed contract.

“Proposal modification” is a change made to a proposal before the solicitation’s closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

“Proposal revision” is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer typically as a result of discussions.

“Shall” means the imperative.

“Should” means an expected course of action or policy that is to be followed unless inappropriate for a particular circumstance.

"Solicitation" means "Request for Proposal (RFP)" where the procurement is negotiated.

“Will” (see “shall”).

2. **PREPARATION OF OFFERS**

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

3. **EXPLANATION TO OFFERORS**

Any explanation desired by an Offeror regarding the meaning or interpretation of the solicitation documents must be requested in writing and with sufficient time allowed for a reply to reach all Offerors before the submission of their offers. **Oral explanations or instructions given before the award of the contract will not be binding.** Any information given to an Offeror concerning a solicitation will be furnished promptly to all Offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if lack of such information would be prejudicial to other Offerors. All Requests should be addressed as follows and submitted via e-mail, facsimile or mail to Michael Glimp at mdglimp@wmata.com, RFP No. FQ14114/MDG, Mechanical Systems MATOC.

4. **PRIOR REPRESENTATIONS**

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

5. ACKNOWLEDGMENT OF AMENDMENTS

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

6. PRE-PROPOSAL CONFERENCE

For the purpose of clarifying the terms, conditions, and requirements of this Request for Proposal, a pre-proposal conference will be held to respond to questions by interested offerors. **This pre-proposal conference will be held at 1:00 p.m on Tuesday, January 6, 2015, in the Lobby Level Training Room of the WMATA Jackson Graham Building, 600 5th Street, NW, Washington, DC 20001.** The purpose of this conference will be to answer questions regarding, or requests for clarifications of, the solicitation documents. It is requested that offerors submit their questions in writing whether in advance of the meeting or during the meeting. Questions from the floor, however, are permissible.

All questions concerning the terms, conditions, and requirements of this Request for Proposal must be received by the Contracting Officer in writing no later than January 9, 2015.

7. REVISIONS PRIOR TO DATE SET FOR RECEIPT OF PROPOSALS

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

8. SUBMISSION OF OFFERS

- a. Offers and modifications thereof shall be enclosed in sealed envelopes and addressed to the office specified in the solicitation. The Offeror 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.
- b. Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified or withdrawn by written or telegraphic notice, provided such notice is received prior to the hour and date specified for receipt.
- c. Facsimile offers, modifications or withdrawals will not be considered unless authorized by the Authority.

9. LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF OFFERS

- a. Any offer received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it
- (1) Was sent by registered or certified U.S. mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been sent by registered mail by the 15th;
 - (2) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile and it is determined by the Authority that the late receipt was due solely to mishandling by the Authority after receipt;
 - (3) Was sent by U.S. Postal Service Express Mail Next Day Service Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of offers. The term "working days" excludes weekends and U.S. Federal holidays; or
 - (4) Is the only offer received.
- b. Any modification of an offer, except a modification resulting from the Contracting Officer's request for "revised final proposals" offer, is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.
- c. A modification resulting from the Contracting Officer's request for "revised final proposals" received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Authority.
- d. The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by registered or certified mail is the U.S. or Canadian Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, Offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.
- e. The only acceptable evidence to establish the time of receipt by the Authority is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the Authority.
- f. The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (d) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, Offeror or Quoter should request the postal clerk to place a legible hand cancellation bulls-eye postmark on both the receipt and the envelope or wrapper.

- g. Notwithstanding paragraph "a" above, a late modification of any otherwise successful offer that makes its terms more favorable to the Authority will be considered at any time it is received and may be accepted.
- h. Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision entitled "Facsimile Proposals". Proposals may be withdrawn in person by an Offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

10. PROPOSAL GUARANTEE – NOT USED

11. CONTRACT AND BONDS

The Offeror whose Technical and Price Proposal are accepted, shall, within the time established in the contract documents, enter into a written contract with the Authority and furnish performance bonds if applicable, on standard Authority forms in the amounts indicated in the General Provisions of the contract.

12. MINIMUM PROPOSAL ACCEPTANCE PERIOD

- a. "Acceptance period," as used in this provision, means the number of calendar days available to WMATA for awarding a contract from the date specified in this solicitation for receipt of proposals.
- b. This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.
- c. WMATA requires a minimum acceptance period of 90 calendar days from the latest revised proposal.

13. CONTRACT AWARD

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

after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the Authority.

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

14. **DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS**

Attached as part of this solicitation are documents outlining the requirements for the Disadvantaged Business Enterprise (DBE) Program: **The goal set forth for this Contract, and each individual task order, is 25% of the final Contract price, including amendment and modification, unless a good faith waiver is requested and approved.**

- a. For the Offeror to be considered responsible, the following documents (see Appendix B) shall be completed and **submitted with the offer and any resulting task orders:**

Schedule of DBE Participation

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

DBE Unavailability Certification
(where applicable)

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

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

If any portion of the written requirement is omitted, then the offer may be found to be unacceptable and subsequently rejected. Appendix B forms and/or waivers must be completed with great care by each Offeror to insure that the offer is acceptable.

15. **OPPORTUNITY FOR DISADVANTAGED BUSINESS ENTERPRISES TO PROPOSE**

The Washington Metropolitan Area Transit Authority hereby notifies all Offerors that it will affirmatively ensure that disadvantaged minority business enterprises will be afforded full opportunity to submit offers in response to this solicitation and will not be discriminated against on the basis of race, color, or national origin in consideration for award.

16. NOTICE OF PROTEST POLICY

- a. WMATA policy and procedure for the administrative resolution of protests is set forth in Chapter 17 of the Authority's Procurement Procedures Manual (PPM). Chapter 17 contains strict rules for filing a timely protest, for responding to a notice that a protest has been filed, and other procedural matters. The Contracting Officer can furnish a copy of Chapter 17 upon request.
- b. FTA Circular 4220.1F, addresses Protests. FTA will only review protests regarding the alleged failure of the grantee to have a written protest procedure or alleged failure to follow such procedures, and only when submitted by an interested party. The term "interested party" is defined in the Authority policy for handling protests.
- c. Alleged violation on other grounds must be submitted to the Contracting Officer who will decide the protest.
- d. The judicial authorities having jurisdiction over court actions concerning protest decisions are the United States District Courts for the Districts of Maryland, Virginia, and the District of Columbia, and the local courts in Maryland, Virginia, and the District of Columbia.

17. PRE AWARD INFORMATION

- a. Before making a determination of responsibility, the Contracting Officer shall possess or obtain information sufficient to satisfy the applicable standards and requirements for responsibility set forth in this Chapter.
- b. The Contracting Officer shall obtain information regarding the responsibility of a prospective contractor whose offer is in the competitive range. The prospective contractor shall promptly supply information requested by the Contracting Officer regarding its responsibility. If the prospective contractor fails to supply the information requested, the Contracting Officer shall make a determination of nonresponsibility based upon the lack of available information.
- c. The Contracting Officer shall use the following sources of information, listed in priority order to support responsibility determinations:
 - (1) General Services Administration publication titled "System for Award Management" ("SAM"), formerly the "Excluded Parties List System." The results of the search must be printed and placed in the contract file;
 - (2) Written records and experience data, including verifiable knowledge of Authority personnel, and other sources, i.e.: publications, suppliers, subcontractors, and customers of the prospective contractor, financial institutions, government agencies, and business and trade associations. Contract Administrators and other Authority personnel who become aware of circumstances casting doubt on a contractor's ability to perform a contract successfully shall promptly inform the Contracting Officer and furnish the relevant information in writing;
 - (3) Information supplied by the prospective contractor, including proposal information, questionnaire replies, financial data, information on production equipment and personnel information; and
 - (4) Pre-award survey reports.

18. PROPOSAL FORMAT INSTRUCTIONS/REQUIREMENTS

The Offeror shall submit their proposal as follows:

a. Proposal Format

The original of Volumes I, II, and III shall be unbound. All electronic copies shall be labeled with the RFP number, the Offeror's identity, and volume number. Volumes shall be submitted in the following order:

(1) Volume I – Cost/Price - One (1) original AND One (1) electronic copy of Volume I submitted on Universal Serial Bus (USB) Drive; (i.e. Flash Drive, Thumb Drive, Pen Drive, Jump Drive)

(2) Volume II – Technical - One (1) original AND Seven (7) electronic copies of Volumes 2 and 3 submitted on Universal Serial Bus (USB) Drives; copies of the technical proposal (Shall not include cost/price information)

(3) Volume III – Contractual - One (1) original AND Seven (7) electronic copies of Volume 3 submitted on Universal Serial Bus (USB) Drives 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. Volume I – Cost/Price Proposal. Volume I will contain the price information for the Seed Project. 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 Offeror's proposal.

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

| TECHNICAL PROPOSAL SECTION | PAGE LIMIT |
|---|----------------------------|
| Title Page | 1 |
| Transmittal Letter | 2 |
| Table of Contents | 2 |
| Executive Summary | 3 |
| Past Performance | 1 Page Per Project |
| Corporate Experience and Technical Capability | 50 (not including resumes) |

TECHNICAL PROPOSAL CONTENTS: The contents and requirements for the Technical Proposal are described in detail in the following sections. The Contractors Technical Proposal shall contain each of the following sections, and be separated by an appropriate tab:

- a) **Title Page:** (Limited to one (1) page) The Technical Proposal must contain a Title Page.
- b) **Transmittal Letter:** (Limited to two (2) pages) The Cover Letter must be signed by an officer authorized to make a binding commitment for the firm(s) making the Proposal. The cover letter shall include:
- The RFP Number
 - The name address, telephone and facsimile numbers, and website addresses of the offeror (if applicable)
 - A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item
 - Names, titles, and phone and facsimile numbers and e-mail addresses of persons authorized to negotiate on the offeror's behalf with the Authority in connection with this solicitation and;
 - Name title and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office
 - This letter shall include acknowledgement of all addenda issued by WMATA.
- c) **Table of Contents:** (Limited to no more than two (2) pages) The Technical Proposal must contain a Table of Contents that delineates all the sections in the Proposal.
- d) **Executive Summary:** (Limited to no more than three (3) pages, including matrix) the offeror shall provide a short executive summary that describes the significant attributes of its proposal. This executive summary will include a matrix/table that maps each of the factors/sub-factors to a specific section/page/paragraph within the vendor's proposal. See table A for a sample matrix.

TABLE A – Sample Matrix:

| Sub-Factor Reference | Section in Proposal | Page in Proposal | Para. in Proposal |
|----------------------|---|------------------------------------|-------------------|
| Past Performance | 22 Past Performance (22.1; 22.2; 22.3) | Tab H – pg. 1-6 | Para. 1 |
| Sub-factor 1 | 3.2 Management Approach 13.2 Quality Assurance | Tab B – pg. 2-5 Tab J – pg. 4-9 | Para. 5 |

- e) **Past Performance**
- 1) Consent Letter executed by each subcontractor, teaming partner, and/or joint venture partner, authorizing release of adverse past performance information so the offeror can respond to such information.
 - 2) Past Performance Summary Sheet - Submit a list of at least 3 (three), but no more than 5 (five) construction contracts/negotiated agreements/task or delivery orders (herein referred to as contract citations) you consider most recent and most relevant in demonstrating your ability to perform the efforts identified in Division 1. If submitting a proposal as a Joint Venture or any other type of teaming arrangement, submit past and present work in accordance with the above guidance for each legal partner. Past performance of any major subcontractor who is not identified as a legal teaming partner will NOT be evaluated and should not be included.

3) Project Performance Information Sheets - Submit project information on EACH contract citation listed on your Past Performance Summary sheet. As a minimum, the project information sheet should include the type of contract; Title, contract number; Name of the agency, company, and/or owner; Name, telephone number, and email address of contact person; Date(s) of award and completion; Value of the contract; Percentage of self performance; General description of the project, the relative complexity of the work, and relevancy to this solicitation. Limit information for each project to one (1) page, single-spaced and 12 pt. font. Include rationale supporting your assertion of relevance. Specifically, relevancy will consider similar types of effort, complexities, and scope within the SOW and evaluation factors. It is important to specifically describe the work that each individual joint venture entity, teaming partner, or major subcontractor performed so the Authority can conduct a meaningful Performance Confidence Assessment (PCA) on the prime, teaming partners, joint venture partners, and each major subcontractor. A relevant contract does not have to contain all Factor areas (e.g. an offeror may submit information on a contract that is only relevant to one Factor).

f) **Corporate Experience and Technical Capability**

1) The Offeror shall provide evidence of verifiable continuous corporate experience as a business entity primarily providing services within the North American Industry Classification System (NAICS) Code 238220 (Plumbing, Heating, and Air-Conditioning Contractors), within the last five (5) years.

2) The Offeror shall describe the proposed approach to scheduling an individual task order. The approach shall include all items the Offeror identifies as necessary. Examples of these items include, but are not limited to: initial project scheduling, milestones, submittals, meetings with the Authority, schedule revisions and updates, scheduling software, customer input and constraints, delay notifications, and project float.

3) The Offeror shall describe the proposed approach to managing project submittals. This approach shall address how they plan on providing timely submittals and the quality control measures they utilize to ensure the submittals are complete and done properly. The Offeror shall describe how their submittal package will be organized. The Offeror shall provide a sample transmission document indicating what submittals will be provided on each individual task order.

4) The Offeror shall provide their approach to selecting the proposed DBE subcontractors, their rationale for selecting the DBE subcontractors identified in their proposal, information on what types of work the DBE subcontractors will perform, and the approach for retaining the proposed DBE subcontractors throughout the life of the MATOC (including a copy of the subcontractor agreements). If the Offeror is a DBE contractor, provide their approach to selecting the proposed major subcontractors, their rationale for selecting the major subcontractors identified in their proposal, information on what types of work the major subcontractors will perform, and the approach for retaining the proposed major subcontractors throughout the life of the MATOC (including a copy of the subcontractor agreements). The Offeror shall provide their approach for identifying any subcontractors that need to be replaced and their approach for replacing subcontractors. The Offeror shall provide their approach for controlling subcontract costs. The Offeror shall provide their approach for selecting material suppliers.

- 5) The Offeror shall provide their approach for managing company resources. This includes, at a minimum, addressing what steps will be taken to identify issues that may potentially lead to the Offeror not meeting the schedule established at time of award of any individual task order, or any combination of task orders, and what steps will be taken to ensure the task order(s) will be completed on time (without the need for a time extension) and at no additional cost to the Authority.
- 6) The Offeror shall provide their approach for staffing each project adequately and what steps will be taken if it is determined that staffing needs are not being met. The Offeror shall address their process to ensure the Project Manager and Project Superintendent(s) are not overcommitted and have adequate time to perform their duties on each individual task order, particularly in the event that multiple task orders are being done simultaneously. The Offeror shall identify the roles and responsibilities for the Project Manager and the Project Superintendent(s). The Offeror shall provide a resume for the Project Manager and for all Project Superintendents.
- 7) The Offeror shall provide their corporate safety plan or safety program similar to this project. This plan shall clearly state the Contractor's accident prevention plan, emergency response plan, and safety organization. The following information should be included at a minimum:
- Lost time accident rate and medical cases for past five years;
 - Experience Modification Rating (EMR) for the past five years;
 - The name and address of present compensation and liability insurance carrier;
 - The name, address, and telephone number of the person in charge of the organizational safety program;
 - The Offeror shall submit record of federal, state, or local violations of environmental and occupational safety and health regulations for the last 2 years

The information supplied shall be closely aligned with the procurement under consideration and shall be free from ambiguities. Ambiguous statements or statements with dual meanings will be interpreted in the manner representing the best interest to the Authority. The prime offeror shall be held responsible for the validity of information supplied by potential subcontractors. While any and all pertinent information is essential to a successful technical proposal, it should be noted that voluminous proposals containing nonessential information are undesirable.

- 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.
- e. Documents submitted in response to this RFP must be fully responsive to and consistent with the following:
1. Requirements of the RFP, the specifications, and all standards and regulations pertaining to the specifications.
 2. Any limitation on the number of proposal pages. Pages exceeding the page limitations set forth may not be read nor evaluated.
 3. **Format for proposal Part II and Part III shall be as follows:**

- A page is defined as one face of an 8 ½" x 11" sheet of paper containing information.
- Typing shall not be less than 12 point font; Graphs and Charts shall be no less than 8 point
- Elaborate formats, bindings or color presentations are not desired or required.
- The offeror shall use a standard page numbering system to facilitate proposal references.

All changes resulting from clarifications to the proposal will be submitted on a page for page basis. Each page changed shall contain a revision date located in a uniform location.

The information supplied shall be closely aligned with the procurement under consideration and shall be free from ambiguities. Ambiguous statements or statements with dual meanings will be interpreted in the manner representing the best interest to the Authority.

19. RESTRICTION ON DISCLOSURE AND USE OF DATA

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

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

20. AWARD

The Authority intends to make at least three contract awards as a result of this solicitation. The Authority reserves the right to award one or more contracts if it believes it is in the Authority's best interest. The Authority intends to award without discussions; however, the Authority reserves the right to award no contract at all, depending on the quality of the proposal(s) submitted.

21. BASIS FOR AWARD

BEST VALUE

- a. Award Will Be Made To That Proposer:
 - (1) Whose offer is judged to be an integrated assessment of the evaluation criteria to be the most advantageous to the Authority based on technical merit and price ("best value"); and
 - (2) That the Authority deems responsible in accordance with WMATA Procurement Procedures Manual.

- b. Best Value Determination
 - (1) The technical merit of the proposal is significantly more important than the price, and price must be fair and reasonable.
 - (2) The Authority may select other than the lowest price proposal if it is determined by value analysis, or technical/cost tradeoffs, that the proposal become more technically equivalent, then price becomes more important.
- c. Offerors are advised that award may be made without discussion or any contact with the offerors concerning the offers received. Therefore, offers should be submitted initially on the most favorable terms that the offeror can submit to the Authority.
- d. Price evaluation will be based on the sum of the total estimated prices of the base contract and any options.
- e. Affordability. The price proposals will be assessed for affordability. The Authority will not make an award for any proposal which proposes prices that would render the procurement infeasible.

22. PROPOSAL EVALUATION CRITERIA

Evaluation Factors and Their Relative Order of Importance

Award will be made to the Offeror whose proposal is deemed the best value to the Authority, based on an integrated assessment of the evaluation factors described below. Factors 1, 2, and 3 are of equal importance. All evaluation factors other than price, when combined, are significantly more important than price.

Factor 1: Past Performance

Factor 2: Corporate Experience and Technical Capability

Factor 3: Price

FACTOR 1 - PAST PERFORMANCE

a. Under the Past Performance factor, the Performance Confidence Assessment (PCA) represents the evaluation of an Offeror's present and past work record and assesses the Authority's confidence in the Offeror's probability of successfully performing the required effort. The Authority will evaluate the Offeror's demonstrated record of contract compliance in supplying products and services that meet the user's needs in regards to quality, timeliness, responsiveness, subcontracts and management, and change/cost control.

b. The PCA will be unaffected by any early proposal information received.

c. The PCA will use the consent letter by each subcontractor, teaming partner, and/or joint venture partner to fully review ALL available past performance information. Failure to submit a letter of consent as requested may result in a determination of no applicable past performance information as described below.

d. The Past Performance Evaluation will be accomplished by reviewing an Offeror's most recent and relevant performance information, focusing on and targeting performance, which is relevant to the Factors identified below. For the purposes of this solicitation, recent contracts are defined as

work or a portion of work performed after 1 January 2009 which contain one or more of the following project characteristics: mechanical construction services including, but not limited to, mechanical equipment demolition, repair, replacement, modification and addition. The Authority will determine relevancy of an Offeror's present and past performance based on the information submitted by the Offeror, including the performance of joint venture partners and/or other legal partners. For Offerors who are submitting as a joint venture or other teaming arrangement, past performance for the specific joint venture or other teaming arrangement that is being proposed is significantly more important than any other past performance information cited or utilized by the AUTHORITY. Successful projects submitted with overlapping periods of performance are also significantly more important than projects without overlapping periods of performance.

e. The AUTHORITY will consider efforts, or portions of an effort, proposed by an Offeror, joint venture partner, or other legal partner. Relevance is not rated separately but integrated into the PCA. The Authority is not bound by offeror's opinion of relevancy. Relevancy occurs when requirements for cited efforts (e.g. contracts, task/delivery orders) are similar to this acquisition. Higher relevance combined with demonstrated positive performance favorably impacts an Offeror's PCA.

f. An Offeror will receive an integrated PCA for the Past Performance Factor, in accordance with Performance Confidence Assessments Ratings (below). The Authority bases its PCA on an Offeror's ability to fulfill the solicitation requirements within schedule, budget, and performance constraints. The following statements define levels of relevancy:

Very Relevant - Past/present performance effort involved essentially the same magnitude of effort or complexities this solicitation requires.

Relevant - Past/present performance effort involved much of the magnitude of effort or complexities this solicitation requires.

Somewhat Relevant - Past/present performance effort involved much of the magnitude of effort or complexities this solicitation requires.

Not Relevant - Past/present performance effort did not involve any of the magnitude of effort or complexities this solicitation requires.

g. The AUTHORITY will review, evaluate, and compare all past/present performance data for each identified project to this proposed effort and determine the level of relevancy. If necessary, the AUTHORITY will confirm performance using sources provided by an Offeror or obtain additional performance data from other sources.

h. An Offeror will receive an unfavorable PCA for: (a) less-than-satisfactory past performance rating on any evaluation factor/sub-factor or (b) any unfavorable comment in the AUTHORITY's narrative assessment of past performance in a competitive range or final briefing to the Source Selection Authority (SSA). An Offeror will have an opportunity to comment on unfavorable past performance assessments which the Offeror has not yet had an opportunity to respond. For other formal rating systems, like CPARS, an Offeror already has an avenue to submit comments.

i. Very Relevant and Relevant past performance increases the PCA more than Somewhat Relevant past performance. Likewise, Not Relevant/Not Available past performance is not evaluated favorably or unfavorably.

j. For recorded problems in an Offeror's performance, the AUTHORITY will consider the number and severity. It will also review the corrective actions, not just those planned or promised, for

appropriateness and effectiveness. The AUTHORITY may review other recent contracts or evaluations to determine status of corrective actions.

k. The AUTHORITY may consider the Offeror's past performance in aggregate, including subcontractors, joint ventures, and teaming partners.

l. Each Offeror will receive an integrated PCA from performance data relevant to the other factors. The Performance Confidence Assessment represents an Offeror's overall rating for the Past Performance Factor.

m. The AUTHORITY may obtain data from the Past Performance Information Retrieval System (PPIRS) and from other source selections to evaluate past performance. The AUTHORITY may also seek information from similar systems in other Authority departments and agencies; and may interview program managers, contracting officers, and additional sources known to the Authority, including commercial. In conducting this assessment, the AUTHORITY reserves the right to use data provided by an Offeror and data obtained from other sources.

n. The AUTHORITY will review the Offeror's organizational structure and any legal changes thereof within the relevant timeframe to determine the PCA. The AUTHORITY will determine the relevancy of any organizational changes as they relate to individual projects submitted for evaluation. Projects submitted as most relevant and most current that resemble the current organizational structure will be viewed as favorable.

o. An Offeror will receive an Unknown for the PCA if there is no record of relevant past performance or performance data is unavailable.

FACTOR 2 – CORPORATE EXPERIENCE AND TECHNICAL CAPABILITY

a. An acceptable response shall demonstrate the offeror's corporate experience self-performing no less than 51% of total contract value for services falling within the North American Industry Classification System (NAICS) Code 238220 (Plumbing, Heating, and Air-Conditioning Contractors), within the last five (5) years.

b. An acceptable response shall demonstrate a sound approach to scheduling individual task orders.

c. An acceptable response shall demonstrate a sound approach to managing project submittals. An acceptable response shall demonstrate a sound approach to submittal package organization.

d. An acceptable response shall demonstrate a sound approach to selecting the proposed subcontractors, their rationale for selecting the subcontractors identified in their proposal, information on what types of work the subcontractors will perform, and the approach for retaining the proposed major subcontractors throughout the life of the MATOC (including a copy of the subcontractor agreements). An acceptable response shall demonstrate a sound approach for identifying any subcontractors that need to be replaced and their approach for replacing subcontractors. An acceptable response shall demonstrate a sound approach for controlling subcontract costs. An acceptable response shall demonstrate a sound approach for selecting material suppliers.

e. An acceptable response shall demonstrate a sound approach for managing company resources.

f. An acceptable response shall demonstrate a sound approach for staffing each project adequately. An acceptable response shall demonstrate a sound approach to ensure the Project

Manager and Project Superintendent(s) are not overcommitted and have adequate time to perform their duties on each individual task order, particularly in the event that multiple task orders are being done simultaneously. An acceptable response shall demonstrate a sound plan for delegating responsibilities for the Project Manager and the Project Superintendent(s).

g. An acceptable response shall demonstrate the Contractor's accident prevention plan, emergency response plan, and safety organization to include, but not limited to, a lost time accident rate (LTIIR) not exceeding the current Bureau of Labor Statistics LTIIR, and the Offeror's EMR should not exceed 1.00.

23. RATINGS FOR PROPOSAL EVALUATION CRITERIA

A single Performance Confidence Assessment will be assigned to Factor 1 (Past Performance). The following table provides the ratings and a description:

| PERFORMANCE CONFIDENCE ASSESSMENTS | |
|------------------------------------|---|
| RATING | DESCRIPTION |
| SUBSTANTIAL CONFIDENCE | Based on the Offeror's performance record, the Authority has a high expectation that the Offeror will successfully perform the required effort. |
| SATISFACTORY CONFIDENCE | Based on the Offeror's performance record, the Authority has an expectation that the Offeror will successfully perform the required effort. |
| LIMITED CONFIDENCE | Based on the Offeror's performance record, the Authority has a low expectation that the Offeror will successfully perform the required effort. |
| NO CONFIDENCE | Based on the Offeror's performance record, the Authority has no expectation that the Offeror will be able to successfully perform the required effort. |
| UNKNOWN CONFIDENCE | No performance record is identifiable or the Offeror's performance record is so sparse that no confidence assessment rating can be reasonably assigned. |

Performance confidence represents the Authority's assessment of the probability of an Offeror successfully performing the required effort and is derived from an evaluation of the Offeror's present and past work record.

The following ratings will be used for Factor 2 (Corporate Experience and Technical Capability):

Definition of Adjectival Rankings:

- Exceptional Exceeds specified performance or capability in a beneficial way to WMATA, and has no weakness.
- Acceptable Meets evaluation standards required under the technical provisions. Weaknesses are correctable.
- Marginal Fails to meet evaluation standard; however any significant deficiencies are correctable. Lacks essential information to support a proposal.

Unacceptable Fails to meet an acceptable evaluation standard and the deficiency is uncorrectable. Proposal would have to undergo a major revision to become acceptable. Demonstrated lack of understanding of WMATA's requirements or omissions of major areas.

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

24. DEFINITIONS FOR TECHNICAL EVALUATION

Clarifications: Communications with an offeror for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal. Unlike discussions, clarifications do not give the offeror an opportunity to revise or modify its proposal, except to the extent that correction of apparent clerical mistake results in revisions.

Discussions: Oral or written communications including negotiations between the Authority and an offeror (other than clarifications) that; involves information essential for determining the acceptability of the proposal or to cure identified defects in the proposal.

Deficiencies: Defects in the proposal which preclude acceptance. Involves any part of the Offeror's proposal which would not satisfy the Authority's minimum requirements established in the solicitation. Included failures to meet specifications, submit information, or questionable technical or management approaches. Items disclosed during discussions, evaluated in two categories: material-basis for rejection because further discussions would be meaningless; curable –may be corrected by clarifications or discussions and brought into the competitive range.

Weakness: Includes ambiguities, lack of complete descriptions, errors in interpretation, omissions of essential information, inadequate information, all of which are considered curable in discussions. An excessive number of clarifications may in itself constitute a weakness.

Strengths: Elements of the proposal that meet or exceed the minimum requirements of the solicitation and provide an identified benefit to the Authority.

25. PRICE PROPOSAL EVALUATION

a. The Authority will evaluate price proposal for the seed project for reasonableness, completeness, and realism as appropriate. Each Offeror's cost will be evaluated in terms of the following which are equal in importance:

- (1) Submittal of proposed prices for both the Seed Project, if any, failure to do so will necessitate rejection of the proposal;
- (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 adequate price competition does not exist, to ascertain whether or not the proposed price is fair and reasonable; and

- (4) In accordance with FAR 15.404-1, the Offeror shall provide certified cost or pricing data as requested by the Contracting Officer.

26. TYPE OF CONTRACT

The Authority will award a Multiple Award Task Order Contract/IDIQ. The contractor will be required to submit Monthly Invoices to WMATA's Contracting Officer Technical Representative for payment approval.

27. ENGLISH LANGUAGE AND UNITED STATES CURRENCY

As regards this solicitation and the resultant contract:

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

28. FEDERAL/LOCAL/STATE SALES TAX

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

29. BRAND NAME OR EQUAL

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

responsibility of the Authority and will be based on information reasonable available to the Department of Procurement.

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

- (2) If the offeror proposes to modify a product so as to make it conform to the requirements of the Request for Proposals, he shall (i) include in his proposal a clear description of such proposed modifications, and (ii) clearly mark any descriptive material to show the proposed modifications.
- (3) Modifications proposed after proposal closing to make a product conform to a brand name product referenced in the Request for Proposal may not be considered.
 - (a) If an item in this solicitation is identified as "brand name or equal," the purchase description reflects the characteristics and level of quality that will satisfy the Authority's needs. The salient physical, functional, or performance characteristics that "equal" products must meet are specified in the solicitation.
 - (b) To be considered for award, offers of "equal" products, including "equal" products of the brand name manufacturer, must—
 - (1) Meet the salient physical, functional, or performance characteristic specified in this solicitation;
 - (2) Clearly identify the item by—
 - (i) Brand name, if any; and
 - (ii) Make or model number;
 - (3) Include descriptive literature such as illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the Contracting Officer; and
 - (4) Clearly describe any modifications the offeror plans to make in a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modifications.
 - (c) The Contracting Officer will evaluate "equal" products on the basis of information furnished by the offeror or identified in the offer and reasonably available to the Contracting Officer. The Contracting Officer is not responsible for locating or obtaining any information not identified in the offer.

- (d) Unless the offeror clearly indicates in its offer that the product being offered is an “equal” product, the offeror shall provide the brand name product referenced in the solicitation.

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

REPRESENTATIONS

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

1. TYPE OF BUSINESS ORGANIZATION

By submission of this offer, the 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. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS

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

(a) It has, has not, participated in a previous contract or subcontract subject to either the Equal Opportunity Clause of this solicitation, or the clause contained in Parts II and IV of Executive Order 11246, as amended; which prohibits discrimination on the basis of race, color, creed, national origin, sex, age; and

- (b) It has, has not, filed all required compliance reports; and
- (c) Representations indicating submittal of required compliance reports signed by proposed subcontractors will be obtained prior to subcontract awards.

4. DISADVANTAGED BUSINESS ENTERPRISE

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

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

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

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

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

5. AFFIRMATIVE ACTION COMPLIANCE

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

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

CERTIFICATIONS

6. COVENANT AGAINST GRATUITIES

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

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

7. CONTINGENT FEE

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

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

8. CLEAN AIR AND WATER CERTIFICATION

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

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

9. DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNANTARY EXLCUSION

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

- (a) Primary Covered Transactions. This certification applies to the offer submitted in response to this solicitation and will be a continuing requirement throughout the term of any resultant contract.
 - (1) In accordance with the provisions of Appendix A to 49 Code of Federal Regulations (CFR) Part 29, the offeror certifies to the best of its knowledge and belief that it and its principals:
 - (i) are not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
 - (ii) have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (iii) are not currently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(ii) of this Certification; and
 - (iv) have not, within a three-year period preceding this offer, had one or more public transactions (Federal, State, or local) terminated for cause or default.

- (2) Where the offeror is unable to certify to any of the statements in this certification, the offeror shall attach an explanation to this offer.
- (b) Lower Tier Covered Transactions. This certification applies to a subcontract at any tier expected to equal or exceed \$25,000 and will be a continuing requirement throughout the term of the prime contract.
 - (1) In accordance with the provisions of Appendix B to 49 Code of Federal Regulations (CFR) Part 29, the prospective lower tier subcontractor certifies, by submission of this offer, that neither it nor its principals is currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal or State department or agency.
 - (2) Where the prospective lower tier subcontractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
- (c) The Certification required by subparagraph (b), above, shall be included in all applicable subcontracts and a copy kept on file by the prime contractor. The prime contractor shall be required to furnish copies of certifications to the Contracting Officer upon the Contracting Officer's request.

10. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

- (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.

11. CERTIFICATION OF NONSEGREGATED FACILITIES

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

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

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

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

12. NONDISCRIMINATION ASSURANCE

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

13. CERTIFICATION OF RESTRICTIONS ON LOBBYING

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

- (a) By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that to the best of his or her knowledge or belief:

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

14. **BUY AMERICA ACT CERTIFICATION**

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

- (a) By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement it will comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7 Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11.
- (b) An offeror must submit to the Authority the appropriate Buy America certification (below) with all offers on FTA-funded contracts, except those subject to a general waiver. Offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors. Mark the applicable certifications below:
 - (1) **Certification requirement for procurement of steel, iron, or manufactured products:**
 - Certificate of Compliance with 49 U.S.C. 5323(j)(1)*
The offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.
 - Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)*
The offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

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

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

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

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

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

15. CERTIFICATION OF NON-DELINQUENT TAXES

This certification is applicable to federally assisted contracts.

- (a) By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:
- (1) It has not been convicted over the past three years of violating any federal criminal tax law or failed to pay any tax.
 - (2) It has certified if it has been notified of an unresolved tax lien or any unsatisfied federal tax delinquency in excess of \$3,000 and that it is paying tax debts through an installment agreement or have requested a collection due process hearing.
 - (3) The offeror agrees that a breach of this certification is a violation of the Federal Acquisition Regulation.
 - (4) As used in this certification, the term "tax delinquency" means an outstanding debt for which a notice of lien has been filed in public records.
 - (5) It further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will:
- (b) Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to Federal Acquisition Regulation;
 - (c) Retain such certifications in its files; and
 - (d) Forward the following notice to such subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

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

A Certification of Non-Delinquent Taxes must be submitted prior to award of a subcontract exceeding \$100,000 which is not exempt from the provisions of Federal Acquisition Regulation. The certification may be submitted either for such subcontract or for all subcontracts during a period (i.e., quarterly, semiannually or annually). (RC-116, OCTOBER 08)

16. 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 |
|---|--------------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

- (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: _____

PART II – GENERAL / SPECIAL PROVISIONS

PART II – SECTION 1 - GENERAL PROVISIONS

PART II, SECTION 1 - GENERAL PROVISIONS

1.1 Definitions (07/03)

- a. Authority: The term Authority as used herein means the Washington Metropolitan Area Transit Authority, created effective February 20, 1967, by Interstate Compact by and between Maryland, Virginia and the District of Columbia, pursuant to Public Law 89-774, approved November 6, 1966.
- b. Authority Representative: The Authority Representative is the person responsible for post award execution of an Authority contract in the most effective, economical, and timely manner. Upon Contract award, the Authority Representative is the Authority's primary point of contact with the Contractor. In addition, the Authority Representative is delegated authority to modify this Contract within specified dollar limits which are available upon request. The Authority may designate additional individuals, usually in the supervisory chain as the Authority Representative, who have dollar authority in excess of the Authority Representative's stated authority (see also definition of Contracting Officer). The Authority Representative may, at his or her discretion, delegate Project responsibilities to a Project Representative and certain other responsibilities to other designees. Unless the Contractor is directed to the contrary, all correspondence with respect to this Contract shall be sent to the Authority Representative.
- c. Project Representative: The term Project Representative means the individual(s), including but not limited to the Resident Engineer, to whom the Authority Representative has delegated Project responsibilities. If a Project Representative is appointed, the Project Representative represents the Authority Representative on the Project within the limits of that delegation with respect to any part of the Work.
- d. Engineer: The term Engineer is used in numerous locations in the specifications. The term Engineer is synonymous with the term Resident Engineer, Project Representative, or if no individual has been so designated, the Authority Representative.
- e. Contracting Officer: A Contracting Officer is an employee within the Authority's Office of Procurement and Materials with authority duly delegated from the powers of the General Manager and CEO to legally bind the Authority by signing a contractual instrument. The Office of Procurement and Materials has been delegated broad authority regarding acquisition functions, independent from the project office. Contracting Officers have the authority to make related determinations and findings, and take other significant actions normally reserved for the Office of Procurement and Materials including, but not limited to: awards, modifications above the Authority Representative's level of authority, final payments, suspensions, terminations, debarments, assessment of liquidated damages, and issuances of final decisions under the Disputes article. The term includes certain other representatives of the Authority acting within delegated limits of authority. In general, the Authority's primary point of contact for pre-award administration and fiscal closeout resides with the Contracting Officer, and the primary point of contact for the post-award contract administration is the Authority Representative.
- f. Board of Directors: The term Board of Directors means the Board of Directors of the Washington Metropolitan Area Transit Authority.
- g. The term Contractor as used in the Specifications shall mean the individual, partnership or corporation that agrees to provide all labor, material and services required under the Contract.

- h. Wherever in the Contract Documents 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 or other delegated Authority's Representative, Project Representative, or Designer, as specified, is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import, shall mean "approved by," "acceptable to," or "satisfactory to" the Contracting Officer or other delegated Authority's Representative, Project Representative, or Designer, as specified, unless otherwise expressly stated.
- i. Where the terms "as shown," "as indicated," "as detailed" or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this Contract unless stated otherwise. The word provided as used herein shall be understood to mean provided complete in place, that is furnished and installed.

1.2 Contract Documents

1.2.1 INTENT OF THE CONTRACT DOCUMENTS:

- a. The intent of the Contract Documents is to prescribe the construction and completion of the work. Where the Contract Drawings and Specifications describe portions of the work in general terms, but not in complete detail, the best general practice shall be followed and only new materials and workmanship of best standard quality shall be used. Unless otherwise specified, the Contractor shall furnish all labor, materials, tools, equipment and incidentals which are necessary to complete the work in a proper, substantial and workmanlike way.
- b. Throughout the Specifications requirements have been specified for Contract performance. Each such Contract item is mandatory and shall be performed by the Contractor.
- c. Reference to any article or paragraph within the Specifications shall imply reference to all subparagraphs thereunder.

1.2.2 ELEMENTS OF THE CONTRACT DOCUMENTS:

- a. The Contract Documents: The Contract Drawings, the General Provisions, the Contract Specifications and all Amendments.
- b. Contract Drawings: The official plans, profiles, cross sections, elevations, schedules and details listed or referenced in the Contract Specifications or amendments thereto and which show the locations, character, dimensions and details of the work to be performed.
- c. General Provisions: Compilation of contractual and legal requirements. In case of variance between the General Provisions, the Special Conditions and/or the Technical Provisions, the General Provisions shall take precedence.
- d. Special Conditions and Technical Provisions: Project requirements and technical specifications which include materials and construction requirements.
- e. Amendment: A document which is added to the original bidding documents during the bidding period to clarify, revise, add to or delete from the original documents or previous amendments.

1.2.3 SPECIFICATIONS AND DRAWINGS:

- a. The Contractor shall keep on the work a copy of the Drawings and Specifications and shall at all times give the Contracting Officer or other delegated Authority's Representative access thereto.
- b. Omissions: Anything mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both.
- c. Discrepancies:
 - (1) In case of discrepancy between Drawings and Specifications, the Specifications shall govern.
 - (2) In case of discrepancy in the figures, in the Drawings or in the Specifications, the matter shall be promptly submitted to the Contracting Officer or other delegated Authority's Representative who shall promptly make a determination in writing.
 - (3) Any adjustment by the Contractor without such a determination shall be at his own risk and expense.
- d. The Contracting Officer or other delegated Authority's Representative shall furnish from time to time such detail drawings and other information as he may consider necessary unless otherwise provided.

1.3 Changes

- a. The Contracting Officer or other delegated Authority's Representative may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract including, but not limited to, changes:
 - (1) In the Specifications, including Drawings and designs;
 - (2) In the method or manner of performance of the work;
 - (3) In the Authority-furnished facilities, equipment, materials, services, or site; or
 - (4) Directing acceleration in the performance of work.
- b. Any other written order or an oral order, which terms as used in this Paragraph b. shall include direction, instruction, interpretation or determination from the Contracting Officer or other delegated Authority's Representative, which causes any such change, shall be treated as a change order under this Article, provided that the Contractor gives the Contracting Officer or other delegated Authority's Representative written notice stating the date, circumstances and source of the order and that the Contractor regards the order as a change order.
- c. Except as herein provided, no order, statement or conduct of the Contracting Officer or other delegated Authority's Representative shall be treated as a change under this Article or entitle the Contractor to an equitable adjustment hereunder.
- d. If any change under this Article causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this Contract, whether or not change by any order, an equitable adjustment shall be made and the

Contract modified in writing accordingly; provided, however, that except for claims based on defective Specifications, no claim for any change under Paragraph b. above shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as therein required, and provided further, that in the case of defective Specifications for which the Authority is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective Specifications.

- e. If the Contractor intends to assert a claim for an equitable adjustment under this Article, he must, within 30 days after receipt of a written change order under Paragraph a. above or the furnishing of a written notice under Paragraph b. above, submit to the Contracting Officer or other delegated Authority's Representative a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the Authority. The statement of claim hereunder may be included in the notice under b. above.
- f. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

1.4 Differing Site Conditions

- a. The Contractor shall promptly, and before such conditions are disturbed, notify the Contracting Officer or other delegated Authority's Representative in writing of the following:
 - (1) Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract.
 - (2) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

The Contracting Officer or other delegated Authority's Representative will promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Contract modified in writing accordingly.

- b. No claim of the Contractor under this Article shall be allowed unless the Contractor has given the notice required in Paragraph a. above; provided, however, the time prescribed therefor may be extended by Contracting Officer or other delegated Authority's Representative.
- c. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

1.5 Termination For Default, Damages For Delay And Time Extensions

- a. If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, or fails to complete said work within such time, the Contracting Officer may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event, the Contracting Officer may take over the work and prosecute the same to completion, by

contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the Authority resulting from his refusal or failure to complete the work in the specified time.

- b. If fixed and agreed liquidated damages are provided in the Contract and if the Contracting Officer so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Authority in completing the work.
- c. If fixed and agreed liquidated damages are provided in the Contract and if the Contracting Officer does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.
- d. The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:
 - (1) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the Authority in its contractual capacity, acts of another contractor in the performance of a contract with the Authority, fires, flood, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers at any tier arising from causes other than normal weather beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and
 - (2) The Contractor, within 10 days from the beginning of any such delay, unless the Contracting Officer grants a further period of time before the date of final payment under the Contract, notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the DISPUTES Article of these General Provisions.
 - (3) Unusually severe weather conditions:
 - (a) Pursuant to Paragraph d.(1) above, the Authority will use the following table as a basis for determining allowable time extensions to the Contract for unusually severe weather conditions and the impact of such weather at the construction site.
 - (b) The column below labeled Work Days represents work-day delays which may be expected in each month named within the Washington Metropolitan Area, based on a five-day work week:

| MONTH | WORK DAYS | MONTH | WORK DAYS |
|----------|-----------|-----------|-----------|
| January | 4 | July | 2 |
| February | 4 | August | 3 |
| March | 4 | September | 2 |

| | | | |
|-------|---|----------|---|
| April | 5 | October | 3 |
| May | 5 | November | 4 |
| June | 2 | December | 4 |

(c) Time extensions for weather delays during a given month will be allowed only for actual work days in excess of those numbers listed above and only when those excess days of delay affect the current critical path(s) leading to specified Contract completion or milestone dates.

(4) Authority Operations and Emergencies:

(a) The possibility exists that access to work may be impeded or that interruption to the work may occur, both scheduled and unscheduled, at the Authority's convenience, or specific direction, for operational or emergency reasons during contract performance ("delays from authority operations and emergencies"). It is the intent of this clause to ease the administration of delays from authority operations and emergencies.

(b) Allowable time extensions to the contract for delays from Authority operations and emergencies shall be determined as follows:

(1) There shall be no allowable time extension nor equitable adjustment for any delay from Authority operations and emergencies causing work stoppage of less than 15 minutes.

(2) The contractor shall immediately bring to the AR's attention any delay from authority operations and emergencies causing continuous work stoppage of 15 minutes or more. Any delay from authority operations and emergencies not brought to the AR's attention on the day of the delay or the following work day will not be recognized.

(3) If the contractor and AR agree that a delay in part (b) (2) has delayed the completion of the work, the delay shall be considered a recognized delay.

(4) The contractor shall submit to the AR on a weekly basis a report of recognized delays occurring during the previous week, as a precondition to the Authority considering any claim for delays from authority operations and emergencies.

(5) Upon the contractor submitting a claim for delays from authority operations and emergencies, the AR shall grant a non-compensable time extension of one day for any working day in which the contractor accumulates 60 or more minutes of timely submitted recognized delays, unless granting the time extension would result in providing the contractor with more than a one day time extension relating to any working day. Simultaneously, the AR shall respond to the contractor's claim, if any, for costs associated with any working day in which the contractor accumulates 60 or more minutes of timely submitted recognized delays.

e. If, after notice of termination of the Contractor's right to proceed under the provisions of this Article, it is determined for any reason that the Contractor was not in default under the provisions of this Article, or that the delay was excusable under the provisions of this Article, the rights and obligations of the parties shall be the same as if the notice of

termination had been issued pursuant to the TERMINATION FOR CONVENIENCE OF THE AUTHORITY Article of these General Provisions.

- f. The rights and remedies of the Authority provided in this clause are in addition to any other rights and remedies provided by law under this Contract.

1.6 Disputes

- a. Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his 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 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Board of Directors. The decision of the Board of Directors or its duly authorized representative for the determination of such appeals 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 shall be afforded an opportunity to be heard and to offer evidence in support of his 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.
- b. This DISPUTES Article does not preclude consideration of questions of law in connection with decisions provided for in Paragraph a. above. Nothing in this Contract, however, shall be construed as making final the decisions of the Board of Directors or its representative on a question of law.

1.7 Payments To Contractor

- a. The Authority will pay the Contract price as hereinafter provided.
- b. The Authority will make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer or other delegated Authority's Representative, on estimates approved by the Contracting Officer or other delegated Authority's Representative. The Contracting Officer or other delegated Authority's Representative shall review and approve the Contractor's progress payment requests based on the scheduled and actual progress of the work as reflected on the schedules and monthly updates if required by an Appendix of this Contract. The Contractor shall not be entitled to progress payments and the Contracting Officer or other delegated Authority's Representative shall have no obligation to review or approve progress payment requests if the Contractor has failed to submit or update the schedules if required by an Appendix of this Contract, or if the applicable schedule or update submitted by the Contractor fails to accurately reflect the actual progress of the work, or if the Contracting Officer or other delegated Authority's Representative declines to approve the submitted schedules for any of the reasons stated in this Contract. A decision not to approve a request for progress payments based upon the Contractor's failure to comply with the schedule and updates submission requirements, if required by an Appendix of this Contract, is committed under this Contract to the sole and absolute discretion of the Contracting Officer or other delegated Authority's Representative.

- c. If requested by the Contracting Officer or other delegated Authority's Representative, the Contractor shall furnish a breakdown of the total Contract price or lump sum bid items showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contracting Officer or other delegated Authority's Representative, at his discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration:
- (1) If such consideration is specifically authorized by the Contract and
 - (2) If the Contractor furnishes satisfactory evidence that he has acquired title to such material and that it will be utilized on the work covered by this Contract.
- d. Unless otherwise provided in the Specifications, if the Contract price is more than \$50,000, material delivered that will be incorporated into the project will be taken into consideration in computing progress payments, provided the material is delivered on the site, or is delivered to the Contractor and properly stored by him in a warehouse, storage yard, or similar suitable place within 25 miles of the site or such reasonable distance in excess of 25 miles as may be approved by the Contracting Officer or other delegated Authority's Representative. Before each such payment is made for delivered material on the site, the Contractor shall furnish to the Contracting Officer or other delegated Authority's Representative such evidence as he may require as proof of the ownership, quantity and value of such materials. Before each such payment is made for delivered materials off the site, the Contractor shall furnish the Contracting Officer or other delegated Authority's Representative evidence of ownership, properly executed bills of sale to the Authority for the delivered material upon which payment is being made.
- e. In making such progress payments, five percent of the estimated amount of work completed shall be retained until final completion and acceptance of the Contract work. Also, whenever the work is substantially complete, and the Contractor is in compliance with all provisions of the Contract, if the Contracting Officer or other delegated Authority's Representative considers the amount retained to be in excess of the amount adequate for the protection of the Authority, he may, at his discretion, release to the Contractor all or a portion of such excess amount. Furthermore, upon completion and acceptance of each separate building, public work, or other division of the Contract, on which the price is stated separately in the Contract, the Contracting Officer or other delegated Authority's Representative may direct the payment to be made without retention.

Where the time originally specified for completion of this Contract exceeds one year, the Contracting Officer or other delegated Authority's Representative, at any time after 50 percent of the work has been completed, if he finds that satisfactory progress (satisfactory progress includes prosecution of physical work, adherence to DBE, SAP, quality assurance and all other provisions of the Contract) is being made, may reduce the total amount retained from progress payments to the minimum level necessary to protect the interest of the Authority.

- f. All material and work covered by progress payments made shall thereupon become the sole property of the Authority but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the Authority to require the fulfillment of all of the terms of the Contract.
- g. Upon completion and acceptance of all work, the amount due the Contractor under this Contract shall be paid upon the presentation of a properly executed voucher and after

the Contractor shall have furnished the Authority with a release, if required, of all claims against the Authority arising by virtue of this Contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release. If the Contractor's claim to amounts payable under the Contract has been assigned, a release may also be required of the assignee.

- h. Payment under this contract shall be subject to any garnishment and attachment orders issued pursuant to the laws of Maryland, Virginia and the District of Columbia, and to levies issued under the laws of the United States.
- i. Subcontract Payments
 - 1. The Contractor shall, under this contract, establish procedures to ensure timely payment of amounts due pursuant to the terms of their subcontracts. The Contractor shall pay each subcontractor for satisfactory performance of its contract, no later than ten (10) days from the date of the Contractor's receipt of payment from the Authority for work by that 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.
 - 2. The Contractor shall certify on each payment request to the Authority that payment has been or will be made to all subcontractors in accordance with paragraph a above. The Contractor shall notify the Contracting Officer or other delegated Authority's Representative with each payment request, of any situation in which scheduled subcontractor payments have not been made.
 - 3. If a subcontractor alleges that the Contractor has failed to comply with this provision, the Contractor agrees to support any Authority investigation, and, if deemed appropriate by the Authority, to consent to remedial measures to ensure subcontractor payment that is due.
 - 4. The Contractor agrees that the Authority may provide appropriate information to interested subcontractors who want to determine the status of Authority payments to the Contractor.
 - 5. Nothing in this provision is intended to create a contractual obligation between the Authority and any subcontractor or to alter or affect traditional concepts of privity of contract between all parties.

1.8 Assignment

- a. The Contractor shall not transfer the rights and obligations of the Contract to third parties. The Contracting Officer or other delegated Authority's Representative may recognize a third party as successor in interest to the Contract where the third party's interest is incidental to the transfer of all the assets of the Contractor, 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 or other delegated Authority's Representative after review of the facts and circumstances surrounding each request, but the assignment shall not be approved unless the surety, in writing, agrees to that assignment and accepts the assignee as the Contractor and principal on the payment and/or performance bonds.
- b. If this Contract provides for payments aggregating \$1,000 or more, claims for monies due or to become due the Contractor from the Authority under this Contract may be

assigned to a bank, trust company or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any institution. Notice of such assignment shall be made to the Contracting Officer or other delegated Authority's Representative. Any such assignment or reassignment shall cover all amounts payable under this Contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. It is the Authority's intent to recognize assignment only to bona fide lending institutions; therefore, assignment to any private corporation, business or individual which does not qualify as such is specifically prohibited.

- c. Any attempt to transfer by assignment not authorized by this Article shall constitute a breach of the Contract and the Contracting Officer or other delegated Authority's Representative may for such cause terminate the right of the Contractor to proceed as provided in TERMINATION FOR DEFAULT, DAMAGES FOR DELAY AND TIME EXTENSIONS Article of these General Provisions, and the Contractor and his sureties shall be liable to the Authority for any excess costs incurred by the Authority.

1.9 Material And Workmanship

- a. Unless otherwise specifically provided in this Contract, all equipment, materials and articles incorporated in the work covered by this Contract are to be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in this Contract, reference to any equipment, material, article or patented process, by trade name, make or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and the Contractor may, at his option, use any equipment, material, article or process which, in the judgment of the Contracting Officer or other delegated Authority's Representative, is equal to that named. The Contractor shall furnish to the Contracting Officer or other delegated Authority's Representative for his approval the name of the manufacturer, the model number and other identifying data and information respecting the performance, capacity, nature and rating of the machinery and mechanical and other equipment which the Contractor contemplates incorporating in the work. When required by this Contract or when called for by the Contracting Officer or other delegated Authority's Representative, the Contractor shall furnish the Contracting Officer or other delegated Authority's Representative for approval full information concerning the material or articles which he contemplates incorporating in the work. When so directed, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material and articles installed or used without required approval shall be at the risk of subsequent rejection.
- b. All work under this Contract shall be performed in a skillful and workmanlike manner. The Contracting Officer or other delegated Authority's Representative may, who may require the Contractor to correct defective workmanship or materials at no additional cost to the Authority.

1.10 Inspection And Acceptance

- a. All work, which term includes but is not restricted to materials, workmanship, and manufacture and fabrication of components, shall be subject to inspection and test by the Contracting Officer or other delegated Authority's Representative or the Engineer at all reasonable times prior to acceptance. Any such inspection and test is for the sole benefit of the Authority and shall not relieve the Contractor of the responsibility of providing quality control measures to assure that the work strictly complies with the

Contract requirements. No inspection or test by the Contracting Officer or other delegated Authority's Representative or the Engineer shall be construed as constituting or implying acceptance. Inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Authority after acceptance of the completed work under the terms of Paragraph f. of this Article, except as hereinabove provided.

- b. The Contractor shall, without charge, replace any material or correct any workmanship found by the Contracting Officer or other delegated Authority's Representative or the Engineer not to conform to the Contract requirements, unless in the public interest the Contracting Officer or other delegated Authority's Representative consents to accept such material or workmanship with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.
- c. If the Contractor does not promptly replace rejected material or correct rejected workmanship, the Contracting Officer or other delegated Authority's Representative may:
 - (1) By contract or otherwise, replace such material or correct such workmanship and charge the costs thereof to the Contractor, or
 - (2) Terminate the Contractor's right to proceed in accordance with the TERMINATION FOR DEFAULT, DAMAGES FOR DELAY AND TIME EXTENSIONS Article of these General Provisions.
- d. The Contractor shall furnish promptly, without additional charge, all facilities, labor and material reasonably needed for performing such safe and convenient inspection and test as may be required by the Contracting Officer or other delegated Authority's Representative. All inspections and tests by the Authority shall be performed in such manner as not unnecessarily to delay the work. Special, full-size and performance tests shall be performed as described in this Contract. The Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready at the time specified by the Contractor for its inspection.
- e. Should it be considered necessary or advisable by the Contracting Officer or other delegated Authority's Representative at any time before acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor and material. If such work is found to be defective or nonconforming in any material respect, due to the fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, an equitable adjustment shall be made in the Contract price to compensate the Contractor for the additional services involved in such examination and reconstruction and, if completion of the work has been delayed thereby, he shall, in addition, be granted a suitable extension of time.
- f. Unless otherwise provided in this Contract, acceptance by the Contracting Officer or other delegated Authority's Representative shall be made as promptly as practicable after completion and inspection of all work required by this Contract. Acceptance shall be final and conclusive except as regards latent defects, fraud or such gross mistakes as may amount to fraud, or as regards the Authority's rights under any warranty or guarantee.
- g. The Contractor shall give the Contracting Officer or other delegated Authority's Representative at least 10 days advance notice of the date the work will be fully completed and ready for final inspection, test and acceptance.

1.11 Project Management And Superintendence By Contractor

The Contractor shall give his personal superintendence to the work or have a competent foreman or superintendent, satisfactory to the Contracting Officer or other delegated Authority's Representative, on the work at all times during progress, with authority to act for him.

1.12 Permits And Responsibilities

The Contractor shall, without additional expense to the Authority, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, State, Local or Municipal laws, codes or regulations, in connection with the prosecution of the work. He shall be similarly responsible for all damages to persons or property that occur as a result of his fault or negligence. He shall take proper safety and health precautions to protect the work, the workers, the public and the property of others. He shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of construction thereof which theretofore may have been accepted.

1.13 CONDITIONS AFFECTING THE WORK

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

1.14 Other Contracts

The Authority may undertake or award other contracts for additional work, and the Contractor shall fully cooperate with such other contractors and Authority employees and carefully fit his own work to such additional work as may be directed by the Contracting Officer or other delegated Authority's Representative. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor or by Authority employees.

1.15 Patent Indemnity

Except as otherwise provided, the Contractor agrees to indemnify the Authority and its officers, agents and employees against liability, including costs and expenses, for infringement upon any Letters of Patent of the United States arising out of the performance of this Contract or out of the use or disposal by or for the account of the Authority of supplies furnished or work performed hereunder.

1.16 Additional Bond Security

If any surety upon any bond furnished in connection with this Contract becomes unacceptable to the Contracting Officer or other delegated Authority's Representative, or if

any such surety fails to furnish reports as to his financial condition from time to time as requested by the Contracting Officer or other delegated Authority's Representative, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interest of the Authority and of persons supplying labor or materials in the prosecution of the work contemplated by this Contract.

1.17 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 Contracting Officer or other delegated Authority's Representative 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.

1.18 Officials Not To Benefit

- a. No member of Congress or resident Commissioner shall be admitted to any share or part of this Contract, or to any benefit that may arise therefrom; 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 and one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

1.19 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 or other delegated Authority's Representative.
- 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; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify his next higher tier subcontractor, or the Contractor, as the case may be, of all relevant information with respect to such dispute.

1.20 Convict Labor

In connection with the performance of work under this Contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

1.21 Civil Rights (Revised October 20, 2000)

- a. Nondiscrimination: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the American with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit law at 49 U.S.C. §5332, the Contractor 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 agrees to comply with applicable Federal implementing regulations and other implementing regulations that FTA may issue.
- b. Equal Employment Opportunity: The following equal employment opportunity requirements apply to this contract.
 - (1) Race, Color, Creed, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49 U.S.C. §5332, the Contractor agrees to comply with all applicable equal opportunity requirements of the U. S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, " 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Contract. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - (2) Age: In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. §5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - (3) Disabilities: In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the Contractor agrees that it will comply with the requirements of U. S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- c. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

1.22 Utilization of Small Business Concerns

- a. It is the policy of the Authority that a fair proportion of the purchases and contracts for supplies and services for the Authority be placed with small business concerns.

- b. The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this Contract.

1.23 **Gratuities**

- a. In connection with performance of work required under this Contract, or any changes or modifications relative thereto, the giving of or offering to give gratuities (in the form of entertainment, gifts or otherwise) by the Contractor, or any agent, representative or other person deemed to be acting on behalf of the Contractor, or any supplier or subcontractor furnishing material to or performing work under this Contractor, or any agent, representative or other person deemed to be acting on behalf of such supplier or subcontractor, to any Director, Officer or employee of the Authority; or to any Director, Officer, employee or agent of any of the Authority's agents, consultants, representatives or other persons deemed to be acting for or on behalf of the Authority, with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract is expressly forbidden. The terms of this GRATUITIES Article shall be strictly construed and enforced in the event of violations hereto.
- 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 aim 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 General and Administrative (G&A) 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 or proposing on, receiving or participating as joint venturer, subcontractor or otherwise in any Authority project for a period of five years;
 - (4) Have complete access to all of the Contractor's financial books, records and accounts for the purpose of performing a comprehensive audit of the entire project.

- (5) In the event of repeated violations of this GRATUITIES Article or of gross or extreme conduct indicative of a corrupt intent to gain special advantage, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract.
- c. The existence of the facts upon which the Board of Directors, or its duly authorized representative, makes findings in connection with investigations and hearings in consonance herewith shall be an issue and may be reviewed in any competent court.
- d. In the event this Contract is terminated as provided in Paragraph b.(5) hereof, 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 nor more than 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.

1.24 Federal, State, and Local Taxes

- a. The Contract price includes all applicable Federal, State and Local taxes and duties.
- b. Nevertheless, with respect to any Federal excise tax or duty on the transactions or property covered by this Contract, if a statute, court decision, written ruling or regulation takes effect after the Contract date, and results in the following:
 - (1) 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 could 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) 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 or other delegated Authority's Representative. 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 or other delegated Authority's Representative, 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 \$100 shall be made in the Contract price pursuant to Paragraph b. above.
- e. As used in Paragraph b. above, the term Contract date means the date set for bid opening, or if this is a negotiated Contract, the Contract date. As to additional supplies or services procured by modification to this Contract, the term Contract date means the date of such modification.
- f. Unless there does not exist any reasonable basis to sustain an exemption, the Contracting Officer or other delegated Authority's Representative upon the request of the Contractor shall without further liability, furnish evidence appropriate to establish exemption from any Federal, State or Local tax; provided that, evidence appropriate to establish exemption from any Federal excise tax or duty which may give rise to either an increase or decrease in the Contract price will be furnished only at the discretion of the Contracting Officer or other delegated Authority's Representative.
- g. The Contractor shall promptly notify the Contracting Officer or other delegated Authority's Representative of matters which will result in either an increase or decrease in the Contract price, and shall take action with respect thereto as directed by the Contracting Officer or other delegated Authority's Representative.

1.25 Termination for Convenience of the Authority

- a. The performance of work under this Contract may be terminated by the Authority in accordance with this Article in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Authority. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.
- b. After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:
 - (1) Stop work under the Contract on the date and to the extent specified in the Notice of Termination;
 - (2) Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated;
 - (3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
 - (4) Assign to the Authority, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the Contracting Officer shall have the right, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
 - (5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this Article;

- (6) Transfer title and deliver the following to the Authority in the manner, at the times, and to the extent, if any, directed by the Contracting Officer:
 - [a] The fabricated or un-fabricated parts, work in progress, completed work, supplies and other material procured as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination.
 - [b] The completed or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to the Authority.
 - (7) Use his best efforts to sell, in the manner, at the times, to the extent and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (6) above; provided, however, that the Contractor:
 - [a] Shall not be required to extend credit to any purchaser, and
 - [b] May acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payment to be made by the Authority to the Contractor under this Contract or shall otherwise be credited to the price or cost of the work covered by this Contract or paid in such other manner as the Contracting Officer may direct;
 - (8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
 - (9) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the Authority has or may acquire an interest.
- c. After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form and with certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon authorize payment to the Contractor the amount so determined.
 - d. Subject to the provisions of Paragraph e., the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this Article, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in Paragraph e. of this Article, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this

Article, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this Paragraph d.

- e. In the event of the failure of the Contractor and the Contracting Officer to agree, as provided in Paragraph d., upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Article, the Contracting Officer shall authorize payment to the Contractor of the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed upon in accordance with Paragraph d.:

- (1) With respect to all Contract work performed prior to the effective date of the Notice of Termination, the total, without duplication of any items, of the following:

[a] The cost of such work;

[b] The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in Paragraph b. (5) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor or suppliers prior to the effective date of the Notice of Termination of work under this Contract, which amount shall be included in the cost on account of which payment is made under Paragraph [a] above; and

[c] A sum, as profit on Paragraph [a] above, determined by the Contracting Officer to be fair and reasonable; provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this Paragraph [c] and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

- (2) The reasonable cost of the preservation and protection of property incurred pursuant to Paragraph b. (9); and any other reasonable cost incidental to termination of work under this Contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this Contract.

The total sum to be paid to the Contractor under Paragraph (1) above shall not exceed the total Contract price as reduced by the amount of payments made as further reduced by the Contract price of work not terminated. Except for normal spoilage, and except to the extent that the Contracting Officer shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under Paragraph (1) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Authority, or to a buyer pursuant to Paragraph b. (7).

- f. The Contractor shall have the right of appeal, under the DISPUTES Article, from any determination made by the Contracting Officer under Paragraph c. or e. above, except that if the Contractor has failed to submit his claim within the time provided in Paragraph c. above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under Paragraph c. or e. above, the Authority shall pay to the Contractor the following:

- (1) If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or

- (2) If an appeal has been taken, the amount finally determined on such appeal.
- g. In arriving at the amount due to the Contractor under this Article the following shall be deducted:
- (1) All unliquidated advance or other payment on account theretofore made to the Contractor, applicable to the terminated portion of this Contract.
 - (2) Any claim which the Authority may have against the Contractor in connection with this Contract.
 - (3) The agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this Article, and not otherwise recovered by or credited to the Authority.
- h. If the termination hereunder be partial, prior to the settlement of the terminated portion of this Contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract; i.e., the portion not terminated by the Notice of Termination, and such equitable adjustment as may be agreed upon shall be made in such price or prices.
- i. The Authority may from time to time, under such items and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payment is in excess of the amount finally agreed or determined to be due under this Article, such excess shall be payable by the Contractor to the Authority upon demand, together with interest computed at the rate of six percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess payment is repaid to the Authority; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until 10 days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reasons of the circumstances.
- j. Unless otherwise provided for in this Contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under this Contract shall preserve and make available to the Authority at all reasonable times at the office of the Contractor but without direct charge to the Authority, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the work terminated hereunder, or to the extent determined by the Contracting Officer, photographs, microphotographs or other authentic reproductions thereof.

1.26 Notice and Assistance Regarding Patent and Copyright Infringement

- a. The Contractor shall report to the Contracting Officer or other delegated Authority's Representative, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.

- b. In the event of any claim or suit against the Authority on out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Authority, when requested by the Contracting Officer or other delegated Authority's Representative, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Authority except where the Contractor has agreed to indemnify the Authority.
- c. This Article shall be included in all subcontracts.

1.27 Composition of Contractor

If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

1.28 Site Investigation

The Contractor acknowledges that he has investigated and satisfied himself as to the conditions affecting the work including, but not restricted to, those bearing upon transportation, disposal, handling and storage of materials; availability of labor, water, electric power and roads; and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions of the ground, and the character of equipment and facilities needed preliminary to and during prosecution of the work. The Contractor further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Authority, as well as from information presented by the Drawings and Specifications made a part of this Contract, the character and extent of existing work within or adjacent thereto, and any other work being performed thereon at the time of the submission of his bid. Nothing in this requirement shall be construed as being determinative of the character, scope or extent of the work required under this Contract. Any failure by the Contractor to acquaint himself with the available information will not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the work. The Authority assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the Authority.

1.29 Protection of Existing Vegetation, Structures, Utilities and Improvements

- a. The Contractor shall preserve and protect all existing vegetation such as trees, shrubs and grass on or adjacent to the site of work which is not to be removed and which does not unreasonably interfere with the work. Care shall be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place.
- b. The Contractor shall protect from damage all existing improvements or utilities at or near the site of the work and shall repair or restore any damage to such facilities resulting from failure to comply with the requirements of this Contract or the failure to exercise reasonable care in the performance of the work. If the Contractor fails or refuses to repair any such damage promptly, the Contracting Officer or other delegated Authority's Representative may have the necessary work performed and charge the cost thereof to the Contractor.

1.30 Operations and Storage Areas

- a. All operations of the Contractor, including storage of materials, shall be confined to areas authorized or approved by the Contracting Officer or other delegated Authority's Representative. The Contractor shall hold and save the Authority, its officers and agents, free and harmless from liability of any nature occasioned by his operations.
- b. Temporary buildings, such as storage sheds, shops and offices, may be erected by the Contractor only with the approval of the Contracting Officer or other delegated Authority's Representative, and shall be built with labor and materials furnished by the Contractor without expense to the Authority. Such temporary buildings and utilities shall remain the property of the Contractor and shall be removed by him at his expense upon the completion of the work. With the written consent of the Contracting Officer or other delegated Authority's Representative, such buildings and utilities may be abandoned and need not be removed.
- c. The Contractor shall, under regulations prescribed by the Contracting Officer or other delegated Authority's Representative, use only established roadways or construct and use such temporary roadways as may be authorized by the Contracting Officer or other delegated Authority's Representative. Where materials are transported in the prosecution of the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State or Local law or regulation. When it is necessary to cross curbing or sidewalks, protection against damage shall be provided by the Contractor and any damaged roads, curbing or sidewalks shall be repaired by or at the expense of the Contractor.

1.31 Progress Schedules and Requirements for Maintaining Progress

- a. The Contractor shall submit a schedule to the Contracting Officer or other delegated Authority's Representative for approval, within 15 days after the award of the Contract, showing the order in which the Contractor proposes to carry on the work, the dates on which he will start the several major features, including procurement of materials, plant and equipment, and the contemplated dates for completing the same. The schedule shall be in the form of a graphic network diagram or progress chart indicating appropriately the work scheduled for accomplishment at any time. Unless otherwise specified, the Contractor shall enter on the schedule the actual progress at monthly intervals and shall immediately deliver to the Contracting Officer or other delegated Authority's Representative four copies thereof.
- b. Failure to comply with the terms of this Article may affect the processing of progress payment requests submitted by the Contractor as provided in Article 1.7, PAYMENTS TO THE CONTRACTOR, of this Contract.
- c. If, in the opinion of the Contracting Officer or other delegated Authority's Representative, the Contractor falls significantly behind the approved progress schedule, the Contractor shall take any and all steps necessary to improve his progress. The Contracting Officer or other delegated Authority's Representative, in this instance, may require the Contractor to increase the number of shifts, initiate or increase overtime operations, increase days of work in the work week, or increase the amount of construction plant, or all of them. The Contracting Officer or other delegated Authority's Representative may also require the Contractor to submit for approval supplemental progress schedules detailing the specific operational changes to be instituted to regain the approved schedule, all without additional cost to the Authority.

- d. Failure of the Contractor to comply with the requirements of the Contracting Officer or other delegated Authority's Representative under this provision shall be grounds for determination by the Contracting Officer or other delegated Authority's Representative that the Contractor is not prosecuting the work with such diligence as will ensure completion within the time specified. Upon such determination the Contracting Officer or other delegated Authority's Representative may terminate the Contractor's right to proceed with the work, or any separate part thereof, in accordance with the TERMINATION FOR DEFAULT, DAMAGES FOR DELAY AND TIME EXTENSIONS Article of these General Provisions.

1.32 Subcontractors

Within seven days after the award of any subcontract either by himself or a subcontractor, the Contractor shall deliver to the Contracting Officer or other delegated Authority's Representative a statement setting forth the name and address of the subcontractor and a summary description of the work subcontracted. The Contractor shall at the same time furnish a statement signed by the subcontractor acknowledging the inclusion in his subcontract of the clauses of this Contract entitled CIVIL RIGHTS and LABOR PROVISIONS, and other such articles specifically mentioned. Nothing contained in this Contract shall create any contractual relation between the subcontractor and the Authority.

1.33 Use and Possession Prior To Completion

The Authority, through the Contracting Officer or other delegated Authority's Representative, shall have the right to take possession of or use any completed or partially completed part of the work. Such possession or use shall not be deemed an acceptance of any work not completed in accordance with the Contract. While the Authority is in such possession, the Contractor, notwithstanding the provisions of the Contract entitled PERMITS AND RESPONSIBILITIES, shall be relieved of the responsibility for loss or damage to the work other than that resulting from the Contractor's fault or negligence. If such prior possession or use by the Authority delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment in the Contract price or the time of completion will be made and the Contract shall be modified in writing accordingly.

1.34 Cleaning Up

- a. The Contractor shall at all times keep the construction area, including storage areas used by him, free from accumulations of waste material or rubbish and prior to completion of the work remove any rubbish from the premises and all tools, scaffolding, equipment and materials not the property of the Authority.
- b. Upon completion of construction, the Contractor shall leave the work and premises in a clean, neat and workmanlike condition satisfactory to the Contracting Officer or other delegated Authority's Representative.

1.35 Contract Modifications - Requirements for Proposals, Price Breakdown and Negotiation of Profit

- a. The Contractor, in connection with any proposal he makes for a Contract modification, shall furnish a price breakdown, itemized as required by the Contracting Officer or other delegated Authority's Representative. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract

and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefor shall also be furnished. The proposal, together with the price breakdown and time extension justification shall be furnished by the date specified by the Contracting Officer or other delegated Authority's Representative.

- b. Where profit is negotiated as an element of price, with either the Contractor or subcontractor, a reasonable profit will be negotiated for each modification by using the following procedure as a guide:

(1) Breakdown:

| FACTOR | RATE | WEIGHT | VALUE |
|-----------------------------|------|--------|-------|
| Degree of Risk | 20 | | |
| Relative difficulty of Work | 15 | | |
| Size of Job | 15 | | |
| Period of Performance | 15 | | |
| Contractor's Investment | 5 | | |
| Assistance by Authority | 5 | | |
| Subcontracting | 25 | | |
| | 100 | | % |

- (2) Based on the circumstances of each modification, each of the above factors shall be weighted from .03 to .12 as indicated below. The value shall be obtained by multiplying the rate by the weight. From the value column when totaled the fair and reasonable profit can be determined under the circumstances of the particular modification.

[a] **Degree of risk:** Where the modified work involves no risk or the degree of risk is very small the weighting should be .03; as the degree of risk increases the weighting should be increased up to a maximum of .12. Lump sum items will generally have a higher weighted value than unit price items for which quantities are provided. Things to consider: The portion of the work to be done by subcontractors, nature of work, where work is to be performed, reasonableness of negotiated costs, amount of labor included in cost and whether the negotiation is before or after performance of work.

[b] **Relative difficulty of work:** If the modified work is most difficult and complex the weighting should be .12 and should be proportionately reduced to .03 on the simplest of jobs. This factor is tied in, to some extent, with the degree of risk. Things to consider: The nature of the work, by whom it is to be done, the location and the time schedule.

- [c] **Size of job:** All modified work not in excess of \$100,000 shall be weighted at .12. Work estimated between \$100,000 and \$5,000,000 shall be proportionately weighted from .12 to .05. Work from \$5,000,000 to \$10,000,000 shall be weighted at .04 and work in excess of \$10,000,000 at .03.
- [d] **Period of performance:** Modifications providing for an extension of time in excess of 30 days are to be weighted at .12. Jobs of lesser duration are to be proportionately weighted to a minimum of .03 for jobs not to exceed one day. No weight is to be granted for this factor where there is no extension of the Contract performance period of interim dates due to work under this modification.
- [e] **Contractor's investment:** To be weighted from .03 to .12 on the basis of below average, average and above average. Things to consider: Amount of subcontracting, mobilization payment item, Authority-furnished property and method of making progress payments.
- [f] **Assistance by Authority:** To be weighted from .12 to .03 on the basis of average to above average. Things to consider: Use of Authority-owned property, equipment and facilities, and expediting assistance.
- [g] **Subcontracting:** To be weighted inversely proportional to the amount of subcontracting. Where 80 percent or more of the work is to be subcontracted the weighting is to be .03 and such weighting proportionately increased to .12 where all the work is performed by the Contractor's own forces.
- (3) When considered necessary because of very unusual circumstances or local conditions, the range of weight may be increased to an upper limit of .15 if supported by adequate justification and if approved by the Contracting Officer or other delegated Authority's Representative.
- (4) When negotiations between the Contracting Officer or other delegated Authority's Representative and the Contractor are joined to determine an equitable adjustment for a modification of this Contract, the Contractor shall encourage involved subcontractor(s) to be present to present their cost data and to participate in the resolution of a fair and equitable adjustment. In any event, if after reasonable effort a negotiated settlement cannot be reached between the Contracting Officer or other delegated Authority Representative and the Contractor and subcontractor(s) involved, then at the request of the subcontractor(s) concerned, the Contracting Officer or other delegated Authority's Representative may process Part 1 of a two-part modification to cover the direct costs only, as agreed upon or, if not agreed upon, as determined unilaterally by the Contracting Officer or other delegated Authority's Representative. Subcontractor(s) requests for a Part 1 modification shall be submitted to the Contractor and the Contractor shall forward such requests promptly to the Contracting Officer or other delegated Authority's Representative. Any payments received by the Contractor under this procedure shall be passed along within 10 days thereafter to the subcontractor(s) concerned.
- c. **Change Orders:** When the Contracting Officer or other delegated Authority's Representative directs a change in accordance with the General Provisions and the Progress Schedule requirements of the PROGRESS SCHEDULES Article of the Special Conditions, the Contractor shall identify in his proposal for equitable adjustment the network activities that precede and follow the change order work activities. If the change order work activities are performed concurrently with existing network activities, those concurrent network activities shall be identified. If the change order work activities restrain network activities, those restraints shall be identified.

1.36 Accident Prevention

- a. In order to provide safety controls for protection to the life and health of employees and other persons, for prevention of damage to property, materials, supplies and equipment, and for avoidance of work interruptions in the performance of this Contract, the Contractor shall comply with all pertinent provisions of the SAFETY REQUIREMENTS Article of the Special Conditions, and shall also take or cause to be taken such additional measures as the Contracting Officer or other delegated Authority's Representative may determine to be reasonably necessary for the purpose.
- b. The Contractor shall maintain an accurate record of, and shall report to the Contracting Officer or other delegated Authority's Representative in the manner and on the forms prescribed by the Contracting Officer or other delegated Authority's Representative exposure data and all accidents resulting in death, traumatic injury, occupational disease and damage to property, materials, supplies and equipment incidental to work performed under this Contract.
- c. The Contracting Officer or other delegated Authority's Representative will notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the Contractor or his representative at the site of the work, shall be deemed sufficient for the purpose. If the Contractor fails or refuses to comply promptly, the Contracting Officer or other delegated Authority's Representative may issue an 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 orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.
- d. Compliance with the provisions of this Article by subcontractors shall be the responsibility of the Contractor.
- e. Prior to commencement of the work the Contractor shall:
 - (1) Submit in writing his proposals for effectuating this provision for accident prevention.
 - (2) Meet in conference with representatives of the Contracting Officer or other delegated Authority's Representative to discuss and develop mutual understanding relative to administration of the overall safety program.

1.37 Equipment

- a. The Contractor shall provide equipment, in first class working order and safe condition of sufficient quantities and sizes to complete the work as specified and detailed on the Contract Drawings within the Contract time, and shall provide adequate maintenance of this equipment throughout the length of the project.
- b. All equipment shall be approved by the Authority Representative or Engineer upon delivery to the site; and any item of equipment that at any time proves ineffectual or hazardous to personnel and/or property shall be promptly brought to acceptable condition, or shall be removed from the site as directed by the Authority Representative or Engineer.

1.38 Suspension of Work

- a. The Contracting Officer or other delegated Authority's Representative may order the Contractor in writing to suspend, delay or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the Authority.
- b. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed or interrupted by an act of the Contracting Officer or other delegated Authority's Representative in the administration of this Contract, or by his failure to act within the time specified in this Contract, or if no time is specified, within a reasonable time, an adjustment shall be made for any increase in the cost of performance of this Contract, excluding profit, necessarily caused by such unreasonable suspension, delay or interruption and the Contract modified in writing accordingly. However, no adjustment shall be made under this Article for any suspension, delay, or interruption to the extent:
 - (1) That performance would have been so suspended, delayed or interrupted by any other cause including the fault or negligence of the Contractor or
 - (2) For which an equitable adjustment is provided for or excluded under any other provision of this Contract.
- c. No claim under this clause shall be allowed:
 - (1) For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer or other delegated Authority's Representative in writing of the act or failure to act involved, but this requirement shall not apply as to a claim resulting from a suspension order, and
 - (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay or interruption, but no later than the date of final payment under the Contract.

1.39 Audit and Inspection of Records

- a. This Article is applicable if this Contract was entered into by means of negotiation and shall become operative with respect to any modification to this Contract whether this Contract was initially entered into by means of negotiation or by means of formal advertising.
- b. The Contractor shall maintain records, and the Contracting Officer or other delegated Authority's Representative, the U.S. Department of Transportation, and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor, involving transactions related to this Contract, for the purpose of making audit, examination, excerpts and transcriptions.
- c. The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Contracting Officer or other delegated Authority's Representative, the U.S. Department of Transportation and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three years after final payment under the Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor, involving transactions related to the subcontract, for the purpose of making audit, examination, excerpts and transcriptions.

1.40 Rights in Technical Data - Unlimited

(Also, refer to General Provisions Article 1.61 Rights in Data and Copyrights - FTA.)

- a. The Authority or any third party designated by the Authority to assist it in administration of this Contract or the inspection or verification of the product produced under this Contract, shall have the right to use, duplicate or disclose technical data, which includes computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so:
 - (1) Any manuals, instructional materials prepared for installation, operation, maintenance or training purposes;
 - (2) Technical data pertaining to end items, components or processes which were prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements ("form, fit and function" data; e.g., specification control drawings, catalog sheets, outline drawings; except for the computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software);
 - (3) Other technical data which has been, or is normally furnished without restriction by the Contractor or subcontractor;
 - (4) Other specifically described technical data which the parties have agreed will be furnished without restriction;
 - (5) All computer software regardless of whether it is technical data as defined in this Article 1.40, including the source code, algorithm, process, formulae, and flow charts, which is developed or materially modified by the Contractor for the Authority or for which the Authority is required by federal law or regulation to provide a royalty-free, irrevocable and nonexclusive license to the federal government.
 - (6) Shop drawings.
- b. The Authority shall have the right to use, duplicate, or disclose technical data other than that defined in Paragraph a. in whole or in part, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be
 - (1) released or disclosed in whole or in part outside the Authority,
 - (2) used in whole or in part by the Authority for manufacture, or
 - (3) used by a party other than the Authority except for: (i) emergency repair or overhaul, (ii) where the item or process concerned is not otherwise reasonably available to the Authority to enable timely performance of the work, or (iii) administration of this Contract or the inspection or verification of the product produced under this Contract where the third party has a written contract with the Authority to perform these efforts. In all cases described in this subsection, the release or disclosure outside of the Authority shall be subject to a written prohibition against further use, release, or disclosure by the party receiving the technical data.

- c. Technical data provided in accordance with the provisions of Paragraph b. shall be identified by a legend which suitably recites the aforesaid limitation. Nothing herein shall impair the right of the Authority to use similar or identical data acquired from other sources.
- d. Where any item is purchased as a separate item in the Contract, that purchase includes all integral parts of that item, including any computer software, source codes, algorithms, processes, formulae, and flow charts. As such, the Authority has full rights to use, duplicate, or disclose any or all parts of the item, including computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so. Should disclosure of the computer software be required only under this Paragraph, then the Contracting Officer or other delegated Authority's Representative may waive the provisions of this Paragraph if he certifies in writing that the item is commercially available from multiple sources and the product from any of those sources will be fully compatible with existing Authority property.
- e. 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.
- f. 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 to do so, all (i) technical data and (ii) computer software covered by Article 1.40 a.(5) now or hereafter covered by copyright.
 - (2) No such copyrighted matter shall be included in (i) technical data or (ii) computer software covered by Article 1.40 a.(5) furnished hereunder without the 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 (i) technical data or (ii) computer software covered by Article 1.40 a.(5) provided to the Authority.
- g. Relation to patents: Nothing contained in this Article shall imply a license to the Authority under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Authority under any patent.
- h. Any dispute under this Article shall be subject to the Disputes Article of this Contract.
- i. Notwithstanding any other payment provisions in this Contract, the Contracting Officer or other delegated Authority's Representative may retain from payment up to 10 percent of the Contract price until final delivery and acceptance of the technical data as defined in this Article and as required to be furnished by the Unit Price Schedule or the Contract Specifications.

1.41 Price Reduction for Defective Cost or Pricing Data - Price Adjustments

- a. This Article shall become operative only with respect to any modification of this Contract which involves aggregate increases and/or decreases in cost plus applicable profits in excess of \$100,000 unless the modification is priced on the basis of adequate competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The right to price reduction under this Article is limited to defects in data relating to such modification.
- b. If any price, including profit or fee, negotiated in connection with any price adjustment under this Contract was increased by any significant sums because:
 - (1) The Contractor furnished cost or pricing data which was not complete, accurate and current as certified in the Contractor's Certificate of Current Cost or Pricing Data;
 - (2) A subcontractor, pursuant to the Article of this Contract entitled SUBCONTRACTOR COST AND PRICING DATA AND PRICE ADJUSTMENTS or any subcontract article therein required, furnished cost or pricing data which was not complete, accurate and current as certified in the subcontractor's Certificate of Current Cost or Pricing Data;
 - (3) A subcontractor or prospective subcontractor furnished cost or pricing data which was required to be complete, accurate and current and to be submitted to support a subcontract cost estimate furnished by the Contractor but which was not complete, accurate and current as of the date certified in the Contractor's Certificate of Current Cost or Pricing Data; or
 - (4) The Contractor or a subcontractor or prospective subcontractor furnished any data, not within Paragraph (1), (2) or (3) above, which was not accurate, as submitted; the price shall be reduced accordingly and the Contract shall be modified in writing as may be necessary to reflect such reduction.

However, any reduction in the Contract price due to defective subcontract data of a prospective subcontractor, when the subcontract was not subsequently awarded to such subcontractor, will be limited to the amount, plus applicable overhead and profit markup, by which the actual subcontract, or actual cost to the Contractor if there was not a subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor, provided the actual subcontract price was not affected by defective cost or pricing data. (Note: Since the Contract is subject to reduction under this Article by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the Contractor may wish to include an article in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. However, the inclusion of such an article and the terms thereof are matters of negotiation and agreement between the Contractor and the subcontractor, provided that they are consistent with DISPUTES provisions in subcontracts. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.)

1.42 Audit - Price Adjustments

- a. General: The Contracting Officer or other delegated Authority's Representative shall have the audit and inspection rights described in the applicable Paragraphs b., c. and d. below.

- b. Examination of costs: If this is a cost-reimbursement type, incentive, time and materials, labor hour or price redeterminable Contract, or any combination thereof, the Contractor shall maintain, and the Contracting Officer or other delegated Authority's Representative shall have the right to examine books, records, documents and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred for the performance of this Contract. Such right of examination shall include inspection at all reasonable times of the Contractor's plants, or such parts thereof, as may be engaged in the performance of this Contract.
- c. Cost or pricing data: If the Contractor submitted cost or pricing data in connection with the pricing of this Contract or any change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the Contracting Officer or other delegated Authority's Representative shall have the right to examine all books, records, documents and other data of the Contractor related to the negotiation, pricing or performance of such Contract, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted along with the computations and projections used therein.
- d. Not used.
- e. The Contractor shall insert a clause containing all the provisions of this Article, including this Paragraph e., in all subcontracts hereunder except altered as necessary for proper identification of the contracting parties and the Contracting Officer or other delegated Authority's Representative under this Contract.

1.43 Subcontractor Cost or Pricing Data and Price Adjustments

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

- d. The Contractor shall insert the substance of this Article including this Paragraph d. in each subcontract hereunder which exceed \$100,000.

1.44 Value Engineering Incentive

- a. This Article applies to those Value Engineering Change Proposals (VECP's) which are initiated and developed by the Contractor to change the Drawings, Specifications or other requirements of this Contract. In order to be accepted under this Article each VECP shall:
 - (1) Be identified by the Contractor at the time of submittal to the Contracting Officer or other delegated Authority's Representative as submitted pursuant to this Article using the prescribed WMATA VECP proposal form;
 - (2) Require a change to this Contract.
 - (3) Decrease the Contract price;
 - (4) Maintain the Contract requirements such as safety, service life, reliability, economy of operation, ease of maintenance and necessary standardized and architectural features of the facility or system, and;
 - (5) Not require an unacceptable extension of original Contract duration.
 - (6) Be reviewed and evaluated by way of a two-phase process.
- b. Phase One - Conditional Approval: In addition to the use of the WMATA VECP proposal form, any VECP the Contractor submits shall be in sufficient detail to clearly define the proposed change including the following items:
 - (1) A description of the difference between the existing and the proposed Contract requirements, and the comparative advantages and disadvantages of each;
 - (2) Contract requirements recommended by the Contractor to be changed;
 - (3) Separate detailed cost estimates for both the basic Contract requirement and the proposed change, and an estimate of the change in Contract price including an accounting of the costs of development and implementation and Authority review of the VECP and the sharing arrangement as set forth in the following Paragraph e.;
 - (4) A statement from the Contractor predicting any effects the proposed VECP will have on the life-cycle cost of the work to include and identify separately the cost for increased maintenance and operations;
 - (5) A statement of the time by which the proposal must be accepted so as to obtain the maximum price reduction effect and not delay the original Contract completion time. The time required for VECP review shall be considered and included in this statement and also in a separate bar chart;
 - (6) A list of codes and WMATA standards applicable to the work to be carried out by the VECP and a statement that the proposed VECP will be in compliance with the requirements set forth in listed codes and standards;

- (7) The identification of a project where the materials, methods of construction and special equipment, where required, have been previously and successfully performed on construction similar to that which is being proposed for implementation on this Contract; and
 - (8) Preliminary architectural and engineering analysis, including calculations and 22 x 34 inch drawings in sufficient detail for each requirement of the Contract which must be changed if the VECP is accepted, with recommendations for accomplishing each change and its effect on unchanged work.
- c. The Contracting Officer or other delegated Authority's Representative may at any time during the two-phase review and evaluation process reject part or all of the VECP by giving the Contractor written notice thereof. Until final approval is issued, the Contractor shall remain obligated to perform in accordance with the terms of the original Contract. VECP's will be processed expeditiously; however, the Authority shall not be liable for any delay in acting upon any proposal submitted pursuant to this Article. The decision of the Contracting Officer or other delegated Authority's Representative about acceptance or rejection of any such proposal shall be final and shall not be subject to the DISPUTES Article of this Contract.
- (1) The Contractor has the right to withdraw part or all of the VECP at any time prior to acceptance or rejection by the Contracting Officer or other delegated Authority's Representative. Such withdrawal shall be made in writing to the Contracting Officer or other delegated Authority's Representative. If the Contractor desires to withdraw the proposal, he shall be liable for the cost incurred by the Authority in reviewing the proposal.
- d. Upon notice of conditional approval of the concept of the VECP, the Contractor shall proceed with final VECP design in accordance with the agreed schedule.
- e. Phase Two - Final Approval: Final approval of the VECP by the Authority will be contingent upon the following items:
- (1) The Contractor shall address, to the Authority's satisfaction, all design issues and review comments.
 - (2) An equitable adjustment in the Contract price and appropriate changes in any other affected provisions of the Contract shall be made and the Contract modified in accordance with this Article and the CHANGES or other applicable articles of this Contract.
 - (3) The net savings resulting from the change shall be shared between the Contractor and the Authority on the basis of 50 percent for the Contractor and 50 percent for the Authority. Net savings shall be determined by deducting from the estimated gross savings, the Contractor's costs of developing and implementing the proposal, including any amount attributable to a subcontractor, and the estimated amount of increased costs to the Authority resulting from the change, such as costs for review, implementation, inspection, related items and Authority-furnished property. Estimated gross savings shall include Contractor's labor, material, equipment, overhead, profit and bond. The Contract price shall be reduced by the sum of the Authority's costs and share of the net savings.
 - (4) The Contractor is entitled to share in instant Contract savings only, to the full extent provided for in this Article. For purposes of sharing, the term 'instant contract' shall not include any supplemental agreements to or other modifications of this Contract,

executed subsequent to acceptance of the particular VECP, by which the Authority increases the quantity of any item or adds any item.

(5) Notwithstanding any review, approval or acceptance of any VECP by the Authority; the Contractor agrees to be liable to the Authority for all costs of any kind whatsoever caused by or resulting from any error, omission, deficiency or negligence, or combination thereof, of any kind in the design, drawings or specifications submitted to the Authority in connection with any VECP proposal under this Contract. The rights and remedies of the Authority provided in this clause are in addition to any other rights or remedies provided by law or under this Contract.

- f. The Contractor will use his best efforts to include Value Engineering arrangements in any subcontract, which in his judgement, appears to offer sufficient value engineering potential.
- g. A VECP identical to one submitted under any other contract, by this or any other Contractor, may also be submitted under this Contract.
- h. The Contractor may restrict the Authority's right to use any VECP data by marking it with the following statement:

"This data, furnished pursuant to the VALUE ENGINEERING INCENTIVE Article of this Contract, shall not be duplicated, used or disclosed, in whole or in part, for any purpose except to evaluate the VECP, unless the proposal is accepted by the Authority. This restriction does not limit the Authority's right to use information contained in this data if it is or has been obtained, or is otherwise available, from the Contractor or from other source, without limitations. When this proposal is accepted by the Authority, the Authority shall have the right to duplicate, use and disclose any data in any manner and for any purpose whatsoever, and have others do so whether under this or any other Authority contract."

1.45 Variations in Estimated Quantities

- a. Where the quantity of a pay item in this Contract is an estimated quantity and where the actual quantity of such pay item varies more than 15 percent above or below the estimated quantity stated in this Contract, an equitable adjustment in the Contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contracting Officer or other delegated Authority's Representative shall, upon receipt of a written request for an extension of time within 10 days from the beginning of such delay, or within such further period of time which may be granted by the Contracting Officer or other delegated Authority's Representative prior to the date of final settlement of the Contract, ascertain the facts and make such adjustment for extending the completion date as in his judgment the findings justify.

1.46 Contract Prices - Unit Price Schedule

Payment for the various bid items listed in the Unit Price Schedule shall constitute full compensation for furnishing all plant, labor, equipment, appliances and materials and for performing all operations required to complete the work in conformity with Drawings and Specifications. All costs for work not specifically mentioned in the Unit Price Schedule shall be included in the Contract prices for the items listed.

1.47 Progress Payment for Lump Sum Items

The Contractor shall furnish to the Contracting Officer or other delegated Authority's Representative a breakdown of the total Contract price for every lump sum item on the Unit Price Schedule, showing the amount included therein for each principal category of the work, in such detail as to provide a basis for determining progress payments. The breakdown shall be supported by such data to substantiate its correctness as the Contracting Officer or other delegated Authority's Representative may require.

1.48 Warranty of Construction

- a. Except as otherwise expressly provided in this Contract, the Contractor shall remedy at his own expense any failure of the work for a period of two years, including equipment, to conform to Contract Specifications and any defect of material, workmanship, or design in the work, but excluding any defect of any design furnished by the Authority under the Contract, provided that the Contracting Officer or other delegated Authority's Representative gives the Contractor notice of any such failure or defect promptly after discovery but not later than one year after final acceptance of the work, except that in the case of defects or failures in a part of the work of which the Authority take possession prior to final acceptance, such notice shall be given not later than one year from the date the Authority take such possession. The Contractor, at his own expense, shall also remedy damage to equipment, the site, or the buildings or the contents thereof which is the result of any failure or defect, and restore any work damaged in fulfilling the terms of this Article. Should the Contractor fail to remedy any such failure or defect within a reasonable time after receipt of notice thereof, the Authority shall have the right to replace, repair or otherwise remedy such failure or defect at the Contractor's expense. This warranty shall not delay final acceptance of or final payment for the Contract work.
- b. All subcontractors', manufacturers' and suppliers' warranties and guarantees, expressed or implied, respecting any part of the work and any materials used therein shall be deemed obtained and shall be enforced by the Contractor as the agent and for the benefit of the Authority without the necessity of separate transfer or assignment thereof; provided that, if directed by the Contracting Officer or other delegated Authority's Representative, the Contractor shall require such subcontractors, manufacturers and suppliers to execute such warranties and guarantees in writing to the Contracting Officer or other delegated Authority's Representative.
- c. Any work repaired or replaced pursuant to this Article shall also be subject to the provisions of this Article to the same extent as work originally performed. The rights and remedies of the Authority provided in this Article are in addition to and do not limit any rights afforded to the Authority by any other article of this Contract.

1.49 Time and Materials Work

- a. In the event equitable adjustment pursuant to the CHANGES Article or other articles of these General Provisions cannot be agreed to in a timely manner, the Contracting Officer or other delegated Authority's Representative reserves the right to order work on a time and materials basis. When work is ordered under this Article and notwithstanding the provisions of other articles, compensation for the work shall be determined as hereinafter provided and shall constitute the total compensation to be paid for the changes to the work. The methods, labor, materials and equipment used in the

performance of such work shall be subject to the approval of the Authority Representative or Engineer.

- b. Work performed by or for the Contractor: Labor, materials, and equipment shall be furnished by the Contractor or by a subcontractor or by others on behalf of the Contractor. The Contractor will be paid therefor as hereinafter provided, except where agreement has been reached to pay in accordance with Paragraph c. below. To the totals, completed as indicated in Paragraphs b. (1) through b. (4), shall be added the following percentages, which in the aggregate shall be limited up to a maximum of:

Labor: 10 percent.

Materials: 5 percent.

Equipment rental: 5 percent.

- c. Profit shall be negotiated as provided in the CONTRACT MODIFICATIONS - REQUIREMENTS FOR PROPOSALS, PRICE BREAKDOWN AND NEGOTIATION OF PROFIT Article of these General Provisions.

A percentage for subcontract work, limited up to a maximum of 10 percent, may be added to the totals computed above. This subcontract percentage will be a one-time markup regardless of tier of the subcontractor performing the work. A percentage for Contractor's bond not to exceed one percent, may also be added to the total. For the purposes of this Article, subcontractor is defined as an individual, partnership, corporation, association, joint venture or any combination thereof, who contracts with the Contractor to perform work or labor or render service on or about the work. The term subcontractor shall not include those who supply materials only. When work paid for on time and materials basis is performed by forces other than the Contractor's organization, the Contractor shall reach agreement with such other forces as to the distribution of the payment made by the Authority for such work and no additional payment therefor will be made by the Authority by reason of performance of the work by a subcontractor or by others.

- (1) Labor: The cost of labor used in performing the work, whether the employer is the Contractor, subcontractor, or other forces, will be the sum of the following:

[a] The gross actual wages paid including income tax withholding but not including any employer payments to or on behalf of workmen for health and welfare, pension, vacation, insurance and similar purposes.

[b] To the actual gross wages, as defined in Paragraph b. (1) [a] above, will be applied a percentage based upon current applicable labor rates concerning payments made to or on behalf of workmen other than actual wages, which percentage shall constitute full compensation for all payments other than actual gross wages as defined in Paragraph b. (1) [a] above and subsistence and travel allowance as specified in Paragraph b. (1) [c] below. The Contractor shall compute a separate percentage for each craft or a composite percentage for all crafts, if so approved by the Authority Representative or Engineer. All computed percentages shall be submitted to the Authority Representative or Engineer for approval within 90 days after receipt of Notice to Proceed or as directed by the Authority Representative or Engineer prior to any time and materials work being performed.

[c] Subsistence and travel allowance paid to such workmen if required by collective bargaining agreements.

The charges for labor shall include all classifications through foremen when engaged in the actual and direct performance of the work. They shall not include charges for such overhead personnel as assistant superintendents, superintendents, office personnel, timekeepers and maintenance mechanics.

- (2) Materials: The cost of materials required for the accomplishment of the work will be delivered cost to the purchaser, whether Contractor, subcontractor or other forces, from the supplier thereof, except as the following are applicable:
- [a] If a cash or trade discount by the actual supplier is offered or available to the purchaser, it shall be credited to the Authority notwithstanding the fact that such discount may not have been taken.
 - [b] If materials are procured by the purchaser by any method which is not a direct purchase form and a direct billing by the actual supplier to such purchaser, the cost of such materials, including handling, shall be deemed to be the price to the actual supplier as determined by the Authority Representative or Engineer.
 - [c] If the materials are obtained from a supply or source owned wholly or in part by the purchaser, payment therefor will not exceed the price paid by the purchaser for similar materials furnished from said source on Contract items or the current wholesale price for such materials delivered to the job site, whichever price is lower.
 - [d] The cost of such materials shall not exceed the lowest current wholesale price at which such materials are available in the quantities concerned, delivered to the job site, less any discounts as provided in Paragraph b. (2) [a] above.
 - [e] If the Contractor does not furnish satisfactory evidence of the cost of such materials from the actual supplier thereof, the cost shall then be determined in accordance with Paragraph b.(2)[d] above.

The Contractor shall not be compensated for indirect costs and profit on Authority-furnished materials.

- (3) Equipment: The Contractor shall be paid for the use of equipment in accordance with the PAYMENT FOR USE OF EQUIPMENT Article of the Special Conditions. The Contractor shall furnish all data which might assist the Authority Representative or Engineer in the establishment of such rates.
- [a] Operators of rented equipment will be paid for as provided under Paragraph b. (1) above.
- (4) Subcontracts: The cost for subcontract work will be the actual cost to the Contractor for work performed by a subcontractor as computed in accordance with Paragraph b. above.
- c. Special items of work: If the Contracting Officer or other delegated Authority's Representative and the Contractor, by agreement, determine that either (1) an item of time and materials work does not represent a significant portion of the total Contract price, or (2) such item of work cannot be performed by the forces of the Contractor or the forces of any of his subcontractors, or (3) it is not in accordance with the established practice of the industry involved to keep the records which the procedure outlined in Paragraph b. above would require, charges for such special time and materials work item may be made on the basis of invoices for such work without complete itemization of

labor, materials and equipment rental costs. To such invoiced price, less a credit to the Authority for any cash or trade discount offered or available, whether or not such discount may have been taken, will be added a negotiated amount not to exceed five percent of the discounted price, in lieu of the negotiated lump sum not to exceed the percentages provided for in Paragraph b. above.

- d. Records: The Contractor shall maintain his separate records in such a manner as to provide a clear distinction between the direct costs of work paid for on a time and materials basis and the cost of other operations.
 - (1) The Contractor shall prepare, and furnish to the Authority Representative or Engineer, report sheets in duplicate of each day's work paid for on a time and materials basis the day after such work was performed. The daily report sheets shall itemize the materials used, and shall cover the direct cost of labor and the charges for equipment rental, whether furnished by the Contractor, subcontractor or other forces, except for charges described in Paragraph c. above. The daily report sheets shall provide names or identifications and classifications of workmen, the hours worked, and also the size, type and identification number of equipment, and hours operated.
 - (2) Material charges shall be substantiated by valid copies of vendor's invoices. Such invoices shall be submitted with the daily report sheets or, if not available, they shall be submitted with subsequent daily report sheets. Should said vendor's invoices not be submitted within 60 days after the date of delivery of the material or 15 days after acceptance of the work, whichever comes first, the Authority Representative or Engineer reserves the right to establish the cost of such materials at the lowest current wholesale prices at which such materials are available in the quantities concerned delivered to the location of the work less any discounts provided in Paragraph b.(2)[a] above.
 - (3) Said daily report sheets shall be signed by the Contractor or his authorized agent.
 - (4) The Authority Representative or Engineer will compare his records with the Contractor's daily report sheets, make any necessary adjustment, and compile the costs of work paid for on a time and materials basis on daily time and materials work report forms furnished by the Authority Representative or Engineer. When these daily reports are agreed upon and signed by both parties, they shall become the basis of payment for the work performed, but shall not preclude subsequent adjustment based on a later audit.
- e. Payment: Payment as provided in Paragraphs b. and c. above shall constitute full compensation to the Contractor for performance of work paid for on a time and materials basis and no additional compensation will be allowed therefor, except as provided in Paragraph f. below.
- f. If the work under this Article is emergency in nature or is on a critical path, i.e., completion of a milestone or overall Contract completion and affects efficient work and/or delays completion of other Contract work, the Contractor may propose a lump sum amount, adequately analyzed and certified for negotiation with the Contracting Officer or other delegated Authority's Representative as an added cost not covered by Paragraph b. (1) through b. (4) above.

1.50 Equitable Adjustment for Minor Contract Modifications

- a. When the Contracting Officer or other delegated Authority's Representative and Contractor agree to an additive or deductive amount for a modification to this Contract made pursuant to Articles of this Contract titled, CHANGES, DIFFERING SITE CONDITIONS or VALUE ENGINEERING INCENTIVE, when the fair and reasonable price in aggregate amount does not exceed \$50,000 and further agree to an adjustment in the time for Contract performance resulting from said modification which increases or decreases the completion date 10 or less calendar days, the equitable adjustment in Contract amount shall consist of the sum of the following:
 - (1) Direct costs as agreed to by the Contracting Officer or other delegated Authority's Representative and Contractor.
 - (2) Job Office Overhead costs, the sum of which shall be limited to a maximum of 10 percent of direct labor costs, including fringe benefits, but excluding FICA, FUTA, and State Unemployment Insurance (SUI); a maximum of 10 percent of direct material costs; a maximum of five percent of direct equipment costs (small tools, defined as equipment less than \$2,000 in acquisition costs, are included and computed at a maximum of five percent of direct base labor wages); and a maximum of five percent of subcontract costs.
 - (3) Home Office General and Administrative (G&A) costs, the sum of which shall be limited to a maximum of three percent or the audited rate of the direct costs plus job office overhead costs computed as above.
 - (4) Profit will be determined in accordance with the guidelines specified in the CONTRACT MODIFICATIONS-REQUIREMENTS FOR PROPOSALS, PRICE BREAKDOWN AND NEGOTIATION OF PROFIT Article of the General Provisions.
- b. In using the above rates, the following shall apply:
 - (1) Payroll Tax (FICA, FUTA & SUI) amounts are added immediately after direct and indirect costs are totaled.
 - (2) Subcontractors' indirect costs and profit shall be computed in the same manner as above.
 - (3) Indirect costs shall not be duplicated in direct costs.
 - (4) When the Contract time is increased, the change in Contract amount for direct and indirect costs computed by application of the above rates includes costs of impact and extended performance due to the time extension and no further consideration of costs arising from the specific modification and cited pending change orders (PCO's) will be given. The Contractor shall not receive both a percentage and a daily rate markup for job office overhead costs when a time extension to the Contract Performance Period is recognized.
 - (5) Bond will be allowed at actual cost without markup.
- c. Equipment Rates shall be determined from prior Authority audits. In the absence of audited rates for equipment owned or controlled by the Contractor, hourly rates shall be computed from the current Contractor's Equipment Cost Guide (monthly rate divided by 176).

1.51 Cost or Pricing Data

- a. The Contractor shall submit to the Contracting Officer or other delegated Authority's Representative, 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 his knowledge and belief, the cost or pricing data submitted is accurate, complete and current as of the date of execution, which date shall be as close as possible to the date of agreement on the negotiated price of the Contract modification. The cost or pricing data shall be submitted at the time the Contractor submits his proposal for the pricing of any modification to his Contract, whether or not cost or pricing data was required in connection with the initial pricing of the Contract, when the modification involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$100,000, or less at the discretion of the Contracting Officer or other delegated Authority's Representative.
- b. The submittal of certified cost or pricing data shall not be required if the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The Contractor agrees that the terms "adequate price competition" and "established catalog or market prices of commercial items sold in substantial quantities to the general public" shall be determined by the Contracting Officer or other delegated Authority's Representative in accordance with the guidelines as set forth in Subpart 15.4 of the Federal Acquisition Regulations (48 CFR 15.4).
- c. Cost or pricing data consists of all facts existing up to the time of agreement on price which prudent buyers and sellers would reasonably expect to have a significant effect on the price negotiations for the modification. The definition of cost or pricing data embraces more than historical accounting data; it also includes, where applicable, such factors as subcontractor, supplier and vendor quotations, nonrecurring costs, changes in construction methods, unit cost trends such as those associated with labor efficiency and any management decisions which could reasonably be expected to have a significant bearing on costs under the proposed modification and the Contract work. Cost or pricing data consists of all facts which can reasonably be expected to contribute to sound estimates of future costs as well as to the validity of costs already incurred. Cost or pricing data, being factual, is that type of information which can be verified. Because the certificate pertains to cost or pricing data, it does not make representations as to the accuracy of the Contractor's judgment on the estimated portion of future cost or projections. The certificate does, however, apply to the data upon which the Contractor's judgment is based.

1.52 Pricing of Adjustments

- a. When costs are a factor in any determination of a Contract price adjustment pursuant to the CHANGES Article or any other provision of this Contract, such costs shall be in accordance with the contract cost principles and procedures in Subpart 31 of the Federal Acquisition Regulations (48 CFR 31). Where general and administrative expense is recoverable as part of any pricing adjustment under this Contract, the adjustment shall be based on the relationship between the Contractor's total general and administrative expenses allowable under FAR cost principles for all construction-type operations during the fiscal or calendar year covering the actual performance period of the work included in this pricing adjustment, and the Contractor's total cost input (excluding General and Administrative costs) for construction-type operations during the same period, expressed as a percentage, applied to the direct and overhead Contract costs included in the pricing adjustment.
- b. Notwithstanding any interpretation of the aforementioned contract cost principles and procedures to the contrary, the Authority shall not be liable for interest, however

represented, on or as a part of any claim, request, proposal or adjustment (including equitable adjustments) whether said claim, request, proposal or adjustment (including equitable adjustment) arises under the Contract or otherwise.

1.53 Accounting and Record Keeping

- a. Applicability. This Article shall become effective for and shall apply to any adjustment in the price of this Contract initiated by the Contractor or the Authority. However, where the original amount of this Contract is less than \$1,000,000, Paragraph c. of this Article does not apply unless the adjustment is expected to exceed \$50,000.
- b. Forward Priced Adjustments. Unless expressly waived in writing in advance by the Contracting Officer or other delegated Authority's Representative, the Contractor shall furnish to the Contracting Officer or other delegated Authority's Representative a cost proposal in advance of performance of any work for which a price adjustment is requested under this Contract. The proposal format shall be as detailed in the CONTRACT MODIFICATIONS - REQUIREMENTS FOR PROPOSALS, PRICE BREAKDOWN AND NEGOTIATION OF PROFIT Article. The Contractor shall initiate such records as are necessary to substantiate all elements of the pricing proposal, current to the date of agreement on the pricing adjustment. Such records supporting the costs of each pricing adjustment request shall be specifically segregated and identified in the Contractor's accounting system as being applicable to the pricing adjustment request.
- c. Post Pricing Adjustments. In addition to the records required to be originated under b. above, in the event pricing of an adjustment under this Contract is not agreed upon between the Contractor and the Contracting Officer or other delegated Authority's Representative 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 or other delegated Authority's Representative 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 between (1) work required under the base Contract; (2) work requested to be reimbursed under the pricing adjustment; and (3) other claim, including but not limited to, changes, differing site conditions, and the like. The accounts and records so established shall accumulate such costs under logical costs groups, such as material, labor, equipment, subcontracts, field overhead and the like. The Contractor shall record these costs on a form approved by the Contracting Officer or other delegated Authority's Representative. Subject to agreement between the Contractor and the Contracting Officer or other delegated Authority's Representative, or upon direction of the Contracting Officer or other delegated Authority's Representative for work under the TIME AND MATERIALS WORK Article, the Contractor shall use Form C-113 (Daily Report - Labor, Materials and Equipment). The terms of Paragraph d. of the TIME AND MATERIALS WORK Article of this Contract shall apply regardless of the form used.
- d. Availability. The accounts, records and costs information required to be originated under b. and c. above together with all other accounts, records and costs information related to this Contract shall be maintained and made available by the Contractor or 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 other delegated Authority's Representative, or pursuant to any other provisions of this Contract;
- (2) Until the expiration of three years from the date of payment of the final \$100 (final payment) under this Contract or such lesser time as is specified in Subpart 4.7 of the Federal Acquisition Regulations and for such longer period, if any, as is required by applicable statute, or by any other articles of this Contract, or by Paragraphs (a) and (b) below:
 - (a) If the Contract is completely or partially terminated, for a period of three years from either the date of any resulting final settlement or the date of final payment, whichever is the greater period; and
 - (b) If a pricing adjustment is involved in any appeal under the DISPUTES Article of this Contract or in any litigation related to this Contract, for a period of one (1) year following the final disposition of the appeal or litigation.
- e. When asserting a claim under the various provisions 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 such costs as are deemed appropriate by the Contracting Officer or other delegated Authority's Representative. No payment shall be made to the Contractor on its claim until such records are made available and access is permitted.
- f. Limitation on Pricing Adjustment. In the event the Contractor or any subcontractor fails to originate or to maintain, or to make available any accounts or records as required under this or any other article of the Contract, any pricing adjustment or portion thereof previously granted by the Contracting Officer or other delegated Authority's Representative for which records are not available shall be rescinded and recomputed, or if a pricing adjustment has not yet been granted shall be computed, in an amount not to exceed the direct costs for which accounts or records are not available, plus a single mark-up for indirect expenses not to exceed 10 percent of the direct costs so determined by the Contracting Officer or other delegated Authority's Representative. The adjustment will be established by the Contracting Officer or other delegated Authority's Representative based upon, at his or her election, either:
 - (1) An audit of any existing books and records of the Contractor or subcontractor; or (2) an Authority estimate adopted by the Contracting Officer or other delegated Authority's Representative; or (3) a combination of (1) and (2); plus a single mark-up for indirect expenses not to exceed 10 percent of the direct costs so determined by the Contracting Officer or other delegated Authority's Representative. The Contractor and subcontractors shall not be allowed any profit for the work for which the Contractor or subcontractor fails to originate, or to maintain, or to make available any accounts or records as required under this Contract.
- g. The Contractor shall insert a clause containing 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 Officer or other delegated Authority's Representative under this Contract.

1.56 Certificate of Current Cost or Pricing Data

The Contractor shall provide a Certificate of Current Cost or Pricing Data as required in Subpart 15.406 of the Federal Acquisition Regulations (48 CFR Part 15.406) in support of any negotiated contract expected to exceed \$100,000 or any modification to a formally advertised or negotiated contract on which the aggregate of the increases and decreases in cost are expected to exceed \$100,000. The Contracting Officer or other delegated Authority's Representative at his discretion may request cost or pricing data for modifications on which cost are \$100,000 or less and an attendant certificate of current cost or pricing data.

1.57 Revolving Door

- a. The Contractor warrants that it will not offer employment to any officer or employee of the Washington Metropolitan Area Transit Authority (WMATA) who has been involved, directly or indirectly, in any matter of financial interest to the Contractor until at least one year after the officer or employee has ceased involvement in or responsibility for the matter.
- b. The Contractor further warrants that it will not employ any WMATA officer or employee who has had direct responsibility for any matter of financial interest to the Contractor within the year prior to the retirement or termination of the officer or employee until at least one full year after such officer or employee has left the employment of the Authority.
- c. The one year requirement described in a. and b. above may be waived at the discretion of the Contracting Officer or other delegated Authority's Representative if the WMATA employee or former employee has been subject to a Reduction in Force; in such case, the Contracting Officer or other delegated Authority's Representative will provide the Contractor with a letter to that effect.
- d. If a waiver is granted, or if a former employee of WMATA is eventually hired, the Contractor shall be responsible for ensuring that the former employee is not directly involved in negotiating or otherwise dealing with WMATA on any particular matter over which such employee had responsibility during his or her period of employment at WMATA.
- e. Should the Contractor fail to comply with paragraphs a., b. or d. above, the Contracting Officer or other delegated Authority's Representative shall have the right to withhold payment under this Contract in an amount not to exceed two percent of the total Contract amount as liquidated damages to the Authority, such withholding to be in addition to any other withholding under this Contract. Further, the Contracting Officer or other delegated Authority's Representative shall consider such violation in evaluating the Contractor's responsibility in connection with award of any other Authority contract.

1.58 Conflict Of Interest

- a. Neither the Contractor nor any person or company affiliated with it shall have, during the term of this Contract and any extensions thereof, any contractual or other financial relationship with the Authority, with any Authority prime Contractor, or with any subcontractor or supplier to any Authority prime Contractor other than the contractual relationship established under this Contract, unless an exception is granted as described below.
- b. Upon request of the Contractor and upon full disclosure and for good cause the Contracting Officer may in his sole discretion grant an exception to the requirement of a.,

above, when in his judgment the exception will not create a conflict between the Contractor's duties and obligations under this Contract and the duties and obligations imposed on the Contractor under the contractual or other relationship for which an exception is requested.

- c. If, during the performance of this Contract and any extension thereof, the Contractor becomes aware of any relationship, financial interest, or other activity in which it or an affiliated person or company is involved which is not in compliance with the provisions of a., above, it shall promptly notify the Contracting Officer in writing and fully disclose all circumstances thereof. Should the Contracting Officer not grant an exception to the requirements of this Article, the Contractor shall, within ten (10) days of written notice from the Contracting Officer to do so, take all action necessary to comply with the terms of a., above.
- d. If the Contractor fails to comply with the terms of this article, the Contracting Officer, may withhold payments due under the Contract until such time as the Contractor is in compliance or, should the non-compliance remain uncorrected at the expiration of ten (10) days from written notice from the Contracting Officer as provided in c., above, terminate the Contract for default pursuant to the Default Article of this Contract.
- e. The Contractor in performing this Contract shall avoid any conduct which might result in or give the appearance of creating for Directors, Officers or employees of the Authority in their relationship with the Contractor any conflicts of interest or favoritism and/or the appearance thereof and shall avoid any conduct which might result in a Director, Officer or employee failing to adhere to the Standards of Conduct adopted by the Authority's Board of Directors.
- f. Any determination by the Contracting Officer under this Article shall be final and shall be considered a question of fact within the meaning of the Disputes Article of this Contract.

1.59 Labor Provisions

(1) Minimum wages –

- (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill,

- except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (ii) (A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (2) **Withholding** - The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Authority may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- (3) **Payrolls and basic records** -
- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Authority for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing

Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
- (4) Apprentices and trainees –
- (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of

apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment

opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

- (5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- (7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (10) **Certification of eligibility** –
 - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001

1.60 Patent and Rights in Data

(Also, refer to General Provisions Article 1.40 Rights in Technical Data - Unlimited.)

Patent and rights in data requirements for federally assisted projects only apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information.

- A. **Rights in Data** - This following requirements apply to each contract involving experimental, developmental or research work:

- (1) The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists; specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to Project administration.
- (2) The following restrictions apply to all subject data first produced in the performance of this contract.
 - (a) Except for its own internal use, the Authority or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Authority or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution
 - (b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
 2. Any rights of copyright purchased by the Authority or Contractor using Federal assistance in whole or in part provided by FTA.
 - (c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Authority and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Authority or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

- (d) Unless prohibited by state law, upon request by the Federal Government, the Authority and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Authority or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Authority nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
 - (e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 - (f) Data developed by the Authority or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Authority or Contractor identifies that data in writing at the time of delivery of the contract work.
 - (g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- (3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e. , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Authority and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
- (4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- B. Patent Rights** - This following requirements apply to each contract involving experimental, developmental, or research work:
- (1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Authority and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
 - (2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Authority and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due

the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

- (3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

1.61 Program Fraud and False or Fraudulent Statements and Related Acts

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

1.62 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.

1.63 Contract Work Hours and Safety Standards Act

Pursuant to Section 102 (Overtime):

- (1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-

half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- (2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) **Withholding for unpaid wages and liquidated damages** - The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

Section 107 (OSHA):

Contract Work Hours and Safety Standards Act –

- (i) The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, " Safety and Health Regulations for Construction " 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.
- (ii) **Subcontracts** - The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

1.64 Seismic Safety

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

SUPPLEMENTAL PROVISIONS REQUIRED IN FEDERALLY FUNDED CONTRACTS

1.65 ACCESS TO THIRD PARTY CONTRACT RECORDS

- a. The Contractor agrees to provide the Authority, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 CFR. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U. S. C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U. S. C. 5307, 5309 or 5311.
- b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case the Contractor agrees to maintain same until the Authority, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

1.66 BUY AMERICA

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

1.67 CARGO PREFERENCE

The Contractor agrees:

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

1.68 CLEAN AIR

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U. S. C. §§ 7401 et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.
- b. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

1.69 CLEAN WATER

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U. S. C. 1251 et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- b. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

1.70 CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS

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

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal

penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

- (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

1.71 ENERGY CONSERVATION

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

1.72 CHANGES TO FEDERAL REQUIREMENTS

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

1.73 FLY AMERICA

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

1.74 DEBARMENT OR SUSPENSION

- a. The Contractor is bound by its certification contained in its offer to the Authority that neither the Contractor, its principals, or affiliates, are excluded or disqualified, as defined at 49 C.F.R. 29.940 and 29.945. The certification is a material representation of fact, relied upon by the Authority in entering into this Contract. If it is later determined that the Contractor knowingly rendered an erroneous certification,

in addition to remedies available to the Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 49 C.F.R. 29, Subpart C, throughout the term of this Contract.

- b. The Contractor agrees to include this requirement in all subcontracts at all tiers under this Contract.

1.75 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

- a. The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F or any revisions thereto, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all DOT or FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests which would cause the Authority to be in violation of the FTA terms and conditions.
- b. The Contractor agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

1.76 LOBBYING

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

1.77 NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

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

1.78 FALSE STATEMENTS OR CLAIMS CIVIL AND CRIMINAL FRAUD

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

1.79 RECOVERED MATERIALS

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

1.80 RIGHTS IN DATA AND COPYRIGHTING - FTA

- a. The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists; specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to Project administration.

- b. The following restrictions apply to all subject data first produced in the performance of this contract.
- (1) Except for its or WMATA's own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of the U.S. Government, until such time as the Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to Agreements with academic institutions.
 - (2) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. 19.36, the Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, the following subject data for Federal Government purposes:
 - (a) Any subject data developed under this contract whether or not a copyright has been obtained; and
 - (b) Any rights of copyright to which the contractor purchases ownership with Federal assistance.
- c. When the Federal Transit Administration (FTA) provides financial assistance for a planning, research, development, or a demonstration project, it is FTA's general intention to increase mass transportation knowledge, rather than limit the benefits of the Project to participants in the Project. Therefore, unless FTA determines otherwise, the Contractor agrees that, in addition to the rights set forth in subsection (b)(2) of this clause, FTA may make available to any FTA recipient, subrecipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the subject data derived under this contract or a copy of the subject data first produced under this contract. If this contract is not completed for any reason whatsoever, all data developed under this contract shall become subject data as defined in subsection a. of this clause and shall be delivered as the Government may direct.
- d. Unless prohibited by state law, the Contractor agrees to indemnify, save, and hold harmless WMATA and the Government, their officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Contract. The Contractor shall not be required to indemnify WMATA and the Government for any such liability arising out of the wrongful acts of employees or agents of WMATA and the Government.
- e. Nothing contained in this section on rights in data shall imply a license to WMATA or the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to WMATA or the Government under any patent.
- f. The requirements of subsections b. and c., do not apply to material furnished by the Authority to the Contractor and incorporated in the work carried out under the

contract provided that the Contractor identifies the incorporated material at the time of delivery of the work.

- g. Any dispute under this clause shall be subject to the Disputes clause of this contract.
- h. Notwithstanding any other payment provision in this contract, the Contracting Officer may retain from payment up to 10 percent (10 %) of the contract price until final delivery and acceptance of the subject data defined in this clause and as required to be furnished by the contract specification.

PART II, SECTION 2 - SPECIAL PROVISIONS

PART II, SECTION 2 - SPECIAL PROVISIONS

1. TASK ORDER PROCEDURE

This contract provides for the issuance of Task Orders on a negotiated basis as follows:

1. General

Only the Contracting Officer may issue Task Orders to the Contractor, providing specific authorization or direction to perform work within the scope of the contract and as specified in the Statement of Work. Unless specifically authorized by the Contracting Officer, the Contractor shall not commence work until a fully executed Task Order has been awarded. The Contractor may incur costs under this contract in performance of task orders and task order modifications issued in accordance with this ARTICLE.

No other costs are authorized unless otherwise specified in the contract or expressly authorized by the Contracting Officer.

2. Requesting Task Order Proposals

The Contracting Officer or a designated official may solicit responses to requirements from Contractors within a technical area covered by a task order requirement in writing. A Task Order Request for Proposals (TORFP) will be prepared and issued for each task order requirement. Generally, the TORFP will include, but is not limited to, the following:

- a. Statement of Work;
- b. Reporting Requirements and Deliverables (if applicable);
- c. Proposal Due Date and how to deliver Proposals;
- d. Period of Performance/Duration of Task Order;
- e. Evaluation Factors for Award (if other than Price and Past Performance on previous task orders, with Price being more important than Past Performance)
- f. Liquidated Damages (if applicable)

All contract clauses contained this contract shall be incorporated in the TORFP and the resultant task order. If conflicts exist between the contract clauses and the information outlined in the task order, the contract language takes precedence over the information in the task order. Contractors are not required to propose on all TORFPs. Those eligible Contractors that decide not to submit a proposal shall advise the Contracting Officer, in writing, of their intention not to submit a proposal on or before the closing date and time established in the TORFP. An election not to propose on a given TORFP will not negatively affect or prohibit a Contractor from competing on future TORFPs.

3. Competitive Ordering Process.

- a. All Contractors will receive e-mail notification advising of the availability of each proposed task order requirement. All proposed task orders will incorporate all terms of this contract unless otherwise specified in the proposed task order.
- b. Contractors will be provided an adequate time to prepare and submit responses based on the Contracting Officer's consideration of the estimated dollar value and complexity of proposed task order. Responses will not be considered a proposal as

defined in FAR Part 15. However, the Contractor shall provide information sufficient for consideration. If evaluation criteria are specified on the TORFP as other than price and past performance, the following includes a list of potential evaluation criteria (this list is not all encompassing):

- Understanding of the requirements;
 - Experience and capability on similar tasks;
 - DBE Compliance
 - Technical approach, methods and procedures for satisfying the requirements with a discussion of potential problems to be encountered and proposed solutions and/or risk mitigation strategies.
 - Procedures for assuring quality of work, products, and deliverables;
 - Plan for managing the task order, including meeting requirements and schedules, and performance measures (if applicable);
 - Staffing plan with skill levels and level of effort for each individual proposed;
 - References to evaluate past performance on previous contracts/task orders not awarded under the MATOC; and
4. Price to perform the task order

Each contractor will provide their best price for the individual task order. There are no pre-established labor rates, etc. included within the contract. A Contractor will utilize the Task Order Pricing Template when providing their price for each individual task order. The Contractor will provide material cost, direct labor rates, direct labor hours, direct labor cost, equipment cost, and subcontractor cost for each item established on the Task Order Pricing Template. The Authority will provide a Task Order Pricing Template for each task order with the TORFP filled in with the categories of work that are anticipated. If the Contractor identifies other categories of work that were not identified, the Contractor will identify those on the Task Order Pricing Template and provide all information for those categories of work as well. If the category of work is to be subcontracted, the Contractor will provide back-up documentation for that work. The back-up documentation will be the multiple quotations received by the offeror, or an explanation as to why there were not multiple quotations received.

5. Evaluation and Award of Task Order Proposals

The Authority will evaluate the Task Order proposals against the requirements of the TORFP. Specifically, price, past performance on previous task orders, and any other factors specifically identified in the TORFP may be used for evaluation of each proposal. In addition, the TORFP will identify the basis for selecting a contractor for award. Generally, price will be more important than past performance. However, each TORFP will specify how the award decision will be made. Upon completion of evaluations, the

Contracting Officer will issue a task order to the Contractor whose proposal is most advantageous to the Authority.

The Contracting Officer will notify all MATOC contractors of the selection decision in writing (via e-mail).

6. Fair Opportunity

a. Each awardee will be given a fair opportunity to be considered for each order issued over \$2,000 unless the following exception(s) apply:

- The Authority's need for the supplies or services is so urgent that a competition would result in unacceptable delays;
- Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized;
- The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order; or
- It is necessary to place an order to satisfy a minimum guarantee.

2. **WORK BY CONTRACTOR PERCENTAGE REQUIREMENTS**

1. The Contractor shall plan to execute work on the site, with at least **45 percent of the Contract work** with its own organization for each individual task order. The cost of work performed by skilled and unskilled labor carried on the Contractor's own payroll, together with the cost of materials installed, may be included in the above percentages. The Contractor's mark-up for overhead and profit on work performed by subcontractor(s) shall not be included in determining this percentage.

2. If, during the progress of the work hereunder, the Contractor requests a reduction in such percentage, as listed above, a written request must be submitted to the Contracting Officer. The Proposer's justification and rationale for requesting a reduction in the percentage must be included in the written letter. If the Contracting Officer determines that it would be to the Authority's advantage to allow a reduction in the percentage of the work required to be performed by the Contractor, the Contracting Officer shall issue a letter approving this request.

3. **ORDERING PERIOD**

The ordering period of this contract shall be for a term of one (1) Base Period from Date of Award (ADC) to June 30, 2015, and four (4) 12-month option years. The Ordering Period reads as follows:

Base Period (ADC to June 30, 2015)
Option Period I (12 months)
Option Period II (12 months)

Option Period III (12 months)
Option Period IV (12 months)

4. OPTION QUANTITIES

- a. The Authority has the unilateral right to extend the contract by exercising the option or options (as applicable) subject to all terms and conditions herein.
- b. The Authority may exercise the option(s) (if any) by written notice to the 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.
- c. (a) The Authority may extend the term of this contract by written notice to the Contractor within 15 days provided that the Authority gives the Contractor a preliminary written 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.

(b) If the Authority exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 6 years from date of award.

5. AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR

Funds are not presently available for performance under this contract beyond the fiscal year which ends June 30, 2015. 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 which will be performed in whole or in part in a subsequent fiscal year is subject to availability of funds in the subsequent fiscal year is subject to availability of funds in the subsequent fiscal year and will be governed by the terms of this Article.

6. PRICING

Prices on the Price Schedule Sheets submitted must include all associated costs, including but not limited to, travel, markups, overhead, and profit.

7. PAYMENT TERMS

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

8. BILLING AND PAYMENT

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

9. POINT OF CONTACT

All inquiries are to be directed to:

Washington Metropolitan Area Transit Authority
Attn: Michael Glimp/CQ14062
600 Fifth St, N.W., Room 403
Washington DC 20001
Phone: 202-962-2086
E-Mail: mdglimp@wmata.com

10. F.O.B. DESTINATION

- a. The term "f.o.b. destination," as used in this clause, means:
 1. Free of expense to WMATA on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and
 2. Supplies shall be delivered to the destination consignee's warehouse unloading platform, or receiving dock, at the expense of the Contractor. WMATA shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of WMATA acting in its contractual capacity. If the Contractor uses rail carrier or freight forwarder for less than carload shipments, the Contractor shall assure that the carrier will furnish tailgate delivery if transfer to truck is required to complete delivery to consignee.
- b. The Contractor shall:
 1. Pack and mark the shipment to comply with contract specification;
 2. In the absence of specifications, prepare the shipment in conformance with carrier requirements;
 3. Prepare and distribute commercial bills of lading;
 4. Deliver the shipment in good order and condition to the point of delivery specified in the contract;

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

11. CONTRACTOR PERSONNEL

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

12. MOST FAVORED CUSTOMER

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

13. CONDITIONS AFFECTING THE WORK

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

14. INDEMNITY

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

deemed to relieve Contractor from ultimate liability for any obligation of Contractor under this Contract.

2. Contractor shall indemnify, defend and hold harmless the Authority, its directors, officers, employees and agents, against any and all claims, liabilities, losses, demands, damages, penalties, costs, charges, remedial costs, environmental claims, fees or other expenses including attorneys' fees, related to, arising from or attributable to any effluent or other hazardous waste, residue, contaminated soil or other similar material discharged from, removed from, or introduced on, about or under the job site; provided, however, that the foregoing indemnity does not apply to loss or damage due to preexisting conditions, whether known or unknown.
3. If any action or proceeding relating to the indemnification required is brought against the Authority, then upon written notice from the Authority to the Contractor, the Contractor shall, at the Contractor's expense, resist or defend such action or proceeding by counsel approved by the Authority in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same. The Authority reserves the right to use its own counsel under this indemnity at Contractor's sole cost and expense.
4. Contractor understands and agrees that it is Contractor's responsibility to provide indemnification to the Authority pursuant to this Section. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the failure of Contractor's insurance to fully fund any indemnification shall not relieve the Contractor of any obligation assumed under this indemnification.

15. GENERAL INSURANCE REQUIREMENTS

Article 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 Sub-Contractors of every tier.

Article 2. Workers' Compensation and Employer's Liability

Required Minimum Limits of Coverage:

| | | |
|-----------------------|-------------|-----------------------|
| Workers' Compensation | Statutory | |
| | | |
| Employers' Liability | \$2,000,000 | Each Accident |
| | \$2,000,000 | Disease Policy Limit |
| | \$2,000,000 | Disease Each Employee |

Required Minimum Coverage(s):

- 1) Workers' Compensation Statutory Coverage must be provided on an "All States" basis.
- 2) Contractor and Sub-Contractors 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.

Article 3. Commercial General Liability

Required Minimum Limits of Coverage:

| | |
|--------------|---|
| \$10,000,000 | Each Occurrence Limit |
| \$10,000,000 | General Aggregate Limit |
| \$10,000,000 | 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. The coverage provided by the additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.’s Additional Insured Form CG 2 10 11 85 or CG 2 26 11 85 as determined by WMATA.

Article 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:

| | |
|--------------|-----------------------|
| \$5,000,000 | Each Occurrence Limit |
| \$10,000,000 | 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 APPLICATION IS ATTACHED

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.

Article 5. Business Auto Liability

Required Minimum Limits of Coverage:

| | |
|-------------|-----------------------|
| \$2,000,000 | 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.

Article 6. Professional Liability Insurance

NOT APPLICABLE

Article 7. Pollution Liability Insurance

NOT APPLICABLE

Article 8. Builders' Risk

NOT APPLICABLE

Article 9. Additional Insured(s)

Contractor and Sub-Contractors of every tier are required to add WMATA, its independent contractors, and the WMATA Board of Directors as additional insured(s) on all insurance policies purchased by Contractor and Sub-Contractors 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. The coverage provided by the additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured Form CG 20 10 11 85 or CG 20 26 11 85 as determined by WMATA.
- 4) Coverage available to the additional insureds is not limited to the minimum limits of coverage outlined in this document.

Article 10. Waiver of Subrogation

Contractor and Sub-Contractors of every tier are required to have all insurance policies purchased by Contractor and Sub-Contractors 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.

Article 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.

The cert holder box should read:

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

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) COI shall state the RFP# and the name of your WMATA Procurement contact.
- 3) 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.
- 4) COI reflect total limits of insurance purchased by Contractor for the types of insurance required under this Contract.
- 5) 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.
- 6) 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.
- 7) 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

Article 12. Other Insurance

- a. **Installation Floater** covering physical loss or damage to tools, machinery, equipment and other personal property of any kind used in connection with this contract whether owned, rented or in the care, custody and control of the Contractor or its subcontractors. Provide copy of policy to WMATA.

16. BOND REQUIREMENTS

- a. A Payment Bond shall be required within 10 calendar days after the prescribed forms are presented for signature to the proposer to whom award is made, a written task order and Attachments on the forms provided shall be executed and delivered to the Contracting Officer or other delegated Authority Representative, together with a performance bond and payment bond if applicable if the Contract price is \$100,000 or more, each with good and sufficient surety or sureties acceptable to the Authority. Corporations executing the bonds as sureties must be among those appearing on the Treasury Department's list of approved sureties and must be acting within the limitations set forth therein. The penal sums of such bonds shall be as follows:
 - (1) Performance Bond:

The penal sum of the performance bond shall equal 100 percent of the Task Order price.
 - (2) Payment Bond:
 - (a) When the Task Order price is \$1,000,000 or less, the penal sum of the payment bond shall be 50 percent of the Contract price.
 - (b) When the Task Order price is in excess of \$1,000,000 but not more than \$5,000,000, the penal sum shall be 40 percent of the Contract price.
 - (c) When the Task Order price is more than \$5,000,000, the penal sum shall be \$2,500,000.
- b. Failure to furnish: In the event the required bonds are not furnished as specified, the Contracting Officer or other delegated Authority Representative may not issue the Notice To Proceed and no payment will be made to the Contractor until the required bonds are furnished.

17. LAWS AND REGULATIONS

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

18. PRIME CONTRACTOR DBE RESPONSIBILITIES

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

19. FEDERAL/LOCAL/STATE SALES TAX

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

“the Authority and the Board shall not be required to pay taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession or supervision, or upon its activities in the operation and maintenance of any transit facility or upon any revenues 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 Contractor 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 Section 00779, FEDERAL, STATE AND LOCAL TAX.
- c. By submission of its proposal, the proposer certifies that none of the taxes as to which the Authority is exempt are included in its proposal price(s) or the final Contract Price. In the event that the Authority learns that any taxes to which the

Authority is exempt are 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.

20. CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)

- a. The work will be conducted under the general direction of the Contracting Officer. Authority will be delegated to the Contracting Officer's Technical Representative (COTR) to take the following actions;
- (1) Act as the principal point of contact with the contractor. Submit a copy of each item of incoming correspondence and a copy of any enclosures shall also be submitted to the Contract Administrator;
 - (2) Approve in writing the contractor's progress schedule and submittals when required;
 - (3) Inspect the work for compliance with the contract;
 - (4) Review and approve invoices and payment estimates. Forward invoices and receipts to accounting. Bring to the attention of the Contracting Officer any significant discrepancies in, or disputes concerning, contractor invoices of payments. In those cases requiring release of final retained percentages of payment, the COTR will make his recommendations in writing to the Contracting Officer;
 - (5) Coordinate correspondence with the Contract Administrator if its importance significantly impacts the contractual terms and obligations;
 - (6) Evaluate the contractor's technical letters and proposals for the Contracting Officer;
 - (7) Advise the Contracting Officer of potential problems that may affect contract performance;
 - (8) Advise the Contracting Officer whenever the COTR has reason to believe that the contractual not-to-exceed amount will be exceeded;
 - (9) Prepare the Authority estimate for Proposed Contract Modifications. Participate in negotiations of modifications;
 - (10) Approve, in writing, the contractor's progress schedule when required.
 - (11) Receive from the contractor, monthly, if applicable, DBE status reports and forward them to the Office of Procurement and Materials, DBE Branch;
 - (12) Receive from the contractor the Certified Payroll Reports and prepare a log sheet indicating the following: (1) name of the contractor and subcontractor; (2) the contract number; (3) the certified payroll number (number for the payroll for the project starting with the number 1); (4) the time frame of the payroll period (i.e. 1/21/11-2/3/11); (5) the Statement of Compliance date (first page of the report); and (6) the date the report was received by WMATA;

- (13) Maintain a comprehensive file record of documents and correspondence concerning contract activities and actions;
 - (14) Provide the Contract Administrator with a written notification after all supplies/services have been received with a statement that the COTR is not aware of any open issues that would preclude closeout of the contract and that the contract is ready for closeout. Return the file, containing all records, correspondence, etc., to the Contract Administrator;
 - (15) Execute Standard Form 1420, which contains a detailed performance evaluation of the contractor. Note that if, there is one or more categories in which the contractor is deemed unsatisfactory, these evaluations must be provided to the contractor for comment; and
 - (16) Provide the Contract Administrator with a written request (and requisition) to exercise option(s) (if any) a minimum of 90 days prior to the time established in the contract for exercise of the option.
- b. There are certain actions which are reserved for only the Contracting Officer. They are:
- (1) Approval of contract modification proposals and/or other unilateral actions.
 - (2) Issuance of written orders to stop and/or resume work under Article 10, "Stop Work Orders", of the General Provisions.
 - (3) Negotiation with the Contractor for adjustment of contract price and/or time.
 - (4) The COTR is not authorized to render final decision under the DISPUTES article of the General Provisions.
 - (5) The COTR is not authorized to issue Termination Notices pursuant to the terms of this contract.
- c. The presence or absence of the COTR or his inspectors shall not relieve the Contractor from any requirements of the contract.

21. 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 5 days before delivery of the material, whether or not listed in Appendix A of the Standard. This obligation applies to all materials delivered under this contract which involve exposure to hazardous materials or items containing these materials.
- b. "Hazardous material," as used in this clause, is as defined in Federal Standard No. 313B, in effect on the date of this contract.
- c. Neither the requirements of this clause nor any act or failure to act by the Authority shall relieve the Contractor of any responsibility or liability for the safety of Authority, Contractor, or subcontractor personnel or property.
- d. Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, state, and local laws, codes, ordinances, and regulations

- (including the obtaining of licenses and permits) in connection with hazardous material.
- e. The Authority's rights in data furnished under this contract with respect to hazardous material are as follows:
- (1) To use, duplicate and disclose any data to which this clause is applicable. The 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 clause, in accordance with subparagraph (e)(1) above, in precedence over any other clause of this contract providing for rights in data.
 - (3) That the Authority is not precluded from using similar or identical data acquired from other sources.
 - (4) That the data shall not be duplicated, disclosed, or released outside the Authority, in whole or in part for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this clause applies -

"This is furnished under Authority Contract No. and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of This legend shall be marked on any reproduction of this data."
(End of legend)
 - (5) That the Contractor shall not place the 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 clause Rights in Technical Data.
- f. The Contractor shall insert this clause, including this paragraph with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase designations or purchase orders) under this contract involving hazardous material.

22. INSPECTION, TESTING AND ACCEPTANCE

In accordance with the technical specifications.

23. FIRST ARTICLE

- a. If required by the technical specifications, the Contractor shall deliver one (1) unit to the Authority for first article (pre-production sample) tests. The shipping documentation shall contain this contract number and the Lot/Item identification. The Characteristics that the first article must meet and the testing requirements are specified elsewhere in this contract.

- b. Within 10 days after the Authority receives the first article, the Contracting Officer shall notify the Contractor, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of conditional approval or approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite the reasons for the disapproval.
- c. If the first article is disapproved, the Contractor, upon Authority request, shall submit an additional first article for testing. After each request, the Contractor shall make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the Contractor, including any and all costs for additional test following a disapproval. The Contractor shall furnish any additional first article to the Authority under the terms and conditions and within the time specified by the Authority. The Authority shall act on this first article within the time limit specified in paragraph (b) above. The Authority reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule or for any additional costs to the Authority related to these tests.
- d. If the Contractor fails to deliver any first article on time, or the Contracting Officer disapproves any first article, the Contractor shall be deemed to have failed to make delivery within the meaning of the Defaults clause of this contract.
- e. Unless otherwise provided in the contract, the Contractor—
 - (1) May deliver the approved first article as a part of the contract quantity, provided it meets all contract requirements for acceptance and was not consumed or destroyed in testing; and
 - (2) Shall remove and dispose of any first article from the Authority test facility at the Contractor's expense.
- f. If the Authority does not act within the time specified in paragraph (b) or (c) above, the Contracting Officer shall, upon timely written request from the Contractor, equitably adjust under the Changes clause of this contract the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.
- g. The Contractor is responsible for providing operating and maintenance instructions, spare parts support, and repair of the first article during any first article test.
- h. Before first article approval, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity is at the sole risk of the Contractor. Before first article approval, the costs thereof shall not be allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Authority.
- i. The COTR will inspect the first article (pre-production sample) against the specification and shop drawings as well as test its fit in the field. A written report will be forwarded to the contractor in accordance with (b) above.

24. ORGANIZATIONAL CONFLICT OF INTEREST

1. An organizational conflict of interest may result when factors create an actual or potential conflict of interest on an instant contract, or when the nature of the work to be performed on the instant contract creates an actual or potential conflict of interest on a future acquisition. In the latter case, some restrictions on future activities of the contractor may be required.

(a) Purpose. The purpose of this provision is to ensure that the contractor and its subcontractors:

(1) Are not biased because of their financial, contractual, organizational, or other interests which relate to the work under this contract, and

(2) Do not obtain any unfair competitive advantage over other parties by virtue of their performance of this contract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the contractor, its parents, affiliates, divisions and subsidiaries, and successors in interest (hereinafter collectively referred to as "contractor") in the activities covered by this clause as a prime contractor, subcontractor, co-sponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(c) Warrant and Disclosure. The warrant and disclosure requirements of this paragraph apply with full force to both the contractor and all subcontractors. The contractor warrants that, to the best of the contractor's knowledge and belief, there are no relevant facts or circumstances which would give rise to an organizational conflict of interest, and that the contractor has disclosed all relevant information regarding any actual or potential conflict. The contractor agrees it shall make an immediate and full disclosure, in writing, to the Contracting Officer of any potential or actual organizational conflict of interest or the existence of any facts that may cause a reasonably prudent person to question the contractor's impartiality because of the appearance or existence of bias or an unfair competitive advantage. Such disclosure shall include a description of the actions the contractor has taken or proposes to take in order to avoid, neutralize, or mitigate any resulting conflict of interest.

(d) Remedies. The Contracting Officer may terminate this contract for convenience, in whole or in part, if the Contracting Officer deems such termination necessary to avoid, neutralize or mitigate an actual or apparent organizational conflict of interest. If the contractor fails to disclose facts pertaining to the existence of a potential or actual organizational conflict of interest or misrepresents relevant information to the Contracting Officer, the Authority may terminate the contract for default, suspend or debar the contractor from Authority contracting, or pursue such other remedies as may be permitted by law or this contract.

(e) Subcontracts. The contractor shall include a clause substantially similar to this clause, including paragraphs (f) and (g), in any subcontract or consultant agreement at any tier expected to exceed the simplified acquisition threshold. The terms "contract," "contractor," and "Contracting Officer" shall be appropriately modified to preserve the Authority's rights.

(f) Prime Contractor Responsibilities. The contractor shall obtain from its subcontractors or consultants the disclosure, and shall determine in writing whether the interests disclosed

present an actual, or significant potential for, an organizational conflict of interest. The contractor shall identify and avoid, neutralize, or mitigate any subcontractor organizational conflict prior to award of the contract to the satisfaction of the Contracting Officer. If the subcontractor's organizational conflict cannot be avoided, neutralized, or mitigated, the contractor must obtain the written approval of the Contracting Officer prior to entering into the subcontract. If the contractor becomes aware of a subcontractor's potential or actual organizational conflict of interest after contract award, the contractor agrees that the Contractor may be required to eliminate the subcontractor from its team, at the contractor's own risk.

(g) Waiver. The parties recognize that this clause has potential effects which will survive the performance of this contract and that it is impossible to foresee each circumstance to which it might be applied in the future. Accordingly, the contractor may at any time seek a waiver from the Head of the Contracting Activity by submitting such waiver request to the Contracting Officer, including a full written description of the requested waiver and the reasons in support thereof.

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

25. RIGHTS IN TECHNICAL DATA - UNLIMITED

[This article, when used, supersedes General Provision Article No. 37, "Rights in Technical Data"].

a. The Authority or any third party designated by the Authority to assist it in the administration of this contract or the inspection or verification of the product produced under this contract, shall have the right to use, duplicate or disclose technical data, which includes computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so:

1. Any manuals, instructional materials prepared for installation, operation, maintenance or training purposes;
2. Technical data pertaining to end items, components or processes which were prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data; e.g., specification control drawings, catalog sheets, outline drawing; except for the computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software);
3. Other technical data which has been, or is normally furnished without restriction by the Contractor or subcontractor;
4. Other specifically described technical data which the parties have agreed will be furnished without restriction;
5. All computer software regardless of whether it is technical data as defined in this Article 28, including the source code, algorithm, process, formulae, and

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

- b. The Authority shall have the right to use, duplicate, or disclose technical data other than that defined in paragraph a. in whole or in part, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be
 1. Released or disclosed in whole or in part outside the Authority,
 2. Used in whole or in part by the Authority for manufacture, or
 3. Used by a party other than the Authority except for: (i) emergency repair or overhaul, (ii) where the item or process concerned is not otherwise reasonably available to the Authority to enable timely performance of the work, or (iii) administration of this contract or the inspection or verification of the product produced under this contract where the third party has a written contract with the Authority to perform these efforts. In all cases described in this subsection, the release or disclosure outside of the Authority shall be subject to a written prohibition against further use, release or disclosure by the party receiving the technical data.
- c. Technical data provided in accordance with the provisions of paragraph b. shall be identified by a legend which suitably recites the aforesaid limitation. Nothing herein shall impair the right of the Authority to use similar or identical data acquired from other sources.
- d. Where any item is purchased as a separate line item in the contract, that purchase includes all integral parts of that item, including any computer software, source codes, algorithms, processes, formulae, and flow charts. As such, the Authority has full rights to use, duplicate or disclose any or all parts of the item, including computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so. Should disclosure of the computer software be required only under this paragraph, then the Contracting Officer may waive the provisions of this paragraph if he certifies in writing that the item is commercially available from multiple sources and the product from any of those sources will be fully compatible with existing Authority property.
- e. 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.
- f. 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 (i) technical data and (ii) computer software covered by Article 28.a.(5) now or hereafter covered by copyright.

- (2) No such copyrighted matter shall be included in (i) technical data or (ii) computer software covered by Article 28.a.(5) furnished hereunder without the written permission of the copyright owner for the Authority to use such copyrighted matter in the manner above described.
 - (3) The 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 (i) technical data or (ii) computer software covered by Article 28.a.(5) provided to the Authority.
- g. Relation to patents: Nothing contained in this article shall imply a license to the Authority under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Authority under any patent.
 - h. Any dispute under this article shall be subject to the Disputes article of this contract.
 - i. 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 specification.

26. LIQUIDATED DAMAGES

- a. The Contractor understands that if it fails to complete portion of and/or all of the work as described in a Task Order, the Contractor shall pay liquidated damages to the Authority in the amount as specified in the individual Task Order for each calendar day of delay until the work is completed and accepted.
- b. The Contractor agrees that if it does not complete the work within the specified Task Order completion time, then the Contractor shall pay to the Authority as liquidated damages, Termination for Default, Damages for Delay, the sums per calendar days as separate damages for each specified completion requirement.
- c. The amount of liquidated damages will be determined by the Authority on each individual task order.

27. FORCE MAJEURE CLAUSE

The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage under the following circumstances:

- a. If the delay in performing this work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the Authority in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers at any tier arising from causes other than normal weather beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers.

- b. The rights and remedies of the Authority provided in this Section are in addition to any other rights and remedies provided by law or under this Contract.

28. SITE VISIT/INSPECTION

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

29. GARNISHMENT OF PAYMENTS

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

30. GOVERNING LAW

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

31. 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.

32. LIVING WAGE

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

- a. The Authority Living Wage Rate is \$13.48 per hour, and may be reduced by the contractor's per-employee cost for health insurance.
- b. The Contractor shall:
 - (1) Pay, at a minimum, the Authority Living Wage Rate, effective during the time the work is performed, to all employees who perform work under this contract, except as otherwise provided in paragraph (d) below;
 - (2) Include the Living Wage clause in all subcontractors 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) Submit records with each monthly invoice supporting payment of the Living Wage Rate.
- 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 with higher negotiated wage rates,

- (2) Contracts that are subject to higher wage rates required by federal law or collective bargaining agreements (e.g., Davis Bacon);
 - (3) Contracts or agreements for regulated utilities;
 - (4) Emergency services to prevent or respond to a disaster or imminent threat to public health and safety; and
 - (5) Contractors who employ fewer than ten (10) employees.
- e. The Authority may adjust the Living Wage rate effective in January of each year. The adjustment will reflect the average Living Wage Rate among Metro's Compact Jurisdictions with Living Wage provisions. If after contract award the Living Wage Rate increases, the Contractor is entitled to an equitable adjustment to the rate 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 or debarment from future contracts.

33. METRIC SYSTEM

To the extent U.S. DOT or FTA 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.

34. SEISMIC SAFETY

- a. The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.
- b. The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

35. RECYCLED PRODUCTS

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

36. NOTIFICATION OF FEDERAL PARTICIPATION

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

37. 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 Metro 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 Metro, or by the federal government or any other governmental entity with jurisdiction over Metro, regarding a matter that would constitute a

- report under paragraph (a) or a violation of this or any whistleblower provision of this Contract, or with an enforcement or judicial proceeding arising from such inquiry or review;
- (4) refused to obey an order that would violate law; or
 - (5) refused to work or authorize work when a hazardous safety or security condition presents an imminent danger of death or serious injury, there was no reasonable alternative to refusal, there was not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, notified the Contactor or subcontractor of the condition and of the intent not to perform or authorize work.
- d. The Contractor shall include, or shall cause to be included, the substance of this section, 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 paragraph (a)(1) or refusal under paragraphs (a)(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 section 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 section, including this paragraph (e), in its subcontracts at all tiers.

38. 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).

39. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

This contract is subject to the Davis-Bacon and Related Acts. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract. The Davis-Bacon Act requires contractors and subcontractors under construction contracts and subcontracts greater than \$2,000 to submit the required certified payrolls weekly.

40. PUBLIC COMMUNICATION

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 agreement without prior consent from the project manager following consultation with the Assistant General Manager, Customer Service, Communications & Marketing (AGM, CSCM) or her designee. 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 consent from the project manager, subsequent to approval by the AGM, CSCM. Approval of any such requests shall be at the sole discretion of WMATA and coordinated by the project manager, who will confer with CSCM and other WMATA departments as appropriate to facilitate reviews. This provision is not intended to curtail routine communications exercised in the course of business with project staff which may be required to execute deliverables under this agreement. This provision is also not intended to prohibit the contractor from making reference to prior awards in its subsequent offers.

41. PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS

(a) Payment of price. The Authority shall pay the Contractor the price as provided in each individual task order.

(b) Progress payments. The Authority shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.

(1) The Contractor's request for progress payments shall include the following substantiation:

(i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.

(ii) A listing of the amount included for work performed by each subcontractor under the contract.

(iii) A listing of the total amount of each subcontract under the contract.

(iv) A listing of the amounts previously paid to each such subcontractor under the contract.

(v) Additional supporting data in a form and detail required by the Contracting Officer.

(2) In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site also may be taken into consideration if --

(i) Consideration is specifically authorized by this contract; and

(ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) Contractor certification. Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.)

I hereby certify, to the best of my knowledge and belief, that --

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code;

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

(4) This certification is not to be construed as final acceptance of a subcontractor's performance.

(Name)

(Title)

(Date)

(d) Refund of unearned amounts. If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the "unearned amount"), the Contractor shall --

(1) Notify the Contracting Officer of such performance deficiency; and

(2) Be obligated to pay the Authority an amount (computed by the Contracting Officer in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until --

(i) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or

(ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(e) Retainage. If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Authority and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(f) Title, liability, and reservation of rights. All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Authority, but this shall not be construed as --

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Authority to require the fulfillment of all of the terms of the contract.

(g) Reimbursement for bond premiums. In making these progress payments, the Authority shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

(h) Final payment. The Authority shall pay the amount due the Contractor under this contract after --

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Authority arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 6305).

(i) Limitation because of undefinitized work. Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(j) Interest computation on unearned amounts. In accordance with 31 U.S.C. 3903(c)(1), the amount payable under subparagraph (d)(2) of this clause shall be --

(1) Computed at the rate of average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the Contractor receives the unearned amount; and

(2) Deducted from the next available payment to the Contractor.



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:

- List of participating jurisdictions including Alexandria Public Schools, Frederick, Maryland, Northern Virginia Community College, etc.

BOND FORMS

| | |
|----------------------------|-----------------------|
| PERFORMANCE BOND | |
| Contract No.: | Contract Date: |
| Penal Sum of Bond: | |
| Date Bond Executed: | |

KNOW ALL MEN BY THESE PRESENTS, that we, the Principal and Surety(ies) hereto, are firmly bound to the Washington Metropolitan Area Transit Authority (hereinafter called the Authority) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally: Provided, that, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into the contract identified above:

NOW, THEREFORE, if the Principal shall perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Authority, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety(ies) being hereby waived, then the above obligation shall be void and of no effect.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this performance bond and have affixed their seals on the date set forth above.

Principal(s)

| | |
|---|---|
| <p>1. Firm Name and Address:</p> <p>Signature: _____</p> <p>Name and Title:</p> | <p>Corporate Seal</p> <p>State of Inc.:</p> |
| <p>2. Firm Name and Address:</p> <p>Signature: _____</p> <p>Name and Title:</p> | <p>Corporate Seal</p> <p>State of Inc.:</p> |
| <p>3. Firm Name and Address:</p> <p>Signature: _____</p> <p>Name and Title:</p> | <p>Corporate Seal</p> <p>State of Inc.:</p> |

PERFORMANCE BOND – Page 2

| Corporate Surety(ies) | | | | |
|--|---|---------------|---------------------------|--------|
| Surety A | Surety Name and Address: Signature: _____ Name and Title: | | Liability Limit \$ | (Seal) |
| Surety B | Surety Name and Address: Signature: _____ Name and Title: | | Liability Limit \$ | (Seal) |
| Surety C | Surety Name and Address: Signature: _____ Name and Title: | | Liability Limit \$ | (Seal) |
| Attach additional pages as needed. | | | | |
| | Bond | | | |
| | Premium | | | |
| | Schedule | Total Premium | \$ | |
| Instructions | | | | |
| <ol style="list-style-type: none"> 1. This form is authorized for use in connection with contracts for construction work or the furnishing of supplies and services. 2. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of this form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership or joint venture, or an officer of the corporation involved, evidence of his authority must be furnished. 3. Corporation executing the bond as sureties must be among those appearing on the Treasury Department's list of approved sureties and must be acting within the limitations set forth therein. Where more than a single corporate surety is involved, their names and addresses (city and State) shall be inserted in the spaces (Surety A, Surety B, etc.) headed "Corporate Surety(ies)". 4. Corporations executing the bond shall affix their corporate seals. 5. The name of each person signing this performance bond should be typed in the space provided. 6. The date this bond is executed must be the same date as the contract execution date. | | | | |

PAYMENT BOND

Contract No.

Contract Date:

Penal Sum of Bond:

Date Bond Executed:

KNOW ALL MEN BY THESE PRESENTS, that we, the Principal and Surety(ies) hereto, are firmly bound to the Washington Metropolitan Area Transit Authority (hereinafter called the Authority) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally: Provided, that, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into the contract identified above:

NOW, THEREFORE, if the Principal shall promptly make payment to all claimants as hereinafter defined supplying labor and material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety(ies) being hereby waived, then the above obligation shall be void and of no effect, otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the CONTRACT.
2. The above-named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due the claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
 - a. Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to the Principal within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal at any place where he maintains an office or conducts business, or his residence or such notice shall be served in any manner in which legal process may be served in the state or District of Columbia in which the aforesaid project is located, save that such service need not be made by a public officer.
 - b. After the expiration of one (1) year following the date of final settlement of said CONTRACT, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
 - c. Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

PAYMENT BOND page 2

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this payment bond and have affixed their seals on the date set forth above.

Principal(s)

| | | | |
|----|---|----------------|----------------|
| 1. | Firm Name and Address: Signature: Name and Title: | State of Inc.: | Corporate Seal |
| 2. | Firm Name and Address: Signature: Name and Title: | State of Inc.: | Corporate Seal |
| 3. | Firm Name and Address: Signature: Name and Title: | State of Inc.: | Corporate Seal |

Corporate Surety(ies)

| Surety | Surety Name and Address: | Liability Limit | (Seal) |
|--------|--------------------------|-----------------|--------|
| A | Signature: | \$ | |
| | Name and Title: | State of Inc.: | |
| Surety | Surety Name and Address: | Liability Limit | (Seal) |
| B | Signature: | \$ | |
| | Name and Title: | State of Inc.: | |
| Surety | Surety Name and Address: | Liability Limit | (Seal) |
| C | Signature: | \$ | |
| | Name and Title: | State of Inc.: | |

**Attach additional pages as needed.
Instructions**

1. This form is authorized for use in connection with contracts for construction work or the furnishing of supplies and services.
2. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of this form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership or joint venture, or an officer of the corporation involved, evidence of his authority must be furnished.
3. Corporation executing the bond as sureties must be among those appearing on the Treasury Department's list of approved sureties and must be acting within the limitations set forth therein. Where more than a single corporate surety is involved, their names and addresses (city and State) shall be inserted in the spaces (Surety A, Surety B, etc.) headed "Corporate Surety(ies)".
4. Corporations executing the bond shall affix their corporate seals.
5. The name of each person signing this payment bond should be typed in the space provided.
6. The date this bond is executed must be the same date as the contract execution date.

PROPOSAL SECURITY (PROPOSAL BOND FORM)
Submit with Price Proposal

Request for Proposal No.: Proposal Date:
Penal Sum of Bond: 5% of Offered Price or Amount, \$:
Date Bond Executed:

KNOW ALL MEN BY THESE PRESENTS, that we, the Principal and Surety(ies) hereto, are firmly bound to the Washington Metropolitan Area Transit Authority in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally: Provided, that, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the proposal identified above:

NOW, THEREFORE, if the Principal, upon acceptance by the Authority of his proposal identified above, within the period specified therein for acceptance (ninety [90] days if no period is specified), shall execute such further contractual documents, if any, and give such bond(s) as may be required by the terms of the proposal as accepted within the time specified (ten [10] days if no period is specified) after receipt of the forms by him, or in the event of failure so to execute such further contractual documents and give such bonds, if the Principal shall pay the Authority for any cost of procuring the work which exceeds the amount of his proposal, then the above obligation shall be void and of no effect.

Each Surety executing this instrument hereby agrees that its obligation shall not be impaired by any extension(s) of the time for acceptance of the proposal that the Principal may grant to the Authority notice of which extension(s) to the Surety(ies) being hereby waived provided that such waiver shall apply only with respect to extensions aggregating not more than ninety (90) calendar days in addition to the period originally allowed for acceptance of the proposal.

Principal(s)

| | | |
|---------------------------|----------------|----------------|
| | | Corporate Seal |
| 1. Firm Name and Address: | | |
| Signature: _____ | State of Inc.: | |
| | | Corporate Seal |
| 2. Firm Name and Address: | | |
| Signature: _____ | State of Inc.: | |
| | | Corporate Seal |
| 3. Firm Name and Address: | | |
| Signature: _____ | State of Inc.: | |

PROPOSAL SECURITY (PROPOSAL BOND FORM) - Continued - page 2

| Corporate Surety(ies) | | | | |
|--|---|--|---|--------|
| Surety A | Surety Name and Address: Signature: _____ Name and Title: | | Liability Limit \$ _____ State of Inc.: | (Seal) |
| Surety B | Surety Name and Address: Signature: _____ Name and Title: | | Liability Limit \$ _____ State of Inc.: | (Seal) |
| Surety C | Surety Name and Address: Signature: _____ Name and Title: | | Liability Limit \$ _____ State of Inc.: | (Seal) |
| Attach additional pages as needed. | | | | |
| Instructions | | | | |
| <ol style="list-style-type: none"> 1. This form is authorized for use whenever a proposal guaranty is required in connection with construction work or the furnishing of supplies and services. 2. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of this form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership or joint venture, or an officer of the corporation involved, evidence of his authority must be furnished. 3. The penal sum of the bond shall be expressed as either a percentage of the proposal price or in dollars and cents. 4. Corporation executing the bond as sureties must be among those appearing on the Treasury Department's list of approved sureties and must be acting within the limitations set forth therein. Where more than a single corporate surety is involved, their names and addresses (city and State) shall be inserted in the spaces (Surety A, Surety B, etc.) headed "Corporate Surety(ies)". 5. Corporations executing the bond shall affix their corporate seals. 6. The name of each person signing this proposal bond should be typed in the space provided. | | | | |

APPENDIX A – WAGE RATES

NOTE: The following wage decisions are intended for the solicitation seed project. Wage rates will be provided for individual task orders.

General Decision Number: VA140095 11/07/2014 VA95

Superseded General Decision Number: VA20130106

State: Virginia

Construction Type: Building

Counties: Fairfax, Fairfax* and Falls Church* Counties in Virginia.

*INDEPENDENT CITIES

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

| Modification Number | Publication Date |
|---------------------|------------------|
| 0 | 01/03/2014 |
| 1 | 01/24/2014 |
| 2 | 03/07/2014 |
| 3 | 04/25/2014 |
| 4 | 05/09/2014 |
| 5 | 05/16/2014 |
| 6 | 05/30/2014 |
| 7 | 06/27/2014 |
| 8 | 07/04/2014 |
| 9 | 07/18/2014 |
| 10 | 07/25/2014 |
| 11 | 08/29/2014 |
| 12 | 09/05/2014 |
| 13 | 09/26/2014 |
| 14 | 11/07/2014 |

ASBE0024-012 10/01/2013

| | Rates | Fringes |
|---|----------|---------|
| ASBESTOS WORKER/HEAT & FROST INSULATOR..... | \$ 33.13 | 13.76 |

Includes the application of all insulating materials, protective coverings, coatings and finishes to all types of mechanical systems

ASBE0024-013 10/09/2013

| | Rates | Fringes |
|---|----------|---------|
| ABATEMENT WORKER: ASBESTOS (Removal from Mechanical Systems)..... | \$ 20.86 | 5.46 |

| | | |
|---|----------|----------|
| ----- | | |
| BOIL0045-004 10/01/2013 | | |
| | Rates | Fringes |
| BOILERMAKER..... | \$ 32.36 | 27.62 |
| ----- | | |
| BRDC0001-003 05/04/2014 | | |
| | Rates | Fringes |
| BRICKLAYER..... | \$ 29.17 | 8.61 |
| ----- | | |
| BRDC0001-004 05/01/2014 | | |
| | Rates | Fringes |
| MASON - STONE..... | \$ 34.18 | 15.63 |
| ----- | | |
| BRDC0001-005 05/01/2014 | | |
| | Rates | Fringes |
| TILE FINISHER..... | \$ 21.48 | 9.08 |
| ----- | | |
| BRDC0001-006 05/01/2014 | | |
| | Rates | Fringes |
| TILE SETTER..... | \$ 26.28 | 10.00 |
| ----- | | |
| CARP0388-004 08/01/2010 | | |
| | Rates | Fringes |
| CARPENTER (Including Drywall Hanging, Form Work, and Metal Stud Installation)..... | \$ 26.38 | 7.06 |
| ----- | | |
| * ELEC0026-034 11/03/2014 | | |
| | Rates | Fringes |
| ELECTRICIAN..... | \$ 42.40 | 3%+13.70 |
| HVAC Temperature Controls, Alarms on New Construction or wherever Alarm System is installed in conduit | | |
| ----- | | |
| ELEC0026-038 09/01/2014 | | |
| | Rates | Fringes |
| SOUND AND COMMUNICATION TECHNICIAN..... | \$ 27.05 | 8.58 |
| Sound Technician, Low Voltage Wiring for Alarms does not | | |

include New Construction or Alarms installed in conduit

ELEV0010-006 01/01/2014

| | Rates | Fringes |
|------------------------|----------|------------|
| ELEVATOR MECHANIC..... | \$ 40.49 | 26.785+a+b |

a. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Day and the Friday after Thanksgiving.

b. VACATIONS: Employer contributes 8% of basic hourly rate for 5 years or more of service; 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

ENGI0077-022 05/01/2013

| | Rates | Fringes |
|------------------------------|----------|---------|
| Power equipment operators: | | |
| 35 ton cranes & above; | | |
| tower & climbing cranes..... | \$ 32.89 | 8.45+a |
| Bulldozer..... | \$ 31.65 | 8.45+a |
| Excavator; Cranes (All | | |
| Other)..... | \$ 32.40 | 8.45+a |
| Roller..... | \$ 24.68 | 8.45+a |
| Tower cranes and cranes | | |
| 100 ton and over..... | \$ 33.96 | 8.45+a |

a. PAID HOLIDAYS: New Year's Day, Inaugural Day, Decoration Day, Independence Day, Labor Day, Martin Luther King's Birthday, Veterans' Day, Thanksgiving Day, Friday after Thanksgiving and Christmas Day.

b. PREMIUM PAY:
Tower crane and cranes 100-ton and over to receive \$1.00 per hour premium over Group One.

IRON0005-008 06/01/2014

| | Rates | Fringes |
|---|----------|---------|
| IRONWORKER, ORNAMENTAL AND STRUCTURAL..... | \$ 30.25 | 17.285 |

LABO0011-001 09/05/2011

| | Rates | Fringes |
|---|----------|---------|
| LABORER: Mason Tender - Cement/Concrete..... | \$ 20.88 | 6.47 |

PAIN0051-029 06/01/2014

| | Rates | Fringes |
|----------------------------|----------|---------|
| GLAZIER | | |
| \$2 million and Under..... | \$ 24.77 | 9.85 |
| Over \$2 million..... | \$ 28.61 | 9.85 |

PAIN0051-030 06/01/2014

| | Rates | Fringes |
|--|----------|---------|
| PAINTER (Drywall Finishing/Taping, Brush and Roller, Spray)..... | | |
| | \$ 24.89 | 9.05 |

PLUM0005-013 08/01/2014

| | Rates | Fringes |
|--------------|----------|---------|
| PLUMBER..... | \$ 38.92 | 16.35+a |

a. PAID HOLIDAYS: New Year's Day, Martin Luther King's
Birthday, Memorial Day, Independence Day, Labor Day,
Veterans' Day, Thanksgiving Day and the day after
Thanksgiving and Christmas Day.

PLUM0602-003 11/17/2013

| | Rates | Fringes |
|---|----------|---------|
| PIPEFITTER (Including HVAC Pipe and System Installation).... | | |
| | \$ 37.77 | 18.82+a |

a. PAID HOLIDAYS: New Year's Day, Martin Luther King's
Birthday, Memorial Day, Independence Day, Labor Day,
Veterans' Day, Thanksgiving Day and the day after
Thanksgiving and Christmas Day.

SFVA0669-005 07/01/2013

| | Rates | Fringes |
|--|----------|---------|
| SPRINKLER FITTER (Fire Sprinklers)..... | | |
| | \$ 30.68 | 18.07 |

SHEE0100-042 07/01/2014

| | Rates | Fringes |
|---|----------|---------|
| SHEET METAL WORKER (Including HVAC Duct Installation)..... | | |
| | \$ 39.73 | 16.08+a |

a. PAID HOLIDAYS: New Year's Day, Martin Luther King's
Birthday, Memorial Day, Independence Day, Labor Day,
Veterans Day, Thanksgiving Day and Christmas Day

SUVA2010-099 09/20/2010

| | Rates | Fringes |
|---|----------|---------|
| BRICK POINTER/CAULKER/CLEANER.... | \$ 15.69 | 0.00 |
| CEMENT MASON/CONCRETE FINISHER... | \$ 18.85 | 3.78 |
| LABORER: Common or General..... | \$ 13.20 | 2.00 |
| LABORER: Landscape..... | \$ 10.64 | 0.00 |
| LABORER: Mason Tender - Brick... | \$ 10.90 | 2.35 |
| LABORER: Pipelayer..... | \$ 15.47 | 2.27 |
| LABORER: Mason Tender - Pointer, Caulker, Cleaner..... | \$ 10.83 | 0.00 |
| OPERATOR: Backhoe..... | \$ 19.20 | 3.19 |
| OPERATOR: Bobcat/Skid Steer/Skid Loader..... | \$ 15.62 | 2.40 |
| OPERATOR: Forklift..... | \$ 17.93 | 7.28 |
| OPERATOR: Loader..... | \$ 20.63 | 4.80 |
| OPERATOR: Mechanic..... | \$ 18.23 | 1.59 |
| ROOFER..... | \$ 21.55 | 7.01 |
| TRUCK DRIVER: Dump Truck..... | \$ 13.25 | 1.80 |

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

=====
Unlisted classifications needed for work not included within
the scope of the classifications listed may be added after
award only as provided in the labor standards contract clauses
(29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification
and wage rates that have been found to be prevailing for the
cited type(s) of construction in the area covered by the wage
determination. The classifications are listed in alphabetical
order of "identifiers" that indicate whether the particular
rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable , i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rates.

0000/9999: weighted union wage rates will be published annually each January.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

General Decision Number: VA140086 11/07/2014 VA86

Superseded General Decision Number: VA20130097

State: Virginia

Construction Type: Building

County: Arlington County in Virginia.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

| Modification Number | Publication Date |
|---------------------|------------------|
| 0 | 01/03/2014 |
| 1 | 01/24/2014 |
| 2 | 03/07/2014 |
| 3 | 04/11/2014 |
| 4 | 04/25/2014 |
| 5 | 05/09/2014 |
| 6 | 05/16/2014 |
| 7 | 05/30/2014 |
| 8 | 06/27/2014 |
| 9 | 07/04/2014 |
| 10 | 07/18/2014 |
| 11 | 07/25/2014 |
| 12 | 08/08/2014 |
| 13 | 08/29/2014 |
| 14 | 09/05/2014 |
| 15 | 09/26/2014 |
| 16 | 11/07/2014 |

ASBE0024-012 10/01/2013

| | Rates | Fringes |
|---|----------|---------|
| ASBESTOS WORKER/HEAT & FROST INSULATOR..... | \$ 33.13 | 13.76 |

Includes the application of all insulating materials, protective coverings, coatings and finishes to all types of mechanical systems

ASBE0024-013 10/09/2013

| | Rates | Fringes |
|---|----------|---------|
| ABATEMENT WORKER: ASBESTOS (Removal from Mechanical Systems)..... | \$ 20.86 | 5.46 |

BOIL0045-004 10/01/2013

| | Rates | Fringes |
|--|-------|---------|
|--|-------|---------|

| | | |
|---|----------|----------|
| BOILERMAKER..... | \$ 32.36 | 27.62 |
| ----- | | |
| BRDC0001-003 05/04/2014 | | |
| | Rates | Fringes |
| BRICKLAYER..... | \$ 29.17 | 8.61 |
| ----- | | |
| BRDC0001-004 05/01/2014 | | |
| | Rates | Fringes |
| MASON - STONE..... | \$ 34.18 | 15.63 |
| ----- | | |
| BRDC0001-005 05/01/2014 | | |
| | Rates | Fringes |
| TILE FINISHER..... | \$ 21.48 | 9.08 |
| ----- | | |
| BRDC0001-006 05/01/2014 | | |
| | Rates | Fringes |
| TILE SETTER..... | \$ 26.28 | 10.00 |
| ----- | | |
| CARP0388-004 08/01/2010 | | |
| | Rates | Fringes |
| CARPENTER (Including Drywall Hanging, Form Work, and Metal Stud Installation)..... | \$ 26.38 | 7.06 |
| ----- | | |
| * ELEC0026-034 11/03/2014 | | |
| | Rates | Fringes |
| ELECTRICIAN..... | \$ 42.40 | 3%+13.70 |
| ----- | | |
| HVAC Temperature Controls, Alarms on New Construction or wherever Alarm System is installed in conduit | | |
| ----- | | |
| ELEC0026-038 09/01/2014 | | |
| | Rates | Fringes |
| SOUND AND COMMUNICATION TECHNICIAN..... | \$ 27.05 | 8.58 |
| ----- | | |
| Sound Technician, Low Voltage Wiring for Alarms does not include New Construction or Alarms installed in conduit | | |
| ----- | | |
| ELEV0010-006 01/01/2014 | | |

| | Rates | Fringes |
|------------------------|----------|------------|
| ELEVATOR MECHANIC..... | \$ 40.49 | 26.785+a+b |

a. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Day and the Friday after Thanksgiving.

b. VACATIONS: Employer contributes 8% of basic hourly rate for 5 years or more of service; 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

ENGI0077-022 05/01/2013

| | Rates | Fringes |
|--|----------|---------|
| Power equipment operators: 35 ton cranes & above; tower & climbing cranes..... | \$ 32.89 | 8.45+a |
| Bulldozer..... | \$ 31.65 | 8.45+a |
| Excavator; Cranes (All Other)..... | \$ 32.40 | 8.45+a |
| Roller..... | \$ 24.68 | 8.45+a |
| Tower cranes and cranes 100 ton and over..... | \$ 33.96 | 8.45+a |

a. PAID HOLIDAYS: New Year's Day, Inaugural Day, Decoration Day, Independence Day, Labor Day, Martin Luther King's Birthday, Veterans' Day, Thanksgiving Day, Friday after Thanksgiving and Christmas Day.

b. PREMIUM PAY:

Tower crane and cranes 100-ton and over to receive \$1.00 per hour premium over Group One.

IRON0005-008 06/01/2014

| | Rates | Fringes |
|---|----------|---------|
| IRONWORKER, ORNAMENTAL AND STRUCTURAL..... | \$ 30.25 | 17.285 |

LABO0011-001 09/05/2011

| | Rates | Fringes |
|---|----------|---------|
| LABORER: Mason Tender - Cement/Concrete..... | \$ 20.88 | 6.47 |

PAIN0051-029 06/01/2014

| | Rates | Fringes |
|---------------------------------------|----------|---------|
| GLAZIER \$2 million and Under..... | \$ 24.77 | 9.85 |
| Over \$2 million..... | \$ 28.61 | 9.85 |

PAIN0051-030 06/01/2014

| | Rates | Fringes |
|--|----------|---------|
| PAINTER (Drywall Finishing/Taping, Brush and Roller, Spray)..... | \$ 24.89 | 9.05 |

PLAS0891-010 02/01/2014

| | Rates | Fringes |
|------------------------------------|----------|---------|
| CEMENT MASON/CONCRETE FINISHER.... | \$ 27.15 | 9.61 |

PLUM0005-013 08/01/2014

| | Rates | Fringes |
|--------------|----------|---------|
| PLUMBER..... | \$ 38.92 | 16.35+a |

a. PAID HOLIDAYS: New Year's Day, Martin Luther King's
Birthday, Memorial Day, Independence Day, Labor Day,
Veterans' Day, Thanksgiving Day and the day after
Thanksgiving and Christmas Day.

PLUM0602-003 11/17/2013

| | Rates | Fringes |
|---|----------|---------|
| PIPEFITTER (Including HVAC Pipe and System Installation).... | \$ 37.77 | 18.82+a |

a. PAID HOLIDAYS: New Year's Day, Martin Luther King's
Birthday, Memorial Day, Independence Day, Labor Day,
Veterans' Day, Thanksgiving Day and the day after
Thanksgiving and Christmas Day.

ROOF0030-035 05/01/2014

| | Rates | Fringes |
|-------------|----------|---------|
| ROOFER..... | \$ 28.20 | 10.59 |

SFVA0669-005 07/01/2013

| | Rates | Fringes |
|--|----------|---------|
| SPRINKLER FITTER (Fire Sprinklers)..... | \$ 30.68 | 18.07 |

SHEE0100-042 07/01/2014

| | Rates | Fringes |
|--|-------|---------|
|--|-------|---------|

SHEET METAL WORKER (Including
HVAC Duct Installation).....\$ 39.73 16.08+a

a. PAID HOLIDAYS: New Year's Day, Martin Luther King's
Birthday, Memorial Day, Independence Day, Labor Day,
Veterans Day, Thanksgiving Day and Christmas Day

SUVA2010-089 09/20/2010

| | Rates | Fringes |
|---|----------|---------|
| BRICK POINTER/CAULKER/CLEANER.... | \$ 18.52 | 0.00 |
| LABORER: Common or General..... | \$ 14.30 | 0.00 |
| LABORER: Landscape..... | \$ 10.64 | 0.00 |
| LABORER: Mason Tender - Brick... | \$ 10.90 | 2.35 |
| LABORER: Pipelayer..... | \$ 15.47 | 2.27 |
| LABORER: Mason Tender - Pointer, Caulker, Cleaner..... | \$ 12.43 | 0.00 |
| OPERATOR: Backhoe..... | \$ 19.20 | 3.19 |
| OPERATOR: Bobcat/Skid Steer/Skid Loader..... | \$ 15.62 | 2.40 |
| OPERATOR: Forklift..... | \$ 17.93 | 7.28 |
| OPERATOR: Loader..... | \$ 20.63 | 4.80 |
| OPERATOR: Mechanic..... | \$ 18.23 | 1.59 |
| TRUCK DRIVER: Dump Truck..... | \$ 13.25 | 1.80 |

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

=====

Unlisted classifications needed for work not included within
the scope of the classifications listed may be added after
award only as provided in the labor standards contract clauses
(29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification
and wage rates that have been found to be prevailing for the
cited type(s) of construction in the area covered by the wage

determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters, PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rates.

0000/9999: weighted union wage rates will be published annually each January.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on

- a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

APPENDIX B

ATTACHMENT A

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

March 2012

~Applies only if proposal price is \$500,000 or more for a construction contract or \$100,000 or more for a supply and service contract.

~ APPENDIX B

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

1. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENT:

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

2. POLICY:

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

3. CONTRACT GOAL:

- A. If the proposer is not a DBE, the proposer agrees that the DBE goal for this Contract shall be met by subcontractors or by joint ventures with DBEs. **The goal set forth for this Contract, and each individual task order, is 25% of the final Contract price, including amendment and modification.** The amount of DBE participation will be determined by the dollar value of the work performed and/or supplies furnished by DBE firms as compared to the total value of all work performed and/or supplies furnished under this Contract. The Contractor shall have met this goal if the Contractor's DBE participation meets or exceeds this goal.
- B. In cases where work is added to the Contract by modification such that additional DBE participation is necessary to meet this goal, the Contractor shall increase the participation of one or more firms listed on the "Schedule of DBE Participation" or submit additional DBE certified firms to meet the goal. In cases where work is deleted from the Contract, the goal shall be applicable to the new Contract amount. The Contractor shall be permitted to meet the goal by revising its DBE participation, provided, however, that the revision shall not result in DBE participation that is less than the original goal.

4. DEFINITIONS:

- A. **Appendix B.** The Notice of Requirements for Disadvantaged Business Enterprise, which when attached to a solicitation, implements the DBE requirements of the Authority's DBE Program

Plan in the award and administration of federally funded Authority contracts.

- B. **Certified DBE.** means a for-profit small business concern (a) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and (c) whose eligibility is evidenced by a current WMATA Certification letter, a D.C. Department of Transportation Certification letter, or a certification letter issued by the Metropolitan Washington Unified Certification Program (MWUCP).
- C. **Contractor.** One who participates, through a contract or subcontract (at any tier), in a US DOT assisted highway, transit or airport program.
- D. **DC DOT.** The District of Columbia Department of Transportation.
- F. **Good Faith Efforts.** Efforts to achieve a DBE goal or other requirements of the Authority's DBE Program Plan which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the goal program requirement.
- G. **Joint Venture.** An association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and shares in the capital contribution, control, management, risks, and profits of the joint venture commensurate with its ownership interest.
- H. **Metropolitan Washington Unified Certification Program (MWUCP).** A unified certification program mandated by 49 CFR §26.81 between two federal transit recipients (WMATA and the D.C. Department of Transportation). The agreement became effective January 2005.
- I. **Pre-certification.** A requirement under 49 CFR §26.81(c) that all certifications by the MWUCP be made final before the due date for offers on a contract on which a firm seeks to participate as a DBE.
- J. **Race-conscious.** A measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs.
- K. **Race-neutral.** A measure or program that is, or can be, used to assist all small businesses. For the purposes of the DBE program, race-neutral includes gender-neutrality.
- L. **Small Business Concern.** With respect to firms seeking to participate as DBE's in US DOT assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration implementing regulations (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26.65(b).
- M. **Socially and Economically Disadvantaged Individual.** Any individual who is a citizen (or other

lawfully admitted permanent resident) of the United States and who the Authority finds to be a socially and economically disadvantaged individual on a case-by-case basis, and any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged.

- (1) Black Americans, which includes persons having origins in any of the Black racial groups of Africa;
- (2) Hispanic Americans, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (3) Native Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (4) Asian-Pacific Americans, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the North Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (5) Subcontinent Asian Americans, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (6) Women; and
- (7) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

N. **US DOT Assisted Contract.** Any contract between the Authority and a contractor (at any tier) funded in whole or in part with US DOT financial assistance, including letters of credit or loan guarantees.

O. **Unified Certification Program (UCP).** The program mandated by 49 CFR Part 26.81(a), which requires all U. S. DOT recipients of federal financial assistance to participate in a statewide certification program by March 2002.

P. **WMATA.** Washington Metropolitan Area Transit Authority, the transit system (rail and bus) serving the metropolitan Washington area, including parts of Virginia and Maryland.

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

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

A. When a DBE participates in a contract, only the value of the work actually performed by the DBE is counted towards the DBE goal.

- (1) This amount includes the entire amount of that portion of a construction contract that is performed by the DBE's own forces. This amount includes the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
- (2) This amount includes the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the contract, towards the DBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.
- (3) When a DBE subcontracts part of its work under the contract to another firm, the value of the subcontract work may be counted towards the DBE goal only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count towards the DBE goal.

B. When a DBE performs as a participant in a joint venture, the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that a DBE performs with its own forces towards the DBE goal may be counted.

C. Expenditures to a DBE contractor towards the DBE goal may be counted only if the DBE is performing a commercially useful function on that contract.

- (1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Authority will consider the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
- (2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

- (3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work, the Authority will presume that the DBE is not performing a commercially useful function.

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

- (1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible for on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.
- (2) The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract.
 - (3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers, it employs.
- (3) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- (5) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
- (6) The lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the terms of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

E. The following factors will be used to count expenditures with DBEs for materials or supplies towards the DBE goal:

- (1) If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies will be counted towards the DBE goal. A manufacturer is a firm that operates or maintains a

factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the contract.

- (2) If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies will be counted towards the DBE goal. A regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if this person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.
- (3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials and supplies required on a job site, may be counted towards the DBE goal, provided the fees are reasonable and are not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves may not be counted towards the DBE goal.

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

6. PROPOSAL REQUIREMENTS (WITH THE PROPOSAL):

The proposer shall submit the following with its proposal. Any proposer who fails to complete and return this information with its proposal shall be deemed to be not

responsive and may be ineligible for contract award. Proposers that fail to meet the DBE goal above and fail to demonstrate “good faith efforts” to justify waiver of the DBE goal (see paragraph 6.C. below) shall be deemed to be not responsible and will be ineligible for Contract award.

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

negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work. "DBE Unavailability Certifications" (Attachment B-3) shall be completed as appropriate.

(b) A proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as the contract goal into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a proposer's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the proposer of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

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

7. PROPOSAL REQUIREMENTS (APPARENT SUCCESSFUL 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 WMATA, D.C. DOT or MWUCP certification letter(s) shall be attached to the DBE Schedule of Participation to evidence DBE pre-certification.

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

8. CONTRACT ADMINISTRATION REQUIREMENTS:

The following requirements apply after contract award:

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

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

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

- (6) Inability to obtain, or loss of, a license necessary for the performance of the particular category of work.
- (7) Failure or inability to comply with a requirement of law applicable to contractors and subcontractors on a construction, alteration or repair project.
- (8) Failure or refusal to execute the subcontract in accordance with the terms of an offer submitted to the Contractor prior to the Contractor's submission of its proposal, but only where the contracting officer or other delegated authority's representative can ascertain with reasonable certainty the terms of such offer. In the absence of any other factors, such a failure or refusal will be considered an unusual situation only if the proposer obtained, prior to proposing, an enforcement commitment from the subcontractor involved.
- (9) Failure to comply with the terms and conditions of this Contract or those of its subcontract or joint venture agreement.

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

- D. The contractor shall forward copies of all subcontracts to the DBE office at the time of their execution.
- E. If the contracting officer or other delegated authority's representative determines that the Contractor has failed to comply with this Appendix B, he/she will notify the Contractor of such non-compliance and the action to be taken. The Contractor shall, after receipt of such notice, take corrective action. If the Contractor fails or refuses to comply promptly, the contracting officer or other delegated authority's representative may issue a "stop work order" stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop work order shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor. When the Authority proceeds with such formal actions, it has the burden of proving that the Contractor has not met the requirements of this Appendix, but the Contractor's failure to meet its Appendix B goal shall shift to it the requirement to come forward with evidence to show that it has met the good faith requirements of this Appendix. Where the Contractor, after exhausting all its administrative and legal remedies and procedures is found to have failed to exert a "good faith effort" to involve DBE's in the work as herein provided, the Authority may declare the Contractor ineligible to receive further Authority contracts for three years from the date of the finding.

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

SUMMARY OF SUBMITTALS

With the Proposal

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

Proposal Requirements (Apparent Successful Proposer)

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

After Contract Award

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

SUBMIT WITH PROPOSAL
SCHEDULE OF DBE PARTICIPATION

Contract No. _____

Project Name _____

Name of Proposer

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

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

_____ Signature of Contractor Representative

_____ Title

_____ Date

M 23.26a (Rev 02/12)

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-DBE contractors, if applicable. The undersigned will enter into a formal agreement with you for the above work upon your execution of a contract with the Authority.

Name of DBE Subcontractor/Joint Venture

Phone Number

Address

WMATA Vendor ID #/DBE Cert. #

Signature & Title

Date

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

To: _____
(Name of DBE)

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

| <u>WORK ITEMS</u> | <u>PROJECTED DBE COMMENCEMENT DATE</u> | <u>PROJECTED DBE COMPLETION DATE</u> |
|-----------------------|--|--|
|-----------------------|--|--|

(Date)

(Name of Prime Contractor &
Acceptance Signature)

DBE Certification Instructions

Important Notice

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

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

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

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

Instructions

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

General (All firms must submit documents under General)

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

Corporations

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

Partnerships

- Partnership Agreement

Proprietorships

- IRS Employer ID Number
- WMATA Vendor ID#

Limited Liability Companies

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

Change of Status Review

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

Affidavit Enclosure

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

DBE 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 DBE 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)

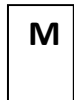
to me personally known, who, being duly sworn, did execute the foregoing Affidavit, and did state that he or she was properly authorized by _____
(Name of Firm)

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)



Information For Determining Joint Venture Eligibility

Page 1

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

Contact Person: _____ Telephone: _____

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

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

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

Contact Person: _____ Telephone: _____

Status of firm: DBE. Non-Minority.

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

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

Contact Person: _____ Telephone: _____

Status of firm: DBE. Non-Minority.

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

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

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

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

Information For Determining Joint Venture Eligibility

Page 2

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

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

TOTALS:

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

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

Name: _____ Race: _____

Title: _____ Sex: Male Female

Company affiliation: _____

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

Name: _____ Race: _____

Title: _____ Sex: Male Female

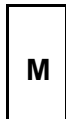
Company affiliation: _____

3. Supervision of field operations:

Name: _____ Race: _____

Title: _____ Sex: Male Female

Company affiliation: _____



23.06c (Rev 10/99)

Information For Determining Joint Venture Eligibility

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

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

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

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

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

.....
...

23.29 (10/99)



Information For Determining Joint Venture Eligibility

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.....
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

DISADVANTAGED BUSINESS ENTERPRISE (DBE)
MONTHLY PROMPT PAYMENT REPORT

PRIME – CONTRACTOR’S REPORT

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

Contract No.: _____ Reporting Period: _____

Name of Prime Contractor: _____ DBE – Yes or No

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

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

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

By: _____ Title: _____ Date: _____

Washington Metropolitan Area Transit Authority

DISADVANTAGED BUSINESS ENTERPRISE (DBE)
MONTHLY PROMPT PAYMENT REPORT

SUBCONTRACTOR'S REPORT

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

Contract No.: _____ Reporting Period: _____

Name of Subcontractor: _____ DBE – Yes or No

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

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

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

By: _____ Title: _____ Date: _____

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