



Request For Proposal

[Federal]

Bus Overhaul Kits

RFP No.: FQ16044

Date: October 1, 2015

Washington Metropolitan Area Transit Authority
RFP: FQ16044

Date: October 1, 2015

SUBJECT: RFP No. FQ16044

Dear Sir/Madam:

The Washington Metropolitan Area Transit Authority (WMATA) requires the services of a qualified contractor(s) to provide Bus Overhaul Kits.

If you have any questions, Technical, Contractual, or Administrative, please e-mail them to ccochrane@wmata.com no later than 9:00am, October 8, 2015. 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 **11:00AM, October 22 2015**, at WMATA, Office of Procurement and Materials, 600 Fifth Street, NW, Room 3C-02, Washington, DC 20001-2651.

Sincerely,

Contracting Officer
Office of Procurement and Materials

Enclosure:

INTRODUCTORY INFORMATION
SOLICITATION CERTIFICATIONS PAGE

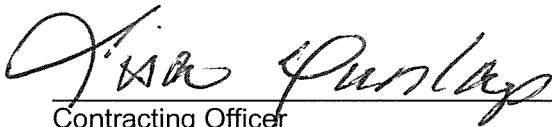
FQ16044

Overhaul Kits

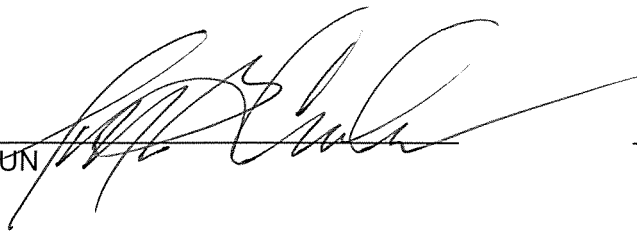
APPROVED FOR RELEASE


Project Manager/Office Designee

09/21/2015
Date


Contracting Officer

9/21/2015
Date


COON

29 Sept 2015
Date

END OF SECTION

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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: Celena Cochrane

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

PROPOSALS SHALL BE TIMELY MAILED OR HAND DELIVERED TO REACH WMATA BEFORE 11:00 A.M. (LOCAL TIME) OCTOBER 22, 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.) - VOLUME III
- PRICE SCHEDULE- VOLUME I
- REPRESENTATIONS AND CERTIFICATIONS- VOLUME III
- PRE-AWARD DATA- VOLUME III
- ACKNOWLEDGMENT OF AMENDMENTS (IF ANY)- VOLUME III
- TECHNICAL PROPOSAL VOLUME II
- PROOF OF INSURANCE ELIGIBILITY - VOLUME III
- APPENDIX B (IF APPLICABLE) - VOLUME III

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

Questions concerning this Request for Proposal may be directed to Celena Cochran at 301-955-7165 and ccochrane@wmata.com.

NOTICE TO ALL VENDORS

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

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

Registered Vendor Benefits:

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

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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
 SUPPLY AND SERVICE CONTRACT RFP-FQ16044



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SOLICITATION, OFFER AND AWARD

CONTRACT NO.	SOLICITATION NO. RFP FQ16044	DATE ISSUED 10/1/2015	ADDRESS OFFER TO OFFICE OF PROCUREMENT Office of Procurement 600 Fifth Street NW Washington, DC 20001
	<input type="checkbox"/> ADVERTISED <input checked="" type="checkbox"/> NEGOTIATED		

SOLICITATION

Sealed offer in original and _____ copies for furnishing the supplies or services in the schedules will be received at Authority until 11:00 A.M. local time 10/22/2015
 (Hour) (Date)

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

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

All offers are subject to the following:

1. The Solicitation Instructions that are attached.
2. The Terms and Conditions, that 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 E-mail _____

Proposer's Phone Number _____

Proposer's Fax Number _____

SCHEDULE

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
					\$

DUN & BRADSTREET ID NUMBER: _____

OFFEROR

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

AWARD (To be completed by The Authority)

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

ITEM NO.	QUANTITY	UNIT	UNIT PRICE

The total amount of this award is \$ _____

Name of Contracting Officer (Print of Type)

WASHINGTON METROPOLITAN TRANSIT AUTHORITY

AWARD DATE

SOLICITATION, OFFER AND AWARD

CONTINUATION SHEET

THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF THE FOLLOWING AMENDMENTS

TO SOLICITATION **RFP FQ16044**

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

SOLICITATION INSTRUCTIONS FOR PRICE SHEET

SEE ATTACHED ELECTRONIC SPREADSHEET WITH MANUFACTURING PART NUMBERS AND RELATED INFORMATION NEEDED TO COMPLETE THIS RFP

Note to Proposers:

1. The Contract price will be evaluated based on the total base price, plus all option year prices. The Authority retains the right to award based on total base price only, total base plus options or any combination of base price plus options.
2. Proposers may submit prices on one or more kits.
3. Each kit is comprised of a group of line items and The Authority reserves the right to remove line items from the kit as needed.

Pricing for items not identified on the Price Sheet:

Offeror shall provide a pricing method for additional parts that comprise a kit. Offeror shall propose a discount off MSRP for all items not identified on the price sheet. Only Offerors awarded this Contract for kits under this solicitation will be eligible to provide additional parts for the kits. Offerors shall submit a price quote within 48 hours of a request for quote. Offeror may propose a discount off MSRP for each delivery order quote. **Pricing must reflect FOB destination delivery.**

PROPOSED EQUALS:

The following information must be attached to the Unit Price Schedule Sheet for each item that is proposed as an 'equal' to the brand name item referenced on the Unit Price Schedule Sheet or in the Technical Specifications. (Refer to Solicitation Instruction #27 - Brand Name or Equal):

Description	of	Item: _____
Brand Name/Model	in	Spec: _____
Manufacturer		of
Equal: _____		
Model No. of Equal: _____		

RFP SOLICITATION INSTRUCTIONS

1. INTRODUCTION

- (a) The Authority seeks to award a Contract to a qualified contractor(s) to provide bus overhaul kits. To that end, it is issuing this RFP to solicit proposals from qualified firms and individuals who can satisfy the requirements of the accompanying Contract documents.
- (b) As this is a lowest price, technically acceptable solicitation, award of a Contract(s) hereunder shall be to the offeror(s) whose proposal(s) is/are deemed by the Authority as satisfying all technical requirements of the solicitation and offers the lowest price of those satisfying all such requirements.
- (c) The Authority contemplates award of a requirements Contract(s) for each type of kit listed in the Price Schedule. The Authority may award one or more Contracts for all kits and/or groups of kits in the Price Schedule resulting from this solicitation. Each Kit is comprised of a group of line items and The Authority reserves the right to remove line items from each kit as needed.
- (d) This solicitation seeks to award a requirements Contract for the supplies/equipment or services specified, and effective for the period stated herewith. Offerors are advised that the quantities of supplies or services specified in the Price Schedule are estimates only, included for purposes of price evaluation and in order to provide information to assist the offerors in formulating their proposals. While they represent the Authority's best such estimate as of the time of the solicitation, they do not constitute a commitment on the part of the Authority to procure supplies or services at the estimated levels.

2. GOODS TO BE FURNISHED/SERVICES TO BE SUPPLIED

In preparing their proposals, offerors are advised that:

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

3. COMMUNICATIONS WITH THE AUTHORITY

Prospective offerors are advised that any and all communications with WMATA relating to this solicitation and made by, or on behalf of, a prospective offeror at any time between release of this Request for Proposals and award of a Contract hereunder, must be directed to the Contract Administrator.

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

4. PREPARATION OF OFFERS

- (a) Offerors shall furnish all information requested by the solicitation and, in so doing, are expected to examine the Request for Proposals and all referenced documents carefully. Failure to do so will be at the risk of the offeror.
- (b) The offeror shall sign the solicitation and print or type its name on the Price Schedule and each continuation sheet on which an entry has been made. Erasures or other changes must be initialed by the person signing the offer.
- (c) Offerors must state a definite time for delivery of supplies or for performance of services unless otherwise specified in the solicitation.
- (d) In preparing their proposals, Offerors should be aware that all prices for the work shall be deemed to include the cost of all work, labor and materials required by the Contract including, without limitation, delivery charges, insurance, bond premiums or any other expenses required by the work, as well as expenses associated with compliance with federal, state or local laws or regulatory requirements. All prices are deemed to be F.O.B. delivery point.

5. EXPLANATIONS TO OFFERORS

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

6. PRE-PROPOSAL CONFERENCE

Not Applicable

7. AMENDMENTS PRIOR TO DATE SET FOR RECEIPT OF PROPOSALS

- (a) The Authority reserves the right to amend any of the terms of this RFP or the Contract documents prior to the date set for the opening of proposals. Copies of any such amendments as may be issued will be furnished in writing to all prospective proposers.
- (b) If, in the judgment of the Contracting Officer, any such amendment(s) would require material changes in price proposals and/or other substantive element(s) of the proposals, the date set for the opening of proposals may be postponed for such period as in the opinion of the Contracting Officer will enable offerors to revise their proposals. In such instances, the amendment will include an announcement of the new date for the closing of proposals.
- (c) In the event of an amendment, all other terms and conditions of the solicitation shall remain unchanged.

8. ACKNOWLEDGMENT OF AMENDMENTS

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

9. SUBMISSION OF PROPOSALS

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

10. PROPOSAL FORMAT INSTRUCTIONS/REQUIREMENTS

Offerors shall submit their proposals as follows:

(a) Proposal Format

The original of Volumes I and 2 shall be unbound. All copies of Volumes 1 and 2, as well as Volume 3, will be separately bound and all copies shall have the RFP number, the proposer's identity, volume number, and volume title printed on the cover page. **Please also provide all the information on a flash drive or compact disk.** Volumes shall be submitted in the following order:

- (1) Volume I – Cost/Price - One (1) original;
 - (2) Volume II – Technical - One (1) original of the technical proposal (**Shall not include cost/price information**);
 - (3) Volume III – Contractual - One (1) original of the completed signed solicitation documents to include Representations, Certifications, Pre-Award Data, Certificate of Insurance, DBE requirements per Appendix B and Amendments, if any.
- (b) Cost/Price. All information relating to cost or pricing data must be included in Volume I. Under no circumstances shall cost or pricing data be included elsewhere in the proposal.

- (c) Technical Proposal. The technical proposal should address the stated Evaluation Criteria for acceptability and be of a nature such as to enable the Authority to decide if a proposal is technically acceptable. Technical proposals shall be specific, detailed and complete and demonstrate that the Offeror has a thorough knowledge and understanding of the acceptability requirements of the Contract. Offerors shall avoid generalized statements which, for example, paraphrase the specifications or attest that "standard procedures will be employed". The Authority wishes to be satisfied that the Offeror maintains an understanding of the specific requirements of this solicitation and maintains the means to fully satisfy the Authority's needs.
- (d) Contractual. Contractual documents shall contain a completed, signed "Solicitation, Offer and Award" form and include Representations and Certifications, Pre-Award Data, Certificate(s) of Insurance, DBE requirements per Appendix B and any Amendments. In the event that the proposer takes any exception to any of the proposed terms and conditions, wishes to propose alternative contract language or is otherwise unwilling or unable to satisfy any of the requirements contained in the Contract documents, such information should be clearly noted on the first page(s) of Volume III of the proposal. Failure to take exception shall constitute an acceptance by the offeror.

11. LATE SUBMISSIONS AND REVISIONS OF PROPOSALS

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

12. WITHDRAWAL OF PROPOSALS

Proposals may be withdrawn by written notice received by the Authority before award. Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is appropriately demonstrated and the representative signs a receipt for the proposal before award. Absent approval of the Contracting Officer, a proposal may not be withdrawn prior to ninety (90) days from receipt of proposals.

13. RECEIPT AND REVIEW OF PROPOSALS BY THE AUTHORITY

- (a) There will be no public opening of proposals in this solicitation. Proposals will be opened by the designated Authority representative and copies of the three Volumes of the Proposal will be distributed for review by Authority designated personnel only, as appropriate. All reasonable efforts will be made to ensure confidentiality of the information contained in the proposals, consistent with applicable provisions of law.
- (b) The Authority may elect to award a Contract on the basis of the initial proposals as received in accordance with the Evaluation Criteria set forth in paragraph, without discussions. Accordingly, the initial proposal should contain the offeror's best terms from both a price and technical standpoint.
 - (i) Notwithstanding a determination by the Authority to proceed without conducting substantive negotiations or discussions with offerors, the Authority may elect to engage in communications with one or more offerors relating to clarification(s) of their proposals.
- (c) As an alternative to the procedure described in subparagraph (b) above, the Authority may, in its discretion, determine to engage in oral and/or written discussions with one (1) or more offerors involving information essential or useful to the Authority's understanding of the Proposals and/or to address deficiencies in the initial Proposals. In determining those Offeror(s) with which it chooses to engage in such Discussions, the Authority shall first make a determination as to those initial Proposals which it deems to be within the Competitive Range for award of the Contract and thereupon conduct Discussions with the Offerors submitting Proposals within the Competitive Range.
- (d) In the event that the Authority conducts substantive Discussions with one or more Offerors as set forth in sub-paragraph c above, the Contracting Officer may, following such Discussions, direct those Offerors whose Proposals have been deemed within the Competitive Range to submit Best and Final Offers ("BAFOs"). In such instances, the Authority shall render its determination as to award of the contract based upon its review of the BAFOs in accordance with the Evaluation Criteria; except that nothing contained herein shall be deemed to limit, modify or impair the right of the Authority to engage in any such further or additional oral or written Discussions or other communications relating to the Solicitation as may, in the judgment of the Contracting Officer, be consistent with the best interests of the Authority.
- (e) The Authority maintains the right to waive informalities and minor irregularities in proposals at any time during the solicitation process.

14. EVALUATION CRITERIA AND BASIS FOR AWARD

TECHNICALLY ACCEPTABLE – LOW PRICE

- (a) The Authority will award a Contract(s) resulting from this solicitation to the responsible Offeror(s) whose proposal conforms to the solicitation and is determined to be the lowest priced among those proposals rated “technically acceptable.” For purposes of determining whether a proposal is “technically acceptable” for purposes of this solicitation, the following Evaluation Criteria shall apply:

Part Number (P/N)–The approved part numbers are shown in the columns labeled “OEM#” on each worksheet of the excel spreadsheet.

The Contractor shall indicate the manufacturer/brand name, the part number, and the delivery/lead time for each item proposed in the columns labeled “NOTES”. Failure to do so may necessitate rejection of the proposal in part or in its entirety.

If Offeror is proposing an alternate part rather than one of the approved part numbers, then WMATA requires further clarification to determine form, fit and function. In addition to the Manufacturer/Brand Name, the part number, and the delivery/lead time, **the Offeror must provide a Manufacturer’s specification sheet or cut sheet.** This allows the technical team to evaluate the alternate parts being offered and determine if the supplier will be asked to perform an FAI for the proposed part.

First Article Inspection (FAI) for Non Approved Suppliers of a Part - Parts which are not provided by the OEM or a previous supplier and/or which are not an approved P/N, will be required to go through an engineering qualification and FAI process. The costs incurred for this process will be the responsibility of the offeror , whether approved or disapproved.

During the process of a new supplier becoming qualified for a particular part, WMATA reserves the right to purchase from the originally approved supplier or OEM until the engineering qualifications and the FAI is completed, as described in the above paragraph (See First Article Inspection clause.)

Lead Time – Initial Order Lead Time will be evaluated based on the length of time it takes the supplier to deliver the product.

- (b) As the Authority reserves the right as described above to award the Contract without discussions or further communication concerning the proposals received, the proposal should contain the offeror’s best terms from both a price and technical standpoint. Notwithstanding the foregoing, the Authority reserves the right to engage in oral or written communications with proposers to the extent, if any, so determined by the Contracting Officer.
- (c) Price evaluation will be based on the total cost to the Authority for base year requirements plus any options.
- (d) The elements of the technical proposal will be rated in accordance with the Evaluation Criteria. Only those proposal(s) as are deemed acceptable in terms of their overall technical merit shall remain eligible for potential award.

15. PRICE PROPOSAL EVALUATION

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

16. TECHNICAL PROPOSAL EVALUATION

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

Evaluation criterion will be rated on a **PASS/FAIL** basis.

- 1. All parts must be brand name or equal.
- 2. Manufacturing part number must cross reference supplier part number in order to allow processing of FAI if needed.
- 3. Include Manufacturer name of part number being priced.
- 4. Excessive lead times may adversely impact the technical ratings.
- 5. Necessary cut sheets, specification sheets for proposed alternates must be provided and it must be determined that the alternates meet WMATA's requirements for the part.

17. PRE AWARD INFORMATION/CONTRACTOR RESPONSIBILITY

- (a) In order to be eligible for award of a contract, a Proposer must affirmatively demonstrate to the satisfaction of the Authority that it is responsible for purposes of this solicitation, including a showing that it maintains the requisite integrity, overall technical expertise and experience, including prior performance on other Authority contracts or contracts with other government agencies, and sufficient financial resources to perform the work of the contract in a timely, satisfactory and appropriate manner.
- (b) The Contracting Officer or other Authority representative(s) may conduct a pre-award survey and/or undertake other actions to obtain information regarding the responsibility of a proposer whose offer is in the Competitive Range or is otherwise under consideration for award. The Proposer shall promptly supply information requested by the Contracting Officer regarding its responsibility in such manner and form as requested by the Authority.
- (c) Without limiting the general obligations of the proposer to demonstrate its responsibility to the satisfaction of the Authority as set forth in subparagraphs (a) and (b) above, a proposer shall furnish the following when so requested by the Contracting Officer or other Authority Representative:

- (1) A completed and signed "Pre-Award Evaluation Data" form (copy attached), including all referenced financial statements and information;
- (2) Evidence of good standing in the System for Award Management (SAM) at www.sam.gov.
- (3) Disadvantaged Business Enterprise data as set forth in Appendix B. Note: As described above, the submittal of certain items and request for waiver (if applicable) are required if the Proposal is \$100,000 or greater. Failure to submit forms B-12, B-13, and/or request for waiver (if applicable) may cause the proposal to be rejected. A failure on the part of an offeror to supply the information requested in this paragraph or otherwise fully cooperate with the Authority's inquiry may result in a determination that the offeror is not responsible for purposes of this solicitation and thereby ineligible for award.
- (4) Small Business Enterprise (SBE) documentation as set forth in Appendix B-1. a failure on the part of an offeror to supply the information requested in this paragraph or otherwise fully cooperate with the Authority's inquiry may result in a determination that the offeror is not responsible for purposes of this solicitation and thereby ineligible for award.

18. PRE-AWARD MEETING

The Authority reserves the right to require that a pre-award meeting be held with the apparent successful Offeror(s) prior to award of a Contract in order to review the Offeror's understanding of the contract requirements and/or further assist the Authority in determining the Offeror's responsibility for purposes of award. The Contractor shall be represented at such meeting by individual(s) fully familiar with the contractual requirements including, where so requested by the Authority, representative(s) of one or more major subcontractor(s).

19. SITE VISIT/INSPECTION OFFEROR'S FACILITIES

NOT APPLICABLE

20. CONTRACT AWARD

- (a) At the conclusion of the process described in paragraph 14 above, the Authority will award a contract resulting from this Solicitation to the responsible offeror whose proposal conforms to the Solicitation and is the lowest priced among all technically acceptable offers. Such determination shall be based upon the initial proposals received where the Authority determines not to conduct discussions in accordance with subparagraph 13(b) or shall be based upon the BAFOs where the Authority directs their submission in accordance with subparagraphs 13 (c) and (d).
- (b) A written award mailed or otherwise furnished to the successful Offeror at any time prior to withdrawal of the proposal by the offeror shall result in a binding Contract without further action by either party. Discussions conducted after receipt of an offer do not constitute a rejection or counteroffer by the Authority.
- (c) Notwithstanding the foregoing or anything to the contrary otherwise contained in this solicitation, the Authority reserves the right to reject and any all proposals received and

decline to enter into a contract pursuant to this solicitation if it deems such action is in the Authority's interest.

21. PERFORMANCE/PAYMENT BONDS

NOT APPLICABLE

22. DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS

Attached as part of this solicitation are documents outlining the requirements for the Disadvantaged Business Enterprise (DBE) Program: **The DBE requirement goal for this contract is 0%.**

23. OPPORTUNITY FOR DISADVANTAGED BUSINESS ENTERPRISES TO PROPOSE

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

24. WMATA'S TAX EXEMPT STATUS

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

"The Authority and the Board shall not be required to pay taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession or supervision, or upon its activities in the operation and maintenance of any transit facility or upon any revenues therefrom, and the property and income derived therefrom shall be exempted from all federal, state, District of Columbia, municipal, and local taxation. This exemption shall include without limitation, all motor vehicle license fees, sales taxes and motor fuel taxes."

(b) It has been the practice of the District of Columbia to apply the Authority's tax exempt status to certain purchases of materials required under Authority construction contracts and acquired by contractors for physical incorporation into the project work. This has not been the practice in either Maryland or Virginia. The Authority does not represent or warrant that the District of Columbia practice applies to this project or, if it does, that it will continue in effect during the term of this project. It is the responsibility of the Contractor to determine its liability for any and all taxes applicable to this project. Assessment or payment of taxes by the Contractor, including taxes resulting from changes in existing laws or the application thereof or of new or additional taxes, shall not constitute the basis for an increase in the Contract price, except as otherwise allowed under the General Provisions Article, FEDERAL, STATE AND LOCAL TAXES, of this Contract.

(c) The Authority's tax exempt numbers are as follows: District of Columbia – 5611 0082187001; Maryland -- 30072210; Virginia -- 5280-0067

- (d) By submission of its proposal, the offeror certifies that none of the taxes as to which the Authority is exempt are included in its cost proposal.

25. RESTRICTION ON DISCLOSURE AND USE OF DATA

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

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

26. ENGLISH LANGUAGE AND UNITED STATES CURRENCY

With respect to both this solicitation and the resultant Contract:

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

27. BRAND NAME OR EQUAL

- (a) If items called for by this RFP have been identified in the Price 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 (physical, functional, or performance) requirements in the RFP.
- (b) Unless the offeror clearly indicates in its proposal that it is offering an "equal" product, the proposal shall be considered as offering a brand name product referenced in the RFP.
- (c) 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 rfp, or such product shall be otherwise clearly identified in the proposal. The determination as to equality of the product offered shall be at the sole discretion of the Authority.

CAUTION TO OFFERORS. WMATA is not responsible for locating or securing any information that is not identified in the proposal and reasonably available to the Authority. Accordingly, to ensure that sufficient information is available, the offeror must furnish as a part of its proposal all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the Authority to determine whether the product offered meets the salient characteristics requirements of the RFP.

The information furnished may incorporate by specific reference, information previously furnished or otherwise available to the Authority. If the offeror proposes to modify a product so as to make it conform to the requirements of the RFP, it shall (i) include in the proposal a clear description of such proposed modifications, and (ii) clearly mark any descriptive material to show the proposed modifications.

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 fifty percent (50%), of the voting rights in that company. To control another company, such ownership is not required. If another company is able to formulate, determine or veto basic business policy decisions of the offeror, such other company is considered the parent of the offeror. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, contractual arrangements or otherwise.

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

Name of Parent Company

Main Office Address (including ZIP Code)

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

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

(d) If a Data Universal Numbering Systems (DUNS), number has not been established for the company at 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 fifty one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged individuals or, in the case of a corporation, in which fifty one percent (51%) of the stock is owned by one 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.

- (c) It is, is not, a small business enterprise.

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

5. AFFIRMATIVE ACTION COMPLIANCE

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

- (a) It has a workforce of _____ employees.
- (b) It has developed and has on file, or has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the 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 Board member, employee or agent 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 ACT AND CLEAN WATER ACT 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 Clean Water Act [33 U.S.C. §1319(c)] and is listed by the U.S. Environmental Protection Agency (EPA) as a violating facility, and the acquisition is not otherwise exempt:

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

9. DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

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

- (a) Primary Covered Transactions. This certification applies to the offer submitted in response to this solicitation and will be a continuing requirement throughout the term of any resultant contract.
 - (1) 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 (3) year period preceding this offer, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- (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 (3) year period preceding this offer, had one (1) or more public transactions (federal, state, or local) terminated for cause or default.
 - (2) Where the offeror is unable to certify to any of the statements in this certification, the offeror shall attach an explanation to this offer.
- (b) Lower Tier Covered Transactions. This certification applies to a subcontract at any tier expected to equal or exceed \$25,000 and will be a continuing requirement throughout the term of the prime contract.
 - (1) The prospective lower tier subcontractor certifies, by submission of this offer, that neither it nor its principals is currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or state department or agency.
 - (2) Where the prospective lower tier subcontractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
- (c) The Certification required by 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 his or her 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 that 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 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 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 that 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 that is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for such subcontract or for all subcontracts during a period (i.e., quarterly, semiannually or annually).

12. NONDISCRIMINATION ASSURANCE

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, disability or sexual preference in the performance of this Contract. The offeror is required to insert the substance of this clause in all subcontracts and purchase orders. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Authority deems appropriate. The offeror further agrees by submitting this offer that it will include this certification, without modification, in all subcontracts and purchase orders.

13. CERTIFICATION OF RESTRICTIONS ON LOBBYING

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

- (a) By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that to the best of his or her knowledge or belief:
 - (1) No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of 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 federally appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this contract, the undersigned shall complete and submit Standard Form--LLL, "Disclosure of Lobbying Activities."
 - (3) The undersigned shall require that the language of this certification be included in the award documents for all 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 Act requirements apply to federally assisted construction contracts, and acquisition of goods or rolling stock contracts valued at more than \$100,000.

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

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

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

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

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

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

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

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

15. CERTIFICATION OF NON-DELINQUENT TAXES

This certification is applicable to federally assisted contracts.

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

A Certification of Non-Delinquent Taxes must be submitted prior to award of a subcontract exceeding \$100,000 which is not exempt from the provisions of the FAR. . The certification may be submitted either for such subcontract or for all subcontracts during a period (i.e., quarterly, semiannually or annually).
(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 firm's 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 (2) years.

9. In the last two (2) years has your firm been denied an award where it was an offeror?

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

10. Has your firm failed to complete, in the last two (2) years, any contract on which it was a successful offeror?

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

11. Please state your firm's 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) does your firm intend performing with its own personnel? %.
 14. Attach as SCHEDULE SIX a list of all principal subcontractors and the percentage and character of work (contract amount) that 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 Proposals.
 15. If the Contractor or subcontractor is in a joint venture, submit "Pre-Award Evaluation Data" forms for each member of the joint venture.

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

The undersigned certifies to the accuracy of all information.

COMPANY: _____
SIGNATURE: _____
NAME: _____
TITLE: _____
DATE: _____

TERMS AND CONDITIONS

CHAPTER I – GENERAL PROVISIONS

1. AGREEMENT

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

2. ARRANGEMENT OF CONTRACTUAL PROVISIONS

For ease of reference, the provisions of this Contract are divided into chapters, articles, paragraphs and subparagraphs. While the chapters and articles are titled, it is understood that both the use of such titles and the manner and overall arrangement of the contractual provisions within the Contract documents are intended solely for the convenience of the parties and are without independent contractual or legal significance.

3. ORDER OF PRECEDENCE

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

4. REQUIREMENTS CONTRACT

- (a) This is a requirements Contract, notwithstanding the foregoing if, as the result of an urgent need, the Authority requires delivery of any quantity of an item before the date otherwise specified under this Contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Authority may acquire the urgently required goods or services from another source.
- (b) In the event that the Contractor is unable or otherwise fails to provide goods or services within the time frames required in the Contract, the Authority reserves the right to procure the goods or services from any other source and in any other manner it deems appropriate. Nothing contained herein shall be deemed to waive, modify or impair the right of the Authority to treat any such failure to meet a required delivery schedule as a material breach of the Contractor's obligations pursuant to the provisions of the "Termination for Default" article hereof, or any other right to which the Authority may be entitled pursuant to this Contract or at law or in equity.

5. AUDIT, AVAILABILITY, AND INSPECTION OF RECORDS

- (a) Authorized persons. The Contracting Officer and his or her representatives, including representatives of the Authority's governing jurisdictions and any other federal, state, or local entity providing funding for this Contract and the Comptroller General of the United States, shall have access and inspection rights described in this article.
- (b) Examination of costs. The Contractor shall maintain, and the Contracting Officer shall have the right to examine and audit, all records to properly reflect all costs incurred or anticipated to be incurred directly or indirectly in performance of this Contract. This right of examination shall include inspection of the Contractor's facilities at all reasonable times while engaged in performing this Contract.
- (c) Cost or pricing data. If the Contractor is required to submit cost or pricing data in connection with any pricing action relating to this Contract, the Contracting Officer shall have the right to examine and audit all of the Contractor's records related to: (1) any proposal for the Contract, subcontract, or modification; (2) any clarifications or discussions conducted on the proposal; (3) pricing of the Contract, subcontract or modification; or (4) performance of the Contract, subcontract or modification.
- (d) Availability. The accounts, records and cost information required to be originated under this Contract, together with all other accounts, records and cost information related to this Contract, shall be maintained and made available by the Contractor and subcontractor(s):
 - (1) At the office of the Contractor or subcontractor(s) at all reasonable times for inspection, audit, reproduction or such other purposes as may be required by the Contracting Officer or by anyone authorized to have access to the records by the Contracting Officer or pursuant to any other provision of this Contract; and
 - (2) Except to the extent otherwise expressly set forth in this Contract, until three (3) years from the date of final payment under this Contract. If the Contract is completely or partially terminated, for a period of three (3) years from either the date of any resulting final settlement or the date of final payment whichever is later. If a pricing adjustment is involved in any dispute or litigation related to this Contract, for a period equal to the later of three (3) years from the date of final payment or one year following the final disposition of the dispute or litigation.
- (e) Subcontracts. The Contractor shall insert this article, including this paragraph, in all subcontracts that exceed \$100,000.

6. AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR

Funds are not guaranteed for performance under this Contract beyond the current fiscal year that ends on June 30, 2016. The Authority's obligation for performance of this Contract beyond that date is contingent upon the availability of funds from which payment for Contract purposes can be made. No legal liability on the part of the Authority for any payment may arise for performance under this Contract, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing, by the Contracting Officer. Any option exercised by the Authority that will be performed, in whole or in part, in a subsequent fiscal year is subject to availability of funds in the subsequent fiscal year and will be governed by the terms of this article.

7. CONTRACTING OFFICERS TECHNICAL REPRESENTATIVE (COTR)

- (a) The work will be conducted under the general direction of the Contracting Officer on behalf of the Authority, who may delegate certain responsibilities to a Contracting Officer's Technical Representative (COTR). While the COTR will be thereupon authorized to perform such designated functions, the Authority will not be responsible for actions of the COTR or any other Authority employee or representative that exceeds his or her authority. The Contractor will be furnished, upon written request, a copy of the delegation, if any, to a COTR for this Contract.

- (b) A COTR may take the following actions:
 - (1) Act as the principal point of contact with the Contractor. The COTR shall submit a copy of each item of incoming correspondence and a copy of any enclosures to the Contract Administrator;
 - (2) Approve in writing the Contractor's progress schedule and submittals when required;
 - (3) Inspect the work for compliance with 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 or payments. In those cases requiring release of final retained percentages of payment, the COTR will make his or her recommendations in writing to the Contracting Officer;
 - (5) Coordinate correspondence with the Contract Administrator, if its importance significantly impacts the contractual terms and obligations;
 - (6) Evaluate the Contractor's technical letters and proposals for the Contracting Officer;
 - (7) Advise the Contracting Officer of potential problems that may affect Contract performance;
 - (8) Advise the Contracting Officer whenever the COTR has reason to believe that the Contractual not-to-exceed amount will be exceeded;
 - (9) Prepare the Authority's 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, 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 that 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, containing a detailed performance evaluation of the Contractor. Note that if, there are 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 ninety (90) days prior to the time established in the Contract for exercise of the option.
- b. There are certain actions that 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 entitled, "Stop Work Orders."
 - (3) Negotiation with the Contractor for adjustment of Contract price and/or time.
 - (4) Rendering final decisions under the "DISPUTES" article.
 - (5) Issuing Termination Notices pursuant to the terms of this Contract.
- c. The presence or absence of the COTR or his or her inspectors shall not relieve the Contractor from any requirements of this Contract.

CHAPTER II – TIME/DELAYS/LIQUIDATED DAMAGES

1. PERIOD OF PERFORMANCE

The period of performance is one base year days commencing on the date of award, and three (3) one (1) year option periods.

The Authority has the unilateral right to extend the Contract by exercising up to three (3) 1 year Option Periods (as applicable) subject to all terms and conditions herein.

The Authority may exercise the option(s) by written notice to the Contractor prior to commencement of the option period. The Authority shall give the Contractor a preliminary notice of its intent to extend at least thirty (30) days before the Contract expires. The preliminary notice does not commit the Authority to an extension.

2. LIQUIDATED DAMAGES FOR DELAY

Not Applicable

3. EXTENSIONS OF TIME/FORCE MAJEURE

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

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

4. AUTHORITY'S DELAY OF WORK

- (a) If the performance of all or any part of the work is delayed or interrupted in a material manner or extent by an act or omission of the Authority in the administration of this Contract, which act or omission is not expressly or impliedly authorized by this Contract or by applicable provisions of law, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this Contract caused by such delay or interruption and the Contract shall be modified in writing, accordingly. Adjustment shall be made also in the delivery or performance dates and any other Contractual provision, if compliance was materially affected by such delay or interruption. No adjustment shall be made under this Contract for any delay or interruption if performance was or would have been delayed or interrupted by any other cause, including, without limitation: (i) the fault or negligence of the Contractor or any subcontractor; (ii) the fault or negligence of a third party to the Contract; (iii) an act constituting a force majeure event pursuant to this Contract; or (iv) any other cause for which an adjustment is provided or excluded under any other provision of this Contract or otherwise at law or in equity.
- (b) An adjustment pursuant to paragraph (a) shall not be allowed:

- (1) for any costs incurred more than twenty (20) days before the Contractor notifies the Contracting Officer, in writing, of the applicable act or omission claimed; and
- (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption and in no event later than thirty (30) days after such termination. Such claim shall be accompanied by appropriate documentation, specifically identifying and supporting the nature and extent of the claimed impact upon the cost and/or time required for performance. In any instance where it is not reasonably practical for the Contractor to fully determine or project the impact within such thirty (30) day period, it shall accompany its claim with such supporting documentation as is then reasonably available to the Contractor, along with a statement of the anticipated time frame when the Contractor expects to provide the additional materials. The Contracting Officer shall maintain the right throughout the process to request such additional materials as he or she reasonably requires in consideration of the claim and shall be under no obligation to conclude his or her consideration of the claim prior to review of all relevant materials. Any adjustment to the Contract price pursuant to this article must be agreed upon or otherwise determined prior to final payment.

5. NOTICE TO THE AUTHORITY OF LABOR DISPUTES

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

CHAPTER III – ACCEPTANCE/INSPECTIONS/DEFICIENCIES

1. INSPECTION OF SUPPLIES

- (a) The Contractor shall provide and maintain an inspection system acceptable to the Authority covering the supplies provided under this Contract and shall tender to the Authority for acceptance only supplies that have been inspected in accordance with the inspection system and found by the Contractor to be in conformity with Contract requirements. As part of the system, the Contractor shall prepare records evidencing the nature and result of all inspections. These records shall be made available to the Authority during the term of this Contract and thereafter in accordance with the “Audit and Inspection of Records” article of this Contract. The Authority may perform reviews and evaluations as reasonably necessary to ascertain compliance with this article. These reviews and evaluations shall be conducted in a manner that will not unduly delay the Contract work. The right of review, whether exercised or not, does not relieve the Contractor of its obligations under the Contract.
- (b) The Authority has the right to inspect and test all supplies provided under the Contract, to the extent practicable, at all places and times, including during manufacturing, and i before acceptance. The Authority shall perform inspections and tests in a manner that will not unduly delay the work. The Authority assumes no contractual obligation to perform any inspection and/or test nor shall the Authority’s failure to perform any inspection or test relieve the Contractor of any obligation under the Contract.
- (c) If the Authority performs inspection(s) or test(s) on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional cost, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (d) When supplies are not ready at the time specified by the Contractor for inspection or testing, the Contracting Officer may charge the Contractor with any additional associated cost. The Contracting Officer may also charge the Contractor for any additional cost of inspection or testing when prior rejection makes re-inspection or retest necessary.

3. ACCEPTANCE OF SUPPLIES

- (a) The Authority shall accept or reject tendered supplies as promptly as practicable after delivery, unless otherwise provided in the Contract. In no event shall a failure of the Authority to inspect and/or accept or reject the supplies relieve the Contractor from responsibility, nor impose liability upon the Authority, for nonconforming supplies.
- (b) Acceptance by the Authority shall be deemed conclusive, except for latent defects, fraud, willful misconduct or gross mistakes amounting to fraud or as otherwise provided in this Contract. In such instances, the Authority, in addition to any other rights and remedies provided by law, or under other provisions of this Contract, shall have the right:

- (1) To direct the Contractor, at no increase in Contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or, if so determined by the Contracting Officer, at the Contractor's facility, in accordance with a reasonable delivery schedule as may be agreed upon between the parties. The Contracting Officer may reduce the Contract price, if the Contractor fails to meet such delivery schedule; or
- (2) Within a reasonable time after receipt by the Contractor of a notice of defects or nonconformance, effectuate an appropriate price adjustment, reducing the Contract price, as is equitable under the circumstances, if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the associated costs of transportation.

4. NEW MATERIAL [SUPPLIES]

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

5. WARRANTY

- (a) All workmanship, parts and materials furnished for the Contract shall be unconditionally warranted against failures or defects for a period of one (1) year after the item supplied is accepted, or placed in service, by the Authority, whichever is earlier. The Contractor shall accept the Authority's records with respect to the date the item was placed in service.
- (b) In the event that any item covered by this warranty fails during the warranty period, the Contractor shall repair or replace it within three (3) days, without cost or expense to the Authority.
- (c) Should the Contractor shall fail to repair or replace any part or do any work in accordance with the terms of this warranty, or if immediate replacement or work is necessary to maintain operations the Authority shall have the right to cause such replacement to be made, utilizing its own forces and/or those of third parties as the Authority shall reasonably deem appropriate, at the Contractor's expense.
- (d) Each piece of equipment, component or part thereof that is replaced, repaired, adjusted or serviced in any manner under the terms of warranty by the Contractor during the warranty period shall be reported to the Contracting Officer on forms supplied by the Authority. Each report shall indicate in detail all repairs, adjustments and servicing to each and every component, unit or parts thereof.

- (e) Any warranty work shall be accomplished with minimum disruption to the Authority's operations and its maintenance and service facilities. The Authority shall, at its sole discretion, determine the availability of facilities for warranty work.
- (f) The Contractor shall make available adequate service facilities, along with spare parts, for all the items supplied. Trained technical service personnel shall be available to the Authority sufficient to meet the Contractor's warranty obligations.
 - (1) The Contractor shall provide field service representatives who are competent and fully qualified in the maintenance and operation of the supplied items. These field service representatives shall assist the Authority in overcoming any difficulties in the operation or maintenance of the items supplied. They shall further serve as on-site representatives of the Contractor for any component failure claims or warranty claims under the Contract.
 - (2) During the warranty period, a field service representative shall be available within twenty four (24) hours.
- (g) The rights of the Authority set forth in this article shall be in addition to those set forth elsewhere in this Contract or otherwise at law or in equity.

6. FIRST ARTICLE INSPECTION

- (a) 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 stated in the technical specifications.
- (b) Within ten (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 the Authority's 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. The Contractor shall furnish any additional first articles to the Authority under these terms and conditions, within the time specified by the Authority. The Authority reserves the right to require an equitable adjustment to the Contract price for any extension of the delivery schedule or for any additional costs to the Authority related to these tests.
- (d) Unless otherwise provided in the Contract, the Contractor—
 - i. May deliver the approved first article as a part of the Contract quantity, provided that it meets all Contract requirements for acceptance and was not damaged or impaired in testing; and
 - ii. Shall remove and dispose of any first article from the Authority's test facility at the Contractor's expense.

- (e) The Contractor is responsible for providing operating and maintenance instructions, spare parts support, and repair of the first article during any first article test.
- (f) The Authority will inspect the first article (pre-production sample) in accordance with the Contract's requirements. A written report will be forwarded to the Contractor in accordance with (b) above.

7. F.O.B. DESTINATION

- (a) Unless otherwise specified, the Contractor shall furnish all supplies to be delivered under this Contract "F.O.B. Destination". As used herein, "F.O.B. Destination" means:
 - (1) Free of expense to WMATA on board the carrier's conveyance, at a specified delivery point where WMATA's or any 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 WMATA's or 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 a rail carrier or freight forwarder for less than carload shipments, the Contractor shall assure that the carrier will furnish tailgate delivery, if transfer to truck is required to complete delivery to WMATA or the consignee.
- (b) The Contractor shall:
 - (1) Pack and mark the shipment to comply with Contract specifications;
 - (2) In the absence of specifications, prepare the shipment in conformance with carrier requirements;
 - (3) Prepare and distribute commercial bills of lading;
 - (4) Deliver the shipment in good order and condition to the point of delivery specified in the Contract;
 - (5) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by WMATA or 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.

8. QUALITY ASSURANCE/QUALITY CONTROL

The Contractor shall be responsible for quality assurance and for assuring that the supplies and services conform to the requirements of the Contract documents. The Contractor shall maintain an effective and economical quality control program planned and developed in conjunction with other Contractor functions necessary to satisfy the Contract's requirements. The quality control program shall establish and implement procedures to ensure that only acceptable supplies or services are tendered to the Authority for acceptance, and shall demonstrate both recognition of the quality requirements of the Contract and an organized approach to satisfy these requirements. The program shall ensure that quality requirements are determined and satisfied throughout all phases of Contract performance, including, as

applicable, design development, purchasing, fabrication, processing, assembly, inspection, testing, packaging, delivery, storage and systems check and shall provide for the early and prompt detection of actual or potential deficiencies, trends, or conditions that could result in unsatisfactory quality.

CHAPTER IV—CHANGES/ PRICING ADJUSTMENTS

1. CHANGE ORDERS

- (a) The Contracting Officer may at any time, by a written order, direct and implement change orders, within the general scope of this Contract, including but not limited to one or more of the following:
 - (1) Nature and/or extent of services to be performed or supplies to be furnished;
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.); or
 - (3) Place of performance of the services.
- (b) If, in the judgment of the Contracting Officer, any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Contract, whether or not directly changed by the order, the Contracting Officer shall make an equitable adjustment in the Contract price, the delivery schedule, or both, and shall modify the Contract accordingly.
- (c) In any instance where the Contractor asserts a right to an adjustment in the Contract price or time required for performance as the result of a change directed pursuant to this article, it must submit a written claim so advising the Authority within thirty (30) days from the date of receipt of the written order directing the change. The claim shall be accompanied by appropriate documentation, specifically identifying and supporting the nature and extent of the claimed impact upon the Contract price and/or time required for performance. In any instance where it is not reasonably practicable for the Contractor to fully project such impact within the thirty (30) day period, the Contractor shall accompany its claim with such supporting documentation as is then reasonably available along with a statement of the anticipated time frame when the Contractor expects to provide the additional materials. The Contracting Officer shall maintain the right throughout the process to request such additional materials as he or she shall reasonably require in consideration of the claim and shall be under no obligation to conclude his or her consideration of the claim prior to review of all relevant materials. Any adjustment to the Contract price pursuant to this article must be agreed upon or otherwise determined prior to final payment.
- (d) If the Contractor's proposed price adjustment includes the cost of property rendered obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of property disposition.
- (e) Disagreements about the right of either party to any adjustment in price or time for performance as the result of a change implemented pursuant to this article shall be subject to adjudication in accordance with the "Disputes" article of this Contract. Notwithstanding the pendency of any such dispute, the Contractor expressly acknowledges that it shall remain fully obligated to perform the Contract as so changed.
- (f) The Contractor shall promptly notify the Contracting Officer of matters, whether implemented as a change order in accordance with this article or otherwise, that the

Contractor asserts may reasonably result in either an increase or decrease in the Contract price or the time required for performance of any part of the Contract and shall take action with respect thereto as directed by the Contracting Officer. The Contractor's failure to provide such notification shall constitute a waiver of its right to seek an adjustment in the Contract price or time required for such performance.

- (g) In no event shall the Contractor be entitled to payment for change orders, additional or extra supplies or services or other modifications to any requirement or term of the Contract unless such has been authorized, in writing, by the Contracting Officer.

2. PRICING OF ADJUSTMENTS

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

3. ACCOUNTING AND RECORD KEEPING FOR ADJUSTMENTS

- (a) Applicability. This Article shall apply to any adjustment in the price of this Contract initiated by the Contractor or the Authority
- (b) Forward Price Adjustments. Unless waived in writing in advance by the Contracting Officer, the Contractor shall furnish to the Contracting Officer a proposed price adjustment in advance of performance of any Work for which a price adjustment is requested. The Contractor shall generate such records as are necessary to substantiate all elements of the proposed adjustment, which records shall be specifically segregated and identified in the Contractor's accounting system as being applicable to the pricing adjustment request.
- (c) Post Price Adjustments. This paragraph shall be applicable with respect to price adjustments which either (i) are expected to exceed \$50,000; or (ii) regardless of the value of the adjustment, arise in connection with a Contract with a base sum in excess of \$1,000,000. In addition to the records required pursuant to paragraph (b) above, in the event pricing of an adjustment under this Contract is not agreed upon between the Contractor and the Contracting Officer prior to the commencement of work for which the pricing adjustment is requested, the Contractor and any subcontractor engaged in such work , shall maintain accounts and original cost records specifically segregated and identified by job order or other appropriate accounting categories approved by the

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

- (e) Access to Records. As a condition to the Authority's obligation to consider any claim for a potential price adjustment under any provision of this Contract, the Contractor shall grant the Authority access to review and ascertain the validity of the accounting records being maintained for segregation of costs, including base cost records, and to audit any such costs as are deemed appropriate by the Contracting Officer.

- (f) Limitation on Pricing Adjustment. In the event that the Contractor or any subcontractor fails to generate, maintain, or make available any records required under this Contract, in addition to any and all rights to which the Authority may be entitled, the Contracting Officer shall determine whether such failure is willful, deliberate or otherwise precipitated by the Contractor's bad faith, in which case the Contractor shall not be entitled to any price adjustment for the work in question. Where the Contracting Officer determines that the failure was not the result of the Contractor's bad faith, the Contractor Officer shall determine the reasonable direct cost of the work for which records are not available, and add a single mark-up for indirect expenses not to exceed ten percent (10%) of the direct costs based on:
 - (1) An audit of any records of the Contractor or subcontractor made available to the Authority; and/or
 - (2) An Authority estimate as adopted or modified by the Contracting Officer.

- (g) In no event shall the Contractor and/or subcontractor be allowed any profit on claimed work for which records are not made available in accordance with its obligations under this article and otherwise in the Contract.

- (h) Flow-down clause. The Contractor shall include this article in all subcontracts issued under this Contract, modified as necessary, for proper identification of the contracting parties and the Contracting Officer.

CHAPTER V – INVOICES/PAYMENTS/ DEDUCTIONS

1. BILLING AND PAYMENT

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

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

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

With respect to any modification, change order, or otherwise, to this Contract that involves aggregate increases and/or decreases in costs plus applicable profit in excess of \$100,000, if the Contracting Officer determines that any price, including profit or fee, previously negotiated in connection with any such modification was based upon the Contractor's cost

or pricing data (including any prospective or actual subcontractor at any tier) that was not complete, accurate or current, such that the amount paid to the Contractor for such price adjustment was greater than what the Contractor would have been entitled to based upon accurate and complete data, the Authority shall be entitled to an adjustment in an amount equal to such overpayment. The Authority's rights hereunder shall be in addition to any other rights it may have under this Contract, at law or in equity.

3. SUBCONTRACTOR PAYMENTS

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

4. GARNISHMENT OF PAYMENTS

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

CHAPTER VI – CONTRACT TERMINATION/STOP WORK ORDERS/DISPUTES

1. STOP WORK ORDERS

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

2. TERMINATION FOR DEFAULT

- (a) The Contractor shall be in default if it commits a breach of any of its obligations under the Contract deemed material by the Contracting Officer. In addition to those instances specifically referred to in this Contract, the Contractor shall be in default in the following circumstances:
- (1) It fails to begin, or abandons, the work of the Contract in accordance with the contractual requirements;
 - (2) It fails to deliver the supplies or perform the services within the time specified in the Contract or any extension approved by the Contracting Officer;
 - (3) It fails to make progress in a manner deemed unreasonable by the Contracting Officer so as to endanger performance of the Contract; or
 - (4) In the view of the Contracting Officer, the Contractor is willfully violating any of the terms and conditions of this Contract or is not executing them reasonably and in good faith.
- (b) In the event of the Contractor's material breach pursuant to paragraph (a), the Contracting Officer will direct a written notice to the Contractor (a "Notice to Cure"), specifying the nature of the breach and providing that, if the Contractor fails to cure such breach within ten (10) days (or such additional time as the Contracting Officer authorizes), the Authority shall terminate the Contract, in whole or designated part, for default in accordance with this article. . Should the Contractor fail to cure the breach to the satisfaction of the Contracting Officer within the ten (10) day period, or such additional period as may be designated in the Notice to Cure, the Authority may immediately upon conclusion of such period or at any reasonable time thereafter, terminate the Contract, in whole or part, by written notice to the Contractor.
- (c) Upon receipt of a Notice of Default, the Contractor shall immediately cease performance of the work so terminated. The Authority shall have the right to take any action necessary to complete the work, including performing the Work itself, or contracting with another party to do so. In the event the work is completed directly by the Authority or by a third party, the Contractor shall be liable for the additional costs and expenses necessary to complete the work, including, without limitation, labor, materials, plant costs, tooling expenses, equipment charges, and property expenses. The costs and expenses so charged may be deducted by the Authority from any monies otherwise payable to the Contractor. Nothing contained herein shall be deemed to relieve the Contractor of its continuing obligation to perform any portion of the Contract that was not terminated.
- (d) The Authority may, in its sole discretion, waive a default by the Contractor, but such waiver shall not be deemed a waiver of any subsequent default.
- (e) Upon any termination for default, the Authority may require the Contractor to transfer title and deliver to the Authority, as directed by the Contracting Officer any completed or partially completed supplies, components (including data and intellectual property) and contract rights that the Contractor has specifically produced or acquired for the terminated portion of this Contract. Upon direction of the

Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Authority has an interest.

- (f) Upon any termination for default, the Authority shall pay for completed Supplies delivered and accepted in accordance with the terms of the Contract. The Authority shall also pay for the Contractor's reasonable actions taken at the direction of the Contracting Officer for the protection and preservation of property. The Authority may withhold from these amounts any sum that the Contracting Officer determines to be necessary to protect the Authority against loss because of outstanding or claimed liens, or other pending or anticipated claims under the Contract.
- (g) If, at any time following the Authority's issuance of a termination for default hereunder, the Contracting Officer determines that the Contractor was not in default or that the default was excusable, the termination shall thereupon be converted to a termination for convenience and the rights and obligations of the parties shall be determined in accordance with the "Termination for Convenience" article of this Contract.
- (h) Any dispute regarding any issue arising under this article shall be subject to adjudication in accordance with the "Disputes" article of this Contract. In no event shall the Authority's issuance of a Notice to Cure pursuant to paragraph (b) be the basis of a dispute pursuant to the disputes article or be otherwise subject to further review under this Contract or otherwise. The pendency of any dispute shall not constitute a basis for the delay or suspension of, or otherwise affect, the Authority's right to proceed in accordance with t this Article, including, without limitation its right to complete the work or its right to insist that the Contractor complete any portion of the work that was not terminated.
- (i) The rights and remedies of the Authority under this article are in addition to any other rights and remedies provided under this Contract, at law or in equity.

3. TERMINATION FOR CONVENIENCE

- (a) The Authority may terminate performance of this Contract in whole, or, in part, if the Contracting Officer determines that a termination is in the Authority's interest. The Contracting Officer shall terminate by delivering to the Contractor, a "Notice of Termination" specifying the extent of termination and the effective date.
- (b) Upon receipt of a Notice of Termination, except as otherwise directed by the Contracting Officer, the Contractor shall immediately proceed as follows:
 - (1) Stop work as specified in the Notice of Termination;
 - (2) Complete performance of the work not terminated;
 - (3) Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the remaining portion of the Contract;
 - (4) Terminate all subcontracts to the extent that they relate to the work terminated;

- (5) Assign to the Authority, as directed by the Contracting Officer, all of the Contractor's right(s), title, and interest under the subcontracts terminated. In such event, the Authority shall have the right to settle or pay any termination costs arising out of the subcontracts and have no further liability to the Contractor in connection with the work which was the subject of such subcontracts;
- (6) With approval of the Contracting Officer, settle all outstanding liabilities and settlement costs arising from the termination of subcontracts;
- (7) As directed by the Contracting Officer, transfer title and deliver to the Authority:
 - (i) Parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
 - (ii) The completed or partially completed plans, drawings, information and other property that, would have been required to be furnished to the Authority, if the Contract had been completed.
- (8) Take any action that may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor in which the Authority has or may acquire an interest;
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (b)(7). The Contractor is not required to extend credit to any purchaser and may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce payments to be made by the Authority under this Contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (c) The Contractor shall submit completed termination inventory schedules not later than one hundred twenty (120) days from the effective date of termination, unless such time is extended in writing by the Contracting Officer.
- (d) As soon as reasonably practicable, and in any event not later than twenty (20) business days following the Authority's issuance of a Notice of Termination pursuant to paragraph (a), the Contractor shall submit a Termination Settlement Proposal (TSP) to the Contracting Officer in the form he or she prescribes detailing the costs to which it asserts entitlement pursuant to this article. If the Contractor fails to submit the TSP within the time prescribed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due to the Contractor as a result of the termination and shall pay the amount so determined.
- (e) Following submission of the Contractor's TSP pursuant to paragraph (d), the parties shall agree upon the whole or any part of the amount to be paid or remaining to be

paid as a result of the termination. The amount may include a reasonable allowance for profit on work completed. In no event shall the total amount to be paid the Contractor pursuant to this article exceed the total Contract price as reduced by (1) payments previously made and (2) the Contract price of the remaining work not terminated.

- (f) If the parties fail to agree on the whole amount to be paid because of the termination, the Contracting Officer shall pay the Contractor the amounts he or she determines as follows, but without duplication of any amounts agreed upon under paragraph (e):
- (1) The Contract price for completed supplies or services accepted by the Authority [or sold or acquired under paragraph (b)(9)] not previously paid for, adjusted for any saving of freight and other charges.
 - (2) The total of:
 - (i) The costs incurred prior to termination, in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any costs attributable to items compensated or to be paid for under subparagraph (f)(1);
 - (ii) The cost of settling and paying termination costs under terminated subcontracts that are properly chargeable to the terminated portion of the Contract, if not excluded in subparagraph (f)(2)(i); and
 - (iii) A sum, representing profit on the items described in subparagraph (f)(2)(i) determined by the Contracting Officer pursuant to Section 49.202 of the Federal Acquisition Regulation (FAR), in effect on the date of this Contract, to be fair and reasonable. If it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the Contracting Officer shall allow no profit under this subparagraph and shall reduce the settlement to reflect the projected rate of loss.
 - (3) The reasonable indirect costs for the work terminated, including:
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of TSPs ;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (g) Except for normal spoilage, and except to the extent that the Authority expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f), the fair value, as he or she determines, of property that is unavailable or damaged so as to become undeliverable to the Authority or to a third party.

- (h) The cost principles and procedures of Part 31 of the FAR, in effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this article, except that the Authority shall not be liable for the payment of interest, however represented on any claimed costs.
- (i) The Contractor shall have the right of appeal, under the "Disputes" article, from any determination made by the Contracting Officer under paragraphs (d) or (f), except that the Contractor's failure to submit the TSP within the time provided in paragraph (d), or timely request an extension thereof, shall constitute a waiver of its right to appeal the Contracting Officer's determination pursuant to the "Disputes" article or any otherwise applicable contractual, legal or equitable remedy.
- (j) In determining any sum due to the Contractor under this article, there shall be deducted:
 - (1) All unliquidated advances or other payments to the Contractor under the terminated portion of the Contract;
 - (2) The value, as determined or reasonably projected by the Contracting Officer, of any claim which the Authority has against the Contractor under this Contract, including any third party claim if the Contracting Officer is not satisfied that sufficient insurance coverage is in place; and
 - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other items procured by the Contractor or sold under the provisions of this article and not recovered by or credited to the Authority.
- (k) If the Contractor asserts that any partial termination has rendered enforcement of the remainder of the Contract at the remaining Contract price inequitable, the Contractor may file a proposal with the Contracting Officer for an adjustment to the price(s) for the continued portion of the Contract. Such proposal shall be submitted within ninety (90) days from the effective date of termination, unless extended in writing by the Contracting Officer, and shall be accompanied by appropriate supporting documentation of the claimed inequity.
- (l) The Contractor's responsibilities and obligations under this article shall apply and remain in full force and effect notwithstanding the pendency of any dispute or other delay regarding an appropriate price adjustment or any other issue arising from the termination for convenience.
- (m) Unless otherwise provided in this Contract or by statute, the Contractor and all subcontractors whose work is encompassed in the termination settlement shall maintain all records and documents relating to the terminated portion of this Contract for three (3) years after final settlement. This includes all books and other evidence bearing on the costs and expenses of the Contractor under this Contract. The Contractor shall make these records and documents available to the Authority, its governing jurisdictions and any other federal, state, or local entities providing funding for this Contract, and to the Comptroller General of the United States, or the agents or representatives of any of them, at the Contractor's office, at all reasonable times, without any direct charge.

4. ASSIGNMENT

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

5. DISPUTES

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

Contract, however, shall be construed as making final the decisions of the Board of Directors or its representative on questions of law.

CHAPTER VII – INDEMNIFICATION/INSURANCE/RISK OF LOSS

1. INDEMNIFICATION

Vendor 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), including bodily injury or death of any person or persons, and for loss or damage to any property, caused by Vendor in connection with this Contract.

2. INSURANCE REQUIREMENTS

Vendor is required to maintain the insurance coverages outlined below over the period of performance of this agreement. Insurers must have an A. M. Best rating of at least A- VII:

- Workers’ Compensation/Employer’s Liability
- Business Auto Liability
- Commercial General Liability (CGL)

Required Minimum CGL Limits:

\$1,000,000	Each Occurrence Limit
\$1,000,000	General Aggregate Limit
\$1,000,000	Products and Completed Operations Limit

The CGL policy shall be endorsed to add WMATA as an Additional Insured.

Certificate of Insurance (COI)

Vendor shall provide WMATA a Certificate of Insurance (COI) as evidence that the insurance requirements have been satisfied. Certificates of Insurance shall be emailed to COI@WMATA.COM.

1. The Certificate Holder box should read:

Washington Metropolitan Area Transit Authority
 Office of Insurance, Room 8F
 600 Fifth Street, NW
 Washington, DC 20001
2. COI shall state the Contract # and the name of the WMATA procurement contact.
3. The COI shall provide the following:
 - a. WMATA as an Additional Insured under the CGL policy.
 - b. Required insurance is primary and non-contributory.
 - c. WMATA will be provided with written notice of cancellation of any of the required insurance policies within thirty (30) days of cancellation. Such notice shall be sent to: COI@wmata.com.
4. Insurance will be considered as acceptable upon receipt of a current COI meeting the requirements as listed above.

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

- (b) In the event of loss or damage to any deliverable or other item of work prior to the time when the Authority takes physical possession, the Contractor agrees to repair or replace the loss or damage as soon as reasonably practicable, to restore the item to the same character and condition as pre-existed the loss or damage in accordance with all Contract requirements without cost to the Authority. Nothing contained herein shall require the Contractor's repair or replacement of any loss or damage occasioned solely by the willful or negligent act(s) of the Authority.

CHAPTER VIII – INTELLECTUAL PROPERTY RIGHTS

1. PATENT INDEMNITY

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

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

2. SET-OFF

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

3. RIGHTS IN TECHNICAL DATA- GENERAL

Not Applicable.

4. RIGHTS IN TECHNICAL DATA – UNLIMITED

- (a) The term technical data as used in this article means technical writings, computer software, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether or not copyrighted, that are specified to be delivered pursuant to this Contract. The term does not include financial reports, cost analyses, and other information incidental to Contract administration. Computer software as used in this article means computer programs, computer data bases, and documentation thereof.

- (b) 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, 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:
- (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, sizes, configurations, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data; e.g., specification control drawings, catalog sheets, outline drawings. Except for the computer software, it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, process, formulae, and flow charts of the software);
 - (3) Other technical data that was , or is normally furnished without restriction by the Contractor or subcontractor;
 - (4) Other specifically described technical data that the parties have agreed will be furnished without restriction;
 - (5) All computer software regardless of whether it is technical data as defined in this Article, including the source code, algorithms, processes, formulae, and flow charts, that 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.
- (c) The Authority shall have the right to use, duplicate, or disclose technical data other than that defined in paragraph (a) in whole or in part, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be
- (1) Released or disclosed, in whole or in part, outside the Authority,
 - (2) Used, in whole or in part, by the Authority for manufacturing, or
 - (3) Used by a party other than the Authority except for: (i) emergency repair or overhaul, (ii) where the item or process concerned is not otherwise reasonably available to the Authority to enable timely performance of the work, or (iii) administration of this Contract or the inspection or verification of the product produced under this Contract where the third party has a written contract with the Authority to perform these efforts. In all cases described in this subsection, the release or disclosure outside of the Authority shall be subject to a written prohibition against further use, release or disclosure by the party receiving the technical data.
- (d) Technical data provided in accordance with paragraph (c) shall be identified by a legend that suitably recites the aforesaid limitation. Nothing herein shall impair the Authority's right to use similar or identical data acquired from other sources.
- (e) Where any item is purchased as a separate line item in 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 or she 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.

- (f) Material covered by copyright:
- (1) The Contractor agrees to and does hereby grant to the Authority, and to its Board members agents and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for the Authority's purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all (i) technical data and (ii) computer software covered by subsection (b) (5) now or hereafter covered by copyright.
 - (2) No such copyrighted matter shall be included in (i) technical data or (ii) computer software covered by subsection (b) (5) furnished hereunder without the written permission of the copyright owner for the Authority to use such copyrighted matter in the manner above described.
 - (3) The Contractor shall report to the Authority promptly and in reasonable written detail each notice or claim of copyright infringement it receives regarding any (i) technical data or (ii) computer software covered by subsection (b)(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) The Contracting Officer may retain from payment, up to ten percent (10%) of the Contract price until final delivery and acceptance of the technical data defined in this article and as required to be furnished by the Price Schedule or the contract specification.

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

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

- (c) The substance of this article shall be included in all subcontracts.

CHAPTER IX – ADDITIONAL COVENANTS/LEGAL REQUIREMENTS

1. NONDISCRIMINATION ASSURANCE

- (a) Nondiscrimination Assurance: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000(d), section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the American with Disabilities Act of 1990, 42 U.S.C. §12132, D.C. law and federal transit law at 49 U.S.C. §5332, the contractor, sub-recipient, or subcontractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, sexual preference or disability. In addition, the contractor, sub-recipient, or subcontractor agrees to comply with applicable federal implementing regulations and other 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. §2000 (e), and federal transit laws at 49 U.S.C. §5332, the Contractor agrees to comply with all applicable equal opportunity requirements of the U. S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, " 41 C.F.R. Part 60 *et. seq.*, [implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. 2000(e) note], and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of 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 that FTA may issue.

 - (2) Age: In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements that FTA may issue.

 - (3) Disabilities: In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U. S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the

Contractor agrees to comply with any implementing requirements that FTA may issue.

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

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

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

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

3. WALSH-HEALEY PUBLIC CONTRACTS ACT

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

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

4. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Not Applicable

5. CONVICT LABOR

- (a) Except as provided in paragraph (b), the Contractor shall not employ in the performance of this Contract any person undergoing a sentence of imprisonment imposed by any court of the federal government, a state, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam or the U.S. Virgin Islands.
- (b) The Contractor is not prohibited from employing persons:
 - (1) On parole or probation to work at paid employment during the term of their sentence;
 - (2) Who have been pardoned or who have served their terms; or
 - (3) Confined for violation of the laws of the federal government, the states, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—
 - (i) The worker is paid or is in an approved work or training program on a voluntary basis;
 - (ii) Representatives of local unions' central bodies or similar labor union organizations have been consulted;
 - (iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts or services;

- (iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
- (v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

6. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide, established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Authority shall have the right to terminate or rescind 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, if no fraud is suspected.

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

7. SEAT BELT USE POLICY

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

8. SENSITIVE SECURITY INFORMATION

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

9. LAWS AND REGULATIONS

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

10. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

- (a) The Contractor agrees to submit a Material Safety Data Sheet (Department of Labor Form OSHA-20), as prescribed in Federal Standard No. 313B, for all hazardous materials five days before delivery of the material, whether or not listed in Appendix A of the Standard. This obligation applies to all materials delivered under this Contract that involve exposure to hazardous materials or items containing these materials.
- (b) "Hazardous material," as used in this article, is as defined in Federal Standard No. 313B, in effect on the date of this Contract.
- (c) Neither the requirements of this article nor any act or failure to act by the Authority shall relieve the Contractor of any responsibility or liability for the safety of Authority, Contractor, or subcontractor personnel or property.
- (d) Nothing contained in this article shall relieve the Contractor from complying with applicable federal, state, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (e) The Authority's rights in data furnished under this Contract with respect to hazardous material are as follows:
 - (1) To use, duplicate and disclose any data to which this Article is applicable. The purposes of this right are to (i) apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous material (ii) obtain medical treatment for those affected by the material; and (iii) have others use, duplicate, and disclose the data for the Authority for these purposes.
 - (2) To use, duplicate, and disclose data furnished under this Article, in accordance with subparagraph (e)(1) above, in precedence over any other provision of this Contract providing for rights in data.
 - (3) The Authority is not precluded from using similar or identical data acquired from other sources.
 - (4) The data shall not be duplicated, disclosed, or released outside the Authority, in whole, or in part, for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this article applies
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"This is furnished under Authority Contract No.FQ16044 and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of the Contracting Officer.. This legend shall be marked on any reproduction of this data."
 - (5) The Contractor shall not place the above legend or any other restrictive legend on any data that (i) the Contractor or any subcontractor previously delivered to the Authority without limitations; or (ii) should be delivered

without limitations under the conditions specified in the article entitled "Rights in Technical Data."

- (f) The Contractor shall insert this article, including this paragraph, with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase designations or purchase orders) under this Contract involving hazardous material.

11. LIVING WAGE

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

- (a) The Authority's living wage rate is \$13.48 per hour, and may be reduced by the contractor's per-employee cost for health insurance.
- (b) The Contractor shall:
 - (1) Pay the Authority's living wage rate, effective during the time the work is performed, to all employees who perform work under this Contract;
 - (2) Include the living wage rate in all subcontracts that exceed \$15,000 in a twelve (12) month period awarded under this Contract;
 - (3) Maintain payroll records, in accordance with the retention and examination of records requirements in the terms and conditions, and include a similar provision in affected subcontracts that requires the subcontractor to maintain its payroll records for the same length of time; and
 - (4) Certify with each monthly invoice that the Authority's living wage rate was paid to affected employees, or if applicable, certify prior to Contract award or Contract extension, if any, that one or more of the exemptions in paragraph (d) below applies.
- (c) The Contractor shall not split or subdivide 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 Policy.
- (d) Exemptions to the Living Wage provisions include:
 - (1) Contracts and agreements subject to higher wage rates required federal law or collective bargaining agreements;
 - (2) Contracts or agreements for regulated utilities;
 - (3) Emergency services to prevent or respond to a disaster or imminent threat to public health and safety;
 - (4) Contractor employees who work less than full-time; and
 - (5) Contractors who employ fewer than ten (10) employees.
- (e) The Authority may adjust the living wage rate effective in January of each year. The adjustment will reflect the average living wage rate among Metro's Compact jurisdictions with living wage rates.. If after Contract award the living wage rate increases, the Contractor is entitled to an equitable adjustment to the Contract price in the amount of the increase for employees who are affected by the escalated wage.

- (f) Failure to comply with the Authority's Living Wage Policy shall result in the Authority's right to exercise available contract remedies, including contract termination.

12. METRIC SYSTEM

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

13. WHISTLEBLOWER PROTECTION

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

- (1) WMATA's Office of Inspector General (OIG), in person, in writing, through the OIG Hotline (888-234-2374) or email wmata-oig-hotline@verizon.net or by any other reasonable means;
- (2) WMATA's Metro Transit Policy Department (MTPD), in person, by telephone (202-962-2121) or by any other reasonable means, or to the OIG, if the information constitutes a potential violation of criminal law;
- (3) WMATA's Chief Safety Officer, in person, in writing, through the SAFE Hotline (202-249-7233) or email safety@wmata.com, or by any other reasonable means; or
- (4) Any other official, office or agency within WMATA or outside WMATA that the employee or independent contractor reasonably believes has the authority to act on the matter.

- (b) The Contractor, its employees, independent contractors and subcontractors shall cooperate with any inquiry or review by an authorized official of WMATA, or by the federal government or any other governmental entity with jurisdiction over WMATA, regarding a matter that would constitute a report under paragraph (a) or a violation of this or any whistleblower provision of this Contract, and with any enforcement or judicial proceeding arising from such inquiry or review.

- (c) The Contractor and its subcontractors shall not interfere with or deny the right of any

employee or independent contractor of either the Contractor or any of its subcontractors to make a report under paragraph (a). The Contractor and its subcontractors shall not recommend, take or threaten to take any action having a negative or adverse impact on any employee or independent contractor of either the Contractor or any of its subcontractors because he or she:

- (1) made or is perceived to have made a report under paragraph (a);
 - (2) sought a remedy under applicable law after making a report under paragraph (a);
 - (3) participated in or cooperated with an inquiry or review by an authorized official of WMATA, or by the federal government or any other governmental entity with jurisdiction over WMATA, regarding a matter that would constitute a report under paragraph (a) or a violation of this or any whistleblower provision of this Contract, or with an enforcement or judicial proceeding arising from such inquiry or review;
 - (4) refused to obey an order that would violate law; or
 - (5) refused to work or authorize work when a hazardous safety or security condition presents an imminent danger of death or serious injury, there was no reasonable alternative to refusal, there was not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, notified the Contractor or subcontractor of the condition and of the intent not to perform or authorize work.
- (d) The Contractor shall include, or shall cause to be included, the substance of this Article, including this paragraph (d), in its subcontracts at all tiers.
- (e) The Contractor and its subcontractors shall comply with the National Transit Systems Security Act (NTSSA), which prohibits discharging, demoting, suspending, reprimanding or in any other way discriminating against an employee as a reprisal for the employee lawfully and in good faith—
- (1) reporting a hazardous safety or security condition;
 - (2) refusing to work when a hazardous safety or security condition presents an imminent danger of death or serious injury, there is no reasonable alternative to refusal, there is not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, has notified the Contractor or subcontractor of the condition and of his or her intent to not perform work;
 - (3) refusing to authorize the use of any safety or security related equipment, track or structures, if the individual is responsible for their inspection or repair and reasonably believes they are in a hazardous safety or security condition, there is no reasonable alternative to refusal, there is not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, has notified the Contractor or subcontractor of the condition and of 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 subparagraph (e)(1) or refusal under subparagraphs (e)(2), (3) or (5).
- (g) The enforcement, filing and investigation of complaints, and remedies under this section shall be governed by the NTSSA, applicable federal regulations and federal law.
- (h) This Article shall be interpreted in accordance with the NTSSA. If any provision is found to be in conflict with the NTSSA, the NTSSA shall govern.
- (i) The Contractor shall include, or shall cause to be included, the substance of this article, including this paragraph, in its subcontracts at all tiers.

14. DRUG AND ALCOHOL TESTING

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

15. EMPLOYMENT RESTRICTION WARRANTY

- (a) The Contractor warrants that it will not offer employment to, solicit or discuss the interest of prospective employment of, or otherwise engage in substantive employment related discussions or communications with, any present or former Board member or employee of the Authority who has been involved, directly or indirectly, in any matter of financial interest to the Contractor until at least one (1) year after the Board member or employee has ceased involvement in or responsibility for the matter. Nor shall the Contractor knowingly engage in communications of the nature described above with any immediate family member or member of the household of any Board member or Authority employee during the period in which such Board member or employee is involved in any such matter of financial interest to the Contractor.

- (a) If a former employee of the Authority is eventually hired, the Contractor shall ensure that the former employee is not involved in negotiating or otherwise dealing with the Authority on any particular matter over which such employee had responsibility during his or her period of employment at Authority.
- (d) Should the Contractor fail to comply with the provisions hereof, and no fraud is suspected, the Contracting Officer shall have the right to withhold payment under this Contract in an amount not to exceed two percent (2%) of the total Contract amount as liquidated damages to the Authority, such withholding to be in addition to any other withholding or right of the Authority under this Contract.. Any objections or appeal shall be settled in accordance with the "Disputes" article of this Contract.

16. GRATUITIES

- (a) In connection with performance of this Contract, or any changes or modifications relative thereto, the giving of or offering to give gratuities (in the form of entertainment, gifts or otherwise) by the Contractor, or any agent, representative or other person deemed to be acting on behalf of the Contractor, to any Board member, 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 thereto is expressly forbidden. The terms of this "GRATUITIES" article shall be strictly construed and enforced in the event of violations hereof.

17. OFFICIALS NOT TO BENEFIT

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

18. ORGANIZATIONAL CONFLICTS OF INTEREST

- (a) An organizational conflict of interest (OCI) exists when the nature of the work to be performed under a proposed contract or subcontract may, without some restriction on future activities (1) result in an unfair competitive advantage to the contractor or subcontractor; or (2) impair the contractor's objectivity in performing the contracted work. Most typically this would arise when a contractor prepares a design or specification for work that is to be procured competitively. It may also arise when a contractor or one of its affiliates would have an economic interest in the outcome of a contract or project. Conflicts of interest may be either real or apparent.
- (b) In the event that the Contractor believes that it or any of its potential subcontractors may have an organizational conflict of interest, it shall notify the Contracting Officer, in writing, within five (5) working days after it becomes aware of the potential or actual organizational conflict of interest. The written notification shall identify the nature and circumstances of the perceived conflict and propose appropriate

measures to eliminate or mitigate the situation. The Contracting Officer will review the circumstances and the proposed mitigation plan and notify the Contractor accordingly, determining that: (1) no mitigation is required; (2) the conflict cannot be mitigated; or (3) the conflict can be mitigated and he or she accepts the proposed measures, or recommends other and/or additional measures.

- (c) The failure of the Contractor to identify such perceived conflicts may result in the Contract award being rescinded or the Contract terminated for default.
- (d) Should the Contractor identify or become aware of a conflict during the term of this Contract, including any extension thereof, that it could not reasonably have anticipated prior to award, it shall notify the Contracting Officer in accordance with paragraph (b) above, or request an exception to the restriction with supporting rationale. The Contracting Officer shall consider the Contractor's proposed measures to mitigate or eliminate the conflict, or the request for an exception.
- (e) If the proposed measures are not determined to be feasible or are otherwise not acceptable to the Contracting Officer, the Contracting Officer may terminate the Contract.; or
- (f) If the request for an exception is not granted by the Contracting Officer, and the Contract is not terminated for convenience, the Contractor shall be notified in writing and be given ten (10) days from the date of the written notification to take all necessary actions to comply with this provision.
- (g) If the proposed measures are determined acceptable to the Contracting Officer, the Contracting Officer may grant a specific exception to this restriction, when in the Contracting Officer's judgment, the exception will not create a conflict between the Contractor's duties and obligations under this Contract and the duties and obligations imposed on the Contractor under the contractual or other relationship.

(1) If the Contractor fails to comply with the terms of this article, and no fraud is suspected, 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 subparagraph (d)(2), terminate the contract for default pursuant to this Contract.

(2) The Contractor, in performing this Contract, shall avoid any conduct that might result in or give the appearance of creating for Board members, agents or employees of the Authority in their relationship with the Contractor, any conflicts of interest or favoritism and/or the appearance thereof. The Contractor shall avoid any conduct that might result in a Board member, agent or employee failing to adhere to the Standards of Conduct adopted by the Authority's Board of Directors.

(3) Any determination by the Contracting Officer under this article shall be final and shall be considered a question of fact within the meaning of the "Disputes" article of this Contract.

19. CONTRACTOR PERSONNEL

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

20. FALSE STATEMENTS, CLAIMS OR SUBMISSIONS

- (a) The Contractor acknowledges its responsibility to undertake its obligations under this publicly funded contract with full integrity and, to that end, to take all reasonable steps to ensure that statements, claims and submissions made pursuant to the Contract are provided in good faith and with a reasonable belief as to their truthfulness, accuracy and completeness.
- (b) In the event that it is finally determined by a court of competent jurisdiction that any statement, claim, submission, or certification made by or on behalf of the Contractor pursuant to a material element of this Contract was knowingly false, fictitious or fraudulent, the Authority shall be entitled to recover from the Contractor an amount equal to not more than three (3) times the monetary value of the benefit derived or sought to be derived by the Contractor through its false statement, claim or submission. For purposes hereof, an element of the Contract shall be deemed material, if it impacted or could have been reasonably intended to impact the disposition of any claim, dispute, proposed or implemented change order, proposed pricing or schedule adjustment of any nature, or other substantive issue directly affecting the rights of the parties under this Contract.
- (c) If fraud is suspected, then the Authority's only remedy prior to final adjudication by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the OIG of any state or federal agency providing funding under this Contract, and/or appropriate federal, state and/or local law enforcement authorities.
- (d) Where the Authority believes that there exists reasonable grounds to conclude that the Contractor has engaged in one (1) or more violations of paragraph (b), it shall so notify the Contractor in writing, describing the nature of the potential violation(s). The Contractor shall thereupon have thirty (30) days following its receipt of such notification to provide its written response. Absent resolution between the parties, the Authority shall be authorized to initiate suit in a court of competent jurisdiction, asserting the Contractor's violation(s) of paragraph (b) of this Article and the Authority's consequent entitlement to monetary relief. Claims relating to an alleged violation of this article shall be subject exclusively to judicial adjudication and shall

not be subject to the "Disputes" article of this Contract or other administrative disposition, except as may be expressly agreed upon between the parties

- (e) The rights of the Authority set forth in this article are in addition to any contractual, legal or equitable rights that may arise upon the Contractor's submission of a knowingly false claim or statement, including without limitation the Authority's right to terminate the Contract for default. This article shall not serve in any respect to limit, waive or modify any liability, civil or criminal, of the Contractor or any of its officers, agents or employees which such conduct may precipitate.

CHAPTER X – MISCELLANEOUS ADDITIONAL PROVISIONS

1. FEDERAL, STATE, AND LOCAL TAXES

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

2. FEDERAL/LOCAL/STATE SALES TAX

The Solicitation Instructions giving rise to award of this Contract advised of the nature and extent of the Authority’s exemption from federal, state, District of Columbia, municipal and local taxation and, by submission of its Offer, the Contractor certified that none of the taxes as to which the Authority is exempt were included in its proposal price(s) or the final Contract

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

3. PUBLIC COMMUNICATION

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

4. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

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

5. SEVERABILITY

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

6. SURVIVAL

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

7. ALL NECESSARY FEDERAL PROVISIONS DEEMED INCLUDED

It is the intent of the parties that each and every provision of law required to be inserted in this Contract should be and is inserted herein. Every such provision is to be deemed to be inserted herein, and if any such provision is not inserted or is not inserted in correct form,

then this contract shall be interpreted to include such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

CHAPTER XI – FEDERAL PROVISIONS

1. NOTIFICATION OF FEDERAL PARTICIPATION

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

2. ACCESS TO THIRD PARTY CONTRACT RECORDS

- (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 of the Contractor's books, documents, papers and records that are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 C.F.R. § 633.17 to provide the FTA Administrator or his authorized representatives including any Project Management Office Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U. S. C. § 5302(a)1, that is receiving federal financial assistance through the programs described at 49 U. S. C. §§ 5307, 5309 or 5311.
- (b) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (c) The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, 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. [See 49 C.F.R. § 18.39(i)(11)].

3. RIGHTS IN DATA AND COPYRIGHTS — FTA

Not applicable.

4. BUY AMERICA ACT

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

5. CHARTER BUS REQUIREMENTS

Contractor shall comply with 49 U.S.C, §§ 5323(d) and (g) and 49 C.F.R .604, which state that recipients and sub-recipients of FTA assistance may provide charter service for transportation projects that uses equipment or facilities acquired with federal assistance authorized under the federal transit laws (except as permitted by 49 C.F.R. part 604), or under 23 U.S.C. §§ 133 or 142, only in compliance with those laws and FTA regulations, "Charter Service," 49 CFR part 604, the terms and conditions of which are incorporated herein by reference.

6. SCHOOL BUS REQUIREMENTS

Pursuant to 49 U.S.C. §§ 5323(f) or (g) as amended by MAP-21, 23 U.S.C. 133, 23 U.S.C. § 142, and 49 C.F.R. part 605, recipients and sub-recipients of FTA assistance shall not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators, unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and sub-recipients shall not use federally funded equipment, vehicles, or facilities. **Violations.** If a recipient or any third party participant has operated school bus service in violation of FTA's school bus laws and regulations, FTA may: (1) Require the recipient or third party participant to take such remedial measures as FTA considers appropriate, or (2) Bar the recipient or third party participant from receiving federal transit funds.

7. BUS TESTING

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

- (1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy (ies) of the final test report(s) to the recipient prior to the recipient's final acceptance of the first vehicle.
- (2) A manufacturer who releases a report under paragraph (1) above shall provide notice to the operator of the testing facility that the report is available to the public.
- (3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to the recipient's final acceptance of the first vehicle. If configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- (4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the US before Oct. 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

8. CARGO PREFERENCE

The Contractor agrees:

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

9. CLEAN AIR ACT

- (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) Flow-down requirement. The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FTA.

10. CLEAN WATER ACT

- (a) The Contractor agrees to comply with all applicable standards, orders and/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) Flow-down requirement. The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FTA.

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

12. ENERGY CONSERVATION

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

13. 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 (21) dated October 1, 2014) between the Authority and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.
- (b) Flow-down requirement. The Contractor agrees to include this article in each subcontract financed, in whole or in part, with federal assistance provided by FTA. It is further agreed that this article shall not be modified, except to identify the subcontractor who will be subject to its provisions.

14. FLY AMERICA REQUIREMENTS

- (a) The Contractor agrees to comply with 49 U. S. C. § 40118 (the Fly America Act) in accordance with the General Services Administration's regulations at 41 C.F.R. § 301-10, which provide that recipients and sub-recipients of federal funds and their contractors are required to use U. S. flag carriers for U. S. government financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. 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.
- (b) Flow-down requirement. The Contractor agrees to include the requirements of this article in all subcontracts that may involve international air transportation.

15. PAYMENT DEDUCTIONS - NONCOMPLIANCE WITH DBE REQUIREMENTS

Not Applicable

16. GOVERNMENT-WIDE DEBARMENT OR SUSPENSION

- (a) The Contractor is bound by its certification contained in its offer to the Authority that either the Contractor, its principals, or affiliates, are excluded or disqualified. The certification is a material representation of fact, relied upon by the Authority in entering into this Contract. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the Authority, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with these requirements, throughout the term of this Contract.
- (b) Flow-down requirement. The Contractor agrees to include this requirement in all subcontracts at all tiers.

17. 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 revision thereto, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all DOT or FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests which would cause the Authority to be in violation of the FTA's terms and conditions.
- (b) Flow-down requirement. The Contractor agrees to include this article in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

18. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

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

19. FALSE STATEMENTS OR CLAIMS CIVIL AND CRIMINAL FRAUD

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

20. 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 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.
- (b) Flow-down requirement. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA.

21. 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 C.F.R. Part 19, or 49 C.F.R. Part 20. The Contractor agrees to comply with this requirement throughout the term of the Contract.
- (b) Flow-down requirement. The Contractor agrees to include these requirements in all subcontracts at all tiers under this Contract.

22. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS

The Contractor agrees to:

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

23. 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:

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

CHAPTER XII-WMATA POLICIES

1. SAFETY REQUIREMENTS

Not Applicable

2. PRE-EMPLOYMENT CRIMINAL BACKGROUND CHECK REQUIREMENT

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

3. WORKPLACE VIOLENCE/ZERO TOLERANCE

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



MID-ATLANTIC PURCHASING TEAM RIDER CLAUSE

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

Extension to Other Jurisdictions

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

Inclusion of Governmental & Nonprofit Participants (Optional Clause)

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

Notification and Reporting

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

Contract Agreement

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

Mid-Atlantic Purchasing Team:

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

PART III TECHNICAL SPECIFICATIONS

A manufacturer's name and part number must be submitted for each proposed item on the Price Schedule to ensure that proper form, fit and function is achieved.

Technical proposals will be evaluated based on the following criteria:

Part Number (P/N)—The approved part numbers are shown in the columns labeled “Vendor P/N 1, Vendor P/N 2, Vendor P/N 3, etc...”

The contractor shall indicate the Manufacturer/Brand Name, the part number, and the delivery/lead time for each item proposed. Failure to do so may necessitate rejection of the proposal in part or in its entirety.

If Offeror is proposing an alternate part rather than one of the approved part numbers, then WMATA requires further clarification to determine form, fit and function. In addition to the Manufacturer/Brand Name, the part number, and the delivery/lead time, the Offeror must provide a Manufacturer's specification sheet or cut sheet. This allows the technical team to evaluate the alternate parts being offered for equivalency and determine if the supplier will be asked to perform an FAI for the proposed part.

First Article Inspection (FAI) for Non Approved Suppliers of a Part - Parts that are not provided by the OEM or a previous supplier and/or which are not an approved P/N, will be required to go through an engineering qualification and FAI process. The costs incurred for this process will be the responsibility of the Contractor, whether approved or disapproved.

During the qualification process for a particular part, WMATA reserves the right to purchase from the originally approved supplier or OEM until the engineering qualifications and the FAI is completed, as described in the above paragraph (First Article is also found in Special Provisions #26)

Lead Time –Initial order lead time will be evaluated based on the length of time it takes the supplier to deliver the product.

Electronic spreadsheets have been included with the solicitation to be used as worksheets for the Offerors' submittals of technical information.

If using the pricing spreadsheet as part of your Technical submittal, please make sure all pricing is hidden, removed or covered.

The Technical Volume 2 should not show any pricing information.

APPENDIX A

SUPPLIER SHIPPING AND DELIVERY REQUIREMENTS

1. PURPOSE

The purpose of this document procedure is to establish the requirements for packaging, packing, identification, handling and delivery of items to the Washington Metropolitan Area Transportation Authority (WMATA). This document shall serve as the primary source for definition in this area, unless specifically directed otherwise on the purchase order.

These requirements shall be made available to all of WMATA's suppliers.

2. SCOPE

Use of this document shall ensure cost effective, safe, efficient, damage- free packaging and delivery of such items, as well as defining handling, storage, marking/labeling, documentation and transportation/delivery requirements for suppliers who provide raw materials, parts and assemblies to WMATA.

3. RESPONSIBILITIES

3.1 Authorities

All questions shall be directed to the WMATA designated Contracting Officer (CO), Contract Administrator (CA) or Purchasing Agent (PA). Packaging, Handling, Storage, and Transportation quality issues shall be directed to the WMATA Quality Assurance and Warranty (QAAW) Department through the WMATA CO, CA or PA. Suppliers shall be diligent in enforcing the elimination of paper debris, metal shavings, dirt, etc. within new and reusable shipping containers. Packaging, Packing Changes or Questions affecting preservation and packing shall be forwarded to the WMATA CO, CA or PA for disposition through the QAAW department.

3.2 Product Preservation

Packaging, packing, and shipping requirements for materials, parts, and assemblies shall meet, at a minimum, best commercial practice in accordance with ASTM D 3951-Standard Practice for Commercial Packaging. All materials, parts, and assemblies shall be able to be stored in an enclosed facility for a minimum period of one (1) year without damage or degradation to the item.

Procedure # 113-19 – Supplier Shipping and Delivery Requirements

Preservation and packaging factors shall include, but not be limited to:

- Fragile/Non-Fragile
- Sensitive to vibration or shock (electronic components, gauges, test equipment, etc.)
- Hazardous material
- Temperature sensitive (Sealers, Adhesives, Paints, Rubber products, etc.)
- Light sensitive (Rubber, Fabrics, Foams, etc.)
- Shelf Life (Batteries, Compressed Gases, Decals, Foams, Paints, Sealers/Adhesives, Rubber, Seat Belts and Webbing, Tapes, Tires, etc.)
- Shelf Life items are to be marked with the Date of Manufacture (DOM), Date of Expiration (DOE) and Manufacturer's suggested shelf life for product.
- Rubber products shall include, but not be limited to, all types of seals and gaskets. This material shall not be kinked when packaged and/or packed for shipment. Cure dates and/or shelf life dates shall be marked on the unit, any intermediate packaging, and shipping containers.
- Special orientation requirements, i.e. directional vertical/horizontal marking on the container.
- Sensitive to electrostatic discharge, electromagnetic, magnetic, or radioactive fields
- Special storage or clean environment
- Special handling equipment, handling techniques, stacking, blocking devices, or engineered containers

Other considerations shall include evaluation of industrial (commercial) packaging compared to International Specifications to ensure all required levels of protection.

Cleanliness - Items shall be free of dirt and other contaminants which would require cleaning by WMATA prior to use. Coatings and preservatives to the item for protection are not considered contaminants.

Preservation - Items susceptible to moisture, corrosion or deterioration shall be provided protection such as preservative coatings, volatile corrosion inhibitors (VCI) or desiccant unit packs in accordance with best commercial practice.

Major Assemblies - Shall be double-wrapped with 4-mml (minimum) polyethylene sheeting and all seams shall be entirely sealed with waterproof tape. Major assemblies shall be protected from moisture with MIL-D-3464 desiccant or equivalent. (Desiccant shall not be positioned directly against assembly surface).

Wrapping/Cushioning - Items requiring protection from physical and mechanical damage, or which are fragile by nature shall be protected by wrapping, cushioning, compartmentalization, or other means to mitigate shock and vibration during shipment and storage.

Packing Materials - Kraft paper, plastic sheeting, bags or sleeves, bubble wrap, polyethylene foam, polyurethane foam-in-place, nylon netting (for tubes, cylinders, etc.), plastic, tubing (bolt thread protection), and plastic caps/plugs are acceptable types of packaging materials.

Loose polystyrene material (i.e., peanuts, chips), shredded paper and starch materials (i.e. edible popcorn) shall not be used as packaging materials.
Loose materials for hazardous packaging (i.e., vermiculate) are acceptable only when shipping hazardous materials.

Plastic Bag Closure - Plastic bags used for inner packaging shall be closed by heat sealing, zip-loc, fold and fasten (tape), or tie (zip-ties, string). Use of staples is not permitted. The closure shall be adequate to retain items within the bag and prevent intrusion of contaminants or foreign objects. The bag closure shall be adequate to prevent escape of any contained liquids.
Plastic bags shall not be used for preserved (greased or oil) items. Bags fabricated from wax-coated to heavy duty kraft paper are an acceptable alternative to plastic bags.

3.3 Packaging; Unit and Intermediate

Unit Package - The unit package shall provide protection from shock, vibration, and other hazards during transportation, storage and handling.

Unit Package Quantity – All items shall be suitable for redistribution without additional repackaging or marking, unless otherwise specified. The standard unit package quantity shall be one (1) each part, set, kit or assembly. Exceptions are small, lightweight items, such as industrial hardware, which shall be unit packaged in quantities that are standard, as listed below. Bulk packaging is specifically excluded unless specified in the contract or purchase order. If bulk is specified in the contract or purchase order, maximum weight per bulk unit container (industrial hardware items) is five pounds (5lb).

Intermediate Package - The use of an intermediate package/container (bag, fiberboard carton) is encouraged particularly when such use enhances handling and transportation.
Intermediate package/container standard increments shall be 10, 25, 50 and 100 Maximum. (Size and weight of the unit package shall be considered when determining quantity)
The maximum load for a fiberboard carton shall be fifty (50) pounds.

3.4 Packing

Packing - Unit and intermediate packages not meeting the requirements for a shipping container shall be packed in shipping containers.

Kits – Packaging and packing shall be in accordance with best commercial practices. Each kit having unlike items, but identified by a single part number (kit number) shall have a packaging list identifying and detailing each item within the kit.

Shipping Containers - The shipping container (including any necessary blocking, bracing, cushioning, or waterproofing) shall comply with the regulations of the carrier used and shall provide for safe delivery to the destination. It shall be capable of handling and storing multiple loads under favorable conditions for a minimum of one (1) year.

Fiberboard Cartons - Corrugated fiberboard cartons, meeting ASTM D 5118-Standard Practice for Fabrication of Fiberboard Shipping Boxes requirements, are the preferred shipping container.

The maximum weight limit for fiberboard shall be fifty (50) pounds (for ease of handling, safety, and to minimize crushing due to stacking during transport).

Wood-Cleated Panelboard Shipping Crate - These types of crates may be used as intermediate packaging/containers as well as standalone unit containers. These crates shall meet ASTM D 6251-Standard Specification for Wood-Cleated Panelboard Shipping Boxes or equivalent.

Weather-Resistant Containers - A weather-resistant container (wood, metal, fiberglass or fiberboard) shall be used for shipping items subject to moisture damage.

Major Assembly Containers - Major assembly containers, requiring load bearing capabilities, shall comply with ASTM D 6256 or its equivalent. Contour blocking and bracing and/or Foam-In-Place cushioning (.5 pound minimum) are an acceptable means of packing.

All containers shall have fork lift access on sides and ends. Metal banding (.5"-75"), meeting ASTM 3953-Standard Specification for Strapping, Flat Steel and Seals or equivalent, is required around the circumference (to side, bottom, side) of all wood containers. Major assembly containers shall be over-packed (placed inside) in a land-sea container to protect from outside elements for transportation to WMATA in accordance with this procedure. The supplier shall specify the preferred mode of transport, depending upon the schedule and circumstances. Selection of major assembly containers is subject to WMATA's approval.

3.5 Containerization Weight and Size Limitations

Raw Stock-Skid - Bundled, or palletized raw stock material shall not exceed 4,000 pounds per unit and pallet height shall not exceed six (6) feet.

Purchase Parts - Properly protected parts containerized onto skids, bundles, or palletized loads shall not exceed 2,000 lbs. per unit and pallet height shall not exceed four (4) feet.

3.6 Marking, Labeling and Documentation

Box or Package Marking - Remove or obliterate the "old" markings from reusable shipping cartons, crates and containers.

EXCEPTION: Special handling markings (i.e., "Fragile", "UP", "Do Not Drop", "ESD", "Hazardous markings", etc.) and ISPM-15 markings are required. These markings may remain on reusable shipping containers so long as the COTR verifies that they are applicable to the product and are accurate and legible prior to re-shipment.

First Article Inspection - All shipments containing First Article Inspection (FAI) items shall be marked with a FAI identification label. If there are several orders in the shipment, each order containing FAI items shall be marked with a FAI identification label. Place the label(s) on the identification side of the package only. Do not place labels on the top or bottom of the item(s).

Source Inspection Items - All shipments containing source inspected items shall be marked with "Source Inspected" identification labels. If there are several orders in the shipment, each order containing source inspected items, shall be marked with a "Source Inspected" identification label. Place the label(s) on the identification side of the package only. Do not place labels on the top or bottom of the item(s).

Documentation - When Certificates of Compliance, tests, and/or reports are required by this RFP, these documents shall be placed in a plastic, sealed bag and shall be affixed on the same side as, and near the shipping label.

Tests and Reports - When specified in the Contract, the Contractor shall furnish WMATA's Quality Assurance and Warranty (QAAW) Department with all test results, certificates, chemical and physical test reports and any and all required documentation. Test reports and/or certification for materials supplied under this Contract shall be retained by the Contractor for a period not less than five (5) years after shipment of materials. Use of the English language is required for all tests and reports. The Contractor agrees to furnish written reports regarding schedule compliance upon the CO, CA or PA's request. Only original or copies of original documents shall be supplied for the item(s). Data transcribed onto Contractor's forms shall not be accepted.

Required Documents may be:

- Attached to the delivered item(s) in accordance with this procedure;
- Supplied to the CO, CA or PA by e-mail, fax, hand delivery or U.S. Mail.

Packing Sheet Requirements:

- Name and Address of the Supplier
- WMATA's Purchase Order Number
- WMATA's Part Number as it appears on the Purchase Order
- The Manufacturer's Part Number, including identity of the manufacturer.
- Quantity Shipped and Unit of Measure
- Other product specific information as applicable to each shipment. This information shall include, but not be limited to:
 - Rejection tag number;
 - Variation request number;
 - Condition of supply authorization, etc.

Bill of Lading Requirements:

- Supplier's name and address;
- Carrier routing;
- Description of freight according to the applicable freight classification (found in the North American Freight Classification Guide);
- WMATA's Purchase Order Number;
- Number and Type of Containers;
- Total Weight of Shipment.

3.7 Bar-Coding

Requirement - In addition to other required markings and labels, each shipment shall be identified with a barcode in accordance with the WMATA eProcurement website.

Software and Hardware Operating Requirements - Barcodes are to be created using the Advanced Shipment Notification (ASN) process, found on WMATA's eProcurement website.

Requirement for Use:

- Internet Access
- Personal Computer
- Inkjet or Laser Printer

Electrostatic Sensitive Device (ESD) - Intermediate and exterior packs are to be identified with sensitive electronic device caution labels. All ESD items shall be handled in accordance with WMATA's QAAW procedure 113-25, ESD Control.

3.8 Hazardous Materials

Compliance - Hazardous materials shipped to WMATA shall be compliant with all applicable DOT 49 C.F.R. Regulations, as allowed by 49 C.F.R. § 171.22, the IATA/ICAO Regulations (Air Transportation), IMDG (Vessel), and UN Model Regulations.

Regulatory Organizations:

- DOT-Department of Transportation;
- IATA-International Air Transportation Association;
- ICAO-International Civil Aviation Organization;
- IMDG-International Maritime Dangerous Goods;
- UN Model Regulations-Recommendations on the Transport of Dangerous Goods. Hazardous Chemicals shall be labeled, tagged or marked with the identity of the material and appropriate hazard warning per (29 C.F.R. § 1910.1200 Appendix E, A.-Labels and Other Forms of Warning).

3.9 Hazard Materials Marking and Labeling

Identification Requirements - As regulated by the 49 C.F.R. part 172 Hazardous Materials Table:

- Proper Shipping Name (Assigned)
- Hazard Class (1-9)
- Identification Number (UN, ID, NA)
- Packing Group (I, II, III, or None)

Communication Requirements - As regulated by 49 C.F.R. part 172, subparts D and E. Mark and label package with:

- Proper shipping name;
- Identification number;
- Orientation markings or other applicable markings;
- Diamond-shaped handling labels (cargo aircraft only, etc.);
- Rectangular-shaped handling labels (cargo aircraft only, etc.).

Describe the shipment on any required shipping papers - As regulated by 49 C.F.R. 172 subpart C:

- Proper shipping name;
- Hazard class;
- Identification number;
- Packing group (when applicable);
- In addition to the basic description, there may be other required information such as:

- DOT-Exemption
- EX Numbers

- Warning Indications

Material Safety Data Sheets (MSDS) - As entitled by 29 C.F.R. § 1910.1200 Appendix E (B), WMATA requires all shipments that meet the definition of a hazardous material per OSHA or DOT regulations shall include the most current MSDS with each shipment.

HAZMAT Packaging - All hazardous material packages shall meet or exceed the required specifications of 49 C.F.R. part 173- Shippers-General Requirements for Shipments and Packaging. Bulk Chemicals, Compressed Gases, and Petroleum Products - The delivery of bulk chemicals and petroleum products (e.g., fuel oil, gasoline, etc.) into above or below ground tanks at a WMATA facility shall be supervised by an authorized WMATA employee to minimize the potential for release of hazardous substances during delivery, except the delivery of bulk compressed gases. All deliveries, including compressed gases, shall be accepted only during normal working hours, or as specified within the Contract.

Packaging of Cylinders - Shall meet all requirements of compressed gases in accordance with 49 C.F.R. part 178; Specification for packaging; Subpart C-Specifications for cylinders. Filling of cylinders and re-qualification requirements shall also meet the details contained in 49 C.F.R.§ 173.300 Subpart G; Gases; Preparation and Packaging or their equivalents.

NOTE: Compressed gas containers shall display a recertification date as well as the service life date of the cylinder.

Bulk is defined as a product delivered in a transportation container and transferred at WMATA to a storage container.

WMATA's ENVIRONMENTAL HEALTH AND SAFETY CONTACT INFORMATION:

- Questions and/or comments regarding packaging, packing or transportation of hazardous materials (HAZMAT) shall be forwarded to WMATA Environmental Management & Industrial Hygiene Department for disposition through the Supplier Quality Department.

4 SUPPORTING DOCUMENTATION

Federal:

- 19 CFR 134.11, Country of Origin Marking Required
- 29 CFR 1910.1200, Appendix E, A Labels and Other Forms of Warning
- 29 CFR 1910.1200, Appendix E, B Material Safety Data Sheet (MSDS)
- 49 CFR Title 49, Code of Federal Regulations (Transportation; Parts 100 to 180)
- 49 CFR 171.22, Authorization and Requirements for the Use of International Transport Standards and Regulations
- 49 CFR 172, Hazardous Material Table
- 49 CFR 172, Subpart C Shipping Papers
- 49 CFR 172, Subpart D Marking
- 49 CFR 172, Subpart E Labeling
- 49 CFR 173, Shippers-General Requirements for Shipments and Packaging's
- 49 CFR 173.300 (301), Subpart G Gases; Preparation and Packaging Commercial and Industry:
- ASTM D 3951, Standard Practices for Commercial Packaging
- ASTM D 3953, Standard Specification for Strapping, Flat Steel and Seals
- ASTM D 5118, Standard Practice for Fabrication of Fiberboard Shipping Boxes
- ASTM D 6251, Standard Specification for Wood-Cleated Panelboard Shipping Boxes

- ASTM D 6256, Wood-Cleated Shipping Boxes with Skidded, Load-Bearing Bases International Standards of Phytosanitary Measures (Guidelines in Regulating Wood Packaging Measures in International Trade)
- JEDEC JESD 625-A, Requirements for Handling Electrostatic Discharge Sensitive (ESDS) Devices

WMATA Standards:

- QAAW procedure #113-05, Receiving and Inspection
- QAAW procedure #113-06, First Article
- QAAW procedure #113-07, Control of Non-Conforming Material
- QAAW procedure #113-15, Material Review Board
- QAAW procedure #113-25, ESD Control

COMBINED GLOSSARY OF DEFINITIONS

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

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

Acceptance Period: The number of days available to the Authority to award a Contract pursuant to this RFP from the date of proposals.

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

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

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

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

Article: One of the provisions of this Contract, each identified separately by number and title that may contain subdivisions denominated as paragraphs and subparagraphs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Disadvantaged Business Enterprise ("DBE"): A for-profit small business concern that has been certified by the Authority to be at least fifty one percent (51%) owned by one or more individuals who

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

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

Discussions: Negotiations or exchanges relating to the solicitation between an offeror and the Authority that may occur after receipt of proposals (generally after establishment of the competitive range) and before award, that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal or be followed by a request by the Contracting Officer for receipt of Best and Final Offers.

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

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

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

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

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

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

FTA: The Federal Transit Administration, an agency within the United States Department of Transportation that provides financial and technical assistance to local public transit agencies.

Government: The Government of the United States of America.

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

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

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

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

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

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

Offeror: A party submitting a proposal in response to this solicitation.

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

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

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

Period of Performance: The time allotted in the Contract for completion of the WORK. The Period of Performance begins upon the effective date of Contract execution.

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

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

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

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

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

Services: The performance of Work by a person or legal entity under contract with the Authority, including without limitation: maintenance; overhaul; repair; servicing; rehabilitation; salvage; modernization or modification of supplies, systems or equipment; routing recurring maintenance of

real property; housekeeping; operation of Authority-owned equipment, facilities and systems; communication services; architect-engineering services; professional and consulting services; and transportation and related services.

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

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

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

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

Shop Drawings: Fabrications, erections, layouts, settings, schematics, and installation drawings prepared by the Contractor for permanent structures, equipment, and systems designed by it to comply with the Contract documents.

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

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

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

Submittal: Written or graphic document or sample prepared for the work by the Contractor or a subcontractor or supplier and submitted to the Authority by the Contractor, including shop drawings, product data, samples, certificates, schedules of material, or other data.

Substantial Completion: Work or a portion thereof that has progressed to the point where it is sufficiently complete in accordance with the Contract (including receipt of test and inspection reports) so that the work, or a specified portion thereof, can be utilized for the purpose for which it is intended, and only incidental work remains for physical completion. **Substitution:** An item offered by the Contractor of significant difference in material, equipment, or configuration, which functionally meets the requirements of the Contract, but is submitted in lieu of item specified therein.

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

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

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

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

WMATA Safety Manual: A compilation of the appropriate safety and reporting requirements for the Project as specified in Section 00370, WMATA SAFETY AND SECURITY REQUIREMENTS.

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

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