



Request For Proposals (Federal)

**STONE TRACK BALLAST,
AREMA 3, 4 AND 5.**

RFP No. : FQ17050/LTR

Date: November 8, 2016

Washington Metropolitan Area Transit Authority
RFP: FQ17050/LTR

Date: November 8, 2016

SUBJECT: RFP No. FQ17050/LTR

Dear Sir/Madam:

The Washington Metropolitan Area Transit Authority (WMATA) requires a qualified contractor to provide **stone ballast, AREMA size 3, size 4 and size 5 to various WMATA locations; and alternate locations within WMATA Metrorail system; District of Columbia, Maryland and Virginia (DC, MD, VA** The ballast must meet the specifications as set forth in the Scope of Work.

The period of performance will be one (1) year base and four (4) one (1) year option period.

DBE goal: 2%.

If you have any technical, contractual, or administrative questions, please e-mail them to lrivas@wmata.com, no later than at November 16, 2016 at 10:00 am. WMATA will provide written answers, by e-mail to all those who obtain the RFP and provide their e-mail addresses. If an amendment(s) is issued resulting from questions and answers, it will be posted on our website, and a copy will be mailed to all offerors so that they can acknowledge receipt.

Your proposal must be received with all required submittals as stated in the RFP, no later than **2:00PM November 22, 2016** at WMATA, Office of Procurement and Materials, 600 Fifth Street, NW, Room 3D-02-D, Washington, DC 20001-2651.

Sincerely,



Kunj Behari
Contracting Officer
Office of Procurement and Materials

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Washington Metropolitan Area Transit Authority
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DIRECTIONS FOR SUBMITTING OFFERS

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, N.W.
Washington, DC 20001
Room 3D-02-D
Attn: Leaser T. Rivas/CA

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 2:00 P.M. (LOCAL TIME) November 22, 2016 ON DAY OF PROPOSAL CLOSING.

Washington Metropolitan Area Transit Authority
RFP: FQ17050/LTR

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 - VOLUME III

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

Questions concerning this Request for Proposals may be directed to **Leaser T. Rivas** on (202-962-5580), and email, lrivas@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;
- Ability to 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-FQ17050/LTR



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SOLICITATION, OFFER AND AWARD

CONTRACT NO.	SOLICITATION NO. RFP FQ17050/LTR	DATE ISSUED Nov 8, 2016	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 TWO (2) copies for furnishing the supplies or services in the schedules and will be received at Authority until **2:00 P.M.** Local time **November 22, 2016.** **PLEASE PROVIDE ALL VOLUMES IN HARD COPY AS WELL AS USB OR CD**
 (Hour) (Date)

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 Price 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
	See Price Schedule				\$
	(See continuation of schedule on pages 8 through 14)				

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 FQ17050/LTR**

Amendment Number _____ Dated _____

Amendment Number _____ Dated _____

Amendment Number _____ Dated _____

Amendment Number _____ Dated _____

Amendment Number _____ Dated _____

Amendment Number _____ Dated _____

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

Authorized Signature

Company Name

Date

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT RFP FQ17050/LTR

Notes to Offeror:

Description of Work:

This solicitation is to provide **mineral aggregate** for use as ballast, AREMA size 3, size 4 and size 5 to various WMATA locations within the Metropolitan area. The ballast must meet the technical specifications as set forth in the specifications package and American Railway Engineering

Award of the Contract:

The Authority will award a firm fixed price Contract for the line items in the Price Schedule to a qualified Contractor for **mineral aggregate** for use as ballast; AREMA size 3, size 4 and size 5 to be delivered to various WMATA locations within the Metropolitan area as described in the solicitation instructions.

1. Stone track Ballast shall be shipped to various WMATA locations as follows:

Alexandria Yard
3101 Eisenhower Avenue
Alexandria, VA 22314

Branch Ave Yard
5700 Capital Gateway Drive
Suitland, MD 20747

Glenmont Yard
12750 Layhill Road
Silver Spring, MD 20906

Greenbelt Yard
5801 Sunnyside Avenue
College Park, MD 20740

New Carrollton Yard
4300 Garden City Drive
New Carrollton, MD 20785

Shady Grove Yard
15903 Somerville Drive
Derwood, MD 20855

West Fall Church Yard
7251 Idylwood Road
Falls Church, VA 22043

And alternate locations within the WMATA rail system (DC, MD, VA)

“Deliveries will be coordinated by Blyden Davis, Track Supervisor. Phone: 202-374-1236.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT RFP FQ17050/LTR

If Supervisor Davis is not available, the deliveries will be coordinated by the COTR, or designee.”

2. **The insurance submission shall include:**
 - a) Current Certificate of Insurance (COI) indicating evidence of all required insurance, including:
Commercial general liability (CGL), business automobile liability insurance, additional insured endorsements and waiver of subrogation endorsements.
 - b) Contract number and work description must be on **Certificate of Insurance (COI)**.
3. **PLEASE PROVIDE ALL VOLUMES IN HARD COPY AS WELL AS USB OR CD.**
4. Complete **(APPENDIX B.)**

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT RFP FQ17050/LTR

PRICE SCHEDULE

BASE YEAR

CLIN	Description	Estimated Quantity (Tons)	Lead Time	* Unit Price	Extended Price
1-1	Ballast AREMA No. 3	200			
1-2	Ballast AREMA No. 4	10,000			
1-3	Ballast AREMA No. 5	800			
	BASE YEAR (Total Price Lines 1-3)				

*Note: Price shall include Haulage costs

Option Year One

CLIN	Description	Estimated Quantity (Tons)	Lead Time	Unit Price	Extended Price
2-1	Ballast AREMA No. 3	200			
2-2	Ballast AREMA No. 4	10,000			
2-3	Ballast AREMA No. 5	800			
	OPTION YEAR ONE (Total Price Lines 1-3)				

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT RFP FQ17050/LTR

PRICE SCHEDULE
Continuation

Option Year Two

CLIN	Description	Estimated Quantity (Tons)	Lead Time	*Unit Price	Extended Price
3-1	Ballast AREMA No. 3	200			
3-2	Ballast AREMA No. 4	10,000			
3-3	Ballast AREMA No. 5	800			
	OPTION YEAR TWO (Total Price Lines 1-3)				

*Note: Price shall include Haulage costs

Option Year Three

CLIN	Description	Estimated Quantity (Tons)	Lead Time	*Unit Price	Extended Price
4-1	Ballast AREMA No. 3	200			
4-2	Ballast AREMA No. 4	10,000			
4-3	Ballast AREMA No. 5	800			
	OPTION YEAR THREE (Total Price Lines 1-3)				

*Note: Price shall include Haulage costs

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT RFP FQ17050/LTR

PRICE SCHEDULE

Continuation

Option Year Four

CLIN	Description	Estimated Quantity (Tons)	Lead Time	* Unit Price	Extended Price
5-1	Ballast AREMA No. 3	200			
5-2	Ballast AREMA No. 4	10,000			
5-3	Ballast AREMA No. 5	800			
	OPTION YEAR Four (Total Price Lines 1-3)				

***Note: Price shall include Haulage costs**

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT RFP FQ17050/LTR

PRICE SCHEDULE

Continuation

	Total Price
Base Year	
Option Year 1	
Option Year 2	
Option Year 3	
Option Year 4	
Grand Total for Base Year and Option Years 1, 2, 3 & 4	

Authorized Signature

Company Name

Date

PRICE SCHEDULE
Continuation

1. This is an Indefinite Delivery, Indefinite Quantity (IDIQ) type contract for the items listed in the Price Schedule.
2. All quantities are estimates for bidding purposes only. The offeror is notified that there will be no adjustment of unit prices for variations in quantities between the estimated quantities and the final quantities ordered in this contract.
3. The guaranteed minimum which will be required under this contract, and which will be initiated by one or more orders during the contract shall be **\$50,000.00**. The maximum which may be ordered by one or more orders during the contract shall be for **\$4,000,000.00**
4. Failure to bid on all items will necessitate rejection of the bid.
5. Any bid that is materially unbalanced as to prices for the various items may be rejected as non-responsive. A materially unbalanced bid is one that is based on prices that are understated for some items of work and are materially overstated for other items of work.
6. The total offered price will be the sum of all price extension amounts for the listed items.
7. All extensions of the unit prices shown will be subject to verification by the Authority. In case of variation between the unit prices and the extension, the unit price will be considered the bid.
8. The initial award amount will be for the total Authority budget amount for this contract. The Authority's obligation under this Contract is limited to the amount of the orders placed and the availability of funds as described herein.
9. Offerors are advised to become familiar with the articles for availability of funds, multi-year contracts and cancellation of items. The Contractor is advised not to perform any work or incur any costs for work above the available funding, until notified in writing by the Contracting Officer.
10. Notification of the availability of additional funds shall be made as soon as practical, if, and when the funds become available, but not later than June 30th of the respective fiscal year, unless a later date is agreed to in writing.
11. This is an indefinite delivery, indefinite quantity, (IDIQ) Contract wherein all items will be ordered by the Contracting Officer, based on the items in the Price Schedule. Note that there is no guarantee that orders will be issued for the total estimated quantities or the total offer.
12. The offeror is placed on notice that it may not be paid for the estimated quantities listed on the Price Schedule Sheet. The final amount of the Contract and payment will be based on actual quantities ordered that may total more or less than the estimated quantity for each of the individual items. The Offeror is further notified that an Order may not include all listed items and some items may not be ordered from this Contract by any order. Invoices for payment shall be arranged to correspond to each order.

Authorized Signature

Company Name

Date

AWARD SCHEDULE CONTINUED FROM AWARD FORM CONTINUED
(To Be Completed at Contract Award):

CONTRACT DESCRIPTION: _____

TERM OF CONTRACT: This is a multi-year contract. The period of performance is for a period of one (1) base year and four (4) option years as described in the Special Provisions.

TYPE OF CONTRACT: Firm Fixed Unit Price Indefinite Delivery Indefinite Quantity Contract.

AVAILABILITY OF FUNDS: Funds are not available for performance under this contract beyond the fiscal year that ends June 30, 2017.

CONTRACT: In accordance with the solicitation documents, Contract # _____ incorporates the following:

RFP CQ/LTR dated __, 2016 (inclusion of Solicitation Instructions, Representations and Certifications, General Provisions, Special Provisions and Technical Specifications

RFP SOLICITATION INSTRUCTIONS

1.INTRODUCTION

- (a) The Authority seeks to award a contract requires a qualified contractor to provide approximately 11,000 tons of mineral aggregate for use as ballast, AREMA size 3, size 4 and size 5 to various WMATA locations within the Metropolitan area. The ballast must meet the specifications as set forth in the Scope of Work. To that end, it is issuing this Request for Proposals (RFP) to solicit proposals from qualified firms and individuals who can satisfy the requirements described herein.

- (b) Since this is a Low Price Technically Acceptable (LPTA) solicitation, award of a Contract hereunder shall be to the offeror whose proposal is deemed by the Authority as satisfying all technical requirements for acceptability stated in the solicitation and offers the lowest price of those satisfying all such requirements.

- (c) The Authority contemplates award of a **firm fixed price** contract. Unless otherwise specified in the Price Schedule, the Authority reserves the right to make multiple awards pursuant to this solicitation.

2. INDEFINITE QUANTITY

This solicitation seeks to award an indefinite-quantity Contract for the supplies or services specified, and effective for the period of performance stated in the Price Schedule. The quantities of supplies and/or services specified in the Price Schedule are estimates only and are not purchased by this Contract.

3. 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 and include the services to be furnished, together with any labor, materials 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 and include the items to be furnished, together with any labor, service or other work necessary for satisfactory and complete performance.

- (c) Contractor agrees that project property will remain available to be used for its originally authorized purpose throughout its useful life or disposition.

4. 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 Contract award must be directed to the Contract Administrator as follows:

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
OFFER UNDER SOLICITATION RFP CQ17010/LTR
OFFICE OF PROCUREMENT, ATTN.: LEASER T. RIVAS, CA
600 FIFTH STREET, N.W.
WASHINGTON, DC 20001

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

4. PREPARATION OF OFFERS

- (a) Offerors shall furnish all information requested by the solicitation and, in so doing, are expected to examine the Request for Proposals and all referenced documents carefully. Failure to do so will be at Offeror's risk.
- (b) The Offeror shall sign the solicitation and print or type its name on the Price Schedule and on each continuation sheet if 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 its proposal, an offeror 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 this Contract, 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. Destination.

5. EXPLANATIONS TO OFFERORS

- (a) Any explanation desired by an offeror regarding the meaning or interpretation of the solicitation or Contract including, without limitation, the terms and conditions, technical specifications or Statement of Work, and Contract drawings, must be requested in writing with sufficient time allowed for a reply to reach all offerors before proposal closing. Absent extraordinary circumstances, all inquiries must be transmitted in a time frame to ensure the Contracting Officer's receipt at least ten (10) days prior to the date specified for proposal closing. All such requests must be submitted via e-mail or first class mail to the Contract Administrator identified in Paragraph 3. Include the RFP number and Contract title in any correspondence.
- (b) Any information that the Authority furnishes 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 Contracting Officer's judgment, the information is necessary to the preparation and/or submittal of proposals or the lack of such information would be otherwise prejudicial to other prospective offerors. Offerors must acknowledge receipt of all amendments on the form provided.
- (c) Offerors are advised that oral explanations, representations or instructions of any kind relating to the subject matter of this solicitation given at any time before award of the

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Contract by any employee, officer or agent of the Authority, will not be binding upon the Authority. The Authority does not assume responsibility for the accuracy of any such communication.

- (d) The failure of a prospective offeror to request an explanation will serve to preclude it from claiming any ambiguity, inconsistency or error that should have been discovered by a reasonably prudent offeror.

6. PRE-PROPOSAL CONFERENCE – NOT APPLICABLE

For the purpose of clarifying the terms, conditions, and requirements of this Request for Proposals, a pre-proposal conference will be held to respond to questions by prospective offerors. **This pre-proposal conference will be held at _____ a.m. /p.m. on _____, in the Lobby Level Meeting Room of the WMATA Jackson Graham Building, 600 5th Street, NW, Washington, DC 20001.** It is requested that offerors submit their questions in writing, whether in advance of the meeting or during the meeting. Questions from the floor, however, are permissible.

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, prior to the date set for the proposal closing. Copies of any such amendments as may be issued will be furnished in writing to all prospective proposers.
- (b) If, in the Contracting Officer's judgment, any amendment(s) would require material changes to price proposals and/or other substantive element(s) of the proposals, the date set for proposal closing may be postponed for such period as, in the Contracting Officer's opinion, will enable offerors to revise their proposals. In such instances, the amendment will include an announcement of the new date for proposal closing.
- (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 Contracting Officer's discretion, jeopardize the offeror's right to have its proposal reviewed by the Authority

9. SUBMISSION OF PROPOSALS

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

10. PROPOSAL FORMAT INSTRUCTIONS/REQUIREMENTS

Offerors shall submit proposals as follows:

- (a) Proposal Format

PLEASE PROVIDE ALL VOLUMES IN HARD COPY AS WELL AS USB OR CD.

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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. All copies shall have the RFP number, the proposer's identity, volume number, and volume title printed on the cover page. Volumes shall be submitted in the following order:

- (1) Volume I – Cost/Price - One (1) original and any required copies of the cost/price proposal;
 - (2) Volume II – Technical - One (1) original and any required copies of the technical proposal (**Shall not include cost/price information**);
 - (3) Volume III – Contractual - One (1) original and any required copies of the completed, signed solicitation documents to include Representations, Certifications, Pre-Award Data, Certificate(s) of Insurance, DBE requirements per Appendix B (if applicable), SBE requirements per Appendix B-1 (if applicable) 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 in such a manner as to enable the Authority to engage in a thorough evaluation of its overall technical merit. Technical proposals shall be specific, detailed and complete and shall demonstrate that the offeror has a thorough knowledge and understanding of the Contract's requirements. Offerors shall avoid generalized statements that 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 Contract requirements and maintains the means to fully satisfy them.
- (d) Contractual. The Contractual volume shall contain a completed, signed Solicitation, Offer and Award form and include Representations, Certifications, Pre-Award Data, Certificate(s) of Insurance, DBE requirements per Appendix B (if applicable), SBE requirements per Appendix B-1 (if applicable) and any amendments. In the event that the offeror takes any exception to any of the Contract's terms and conditions, wishes to propose alternative Contract language or is otherwise unwilling or unable to satisfy any of the Contract's requirements such information should be clearly noted on the first page(s) of Volume III of the proposal. Failure to take exception shall constitute the offeror's acceptance.

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 proposal closing 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 proposal closing. (e.g. A proposal or revision relating to a solicitation with a closing 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 Contracting Officer determines that the late receipt was due solely to the Authority's mishandling after delivery on its 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 proposal closing; or

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- (b) A revision submitted after the date and time set for proposal closing will only be accepted if the Contracting Officer authorizes it. 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 Contracting Officer’s judgment, the late delivery was not attributable to the offeror’s acts or omissions.
- (c) The only acceptable evidence to establish the time of receipt by the Authority is the time/date stamp of that event on the proposal or any other documentary evidence of receipt maintained by the Authority.
- (d) A proposal received after proposal closing may be considered if it is the only proposal received for the solicitation, or if a late revision of any otherwise successful proposal makes its terms more favorable to the Authority.

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. A proposal may not be withdrawn after ninety (90) days from proposal closing without the Contracting Officer’s written approval.

13. RECEIPT AND REVIEW OF PROPOSALS BY THE AUTHORITY

- (a) There will be no public opening of proposals for this solicitation. Proposals will be opened by the designated Authority representative and copies of the three (3) 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 award a Contract on the basis of the initial proposals as evaluated in accordance with the Evaluation Criteria, without discussions. Accordingly, the initial proposal should contain the offeror’s best terms from both a price and technical standpoint.
- (c) Notwithstanding a determination by the Authority to proceed without conducting substantive negotiations or discussions with offerors, the Authority may engage in communications with one (1) or more offerors relating to clarification(s) of their proposals.
- (d) The Contracting Officer may conduct discussions with offerors only for the purpose of making a marginal proposal acceptable. If all initial proposals are technically acceptable, the Authority may not conduct further discussions with offerors prior to Contract award.
- (e) The Contracting Officer may request revised price proposals from all offerors who are technically acceptable.
- (g) 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

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- (a) The Authority will award a Contract 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 Criteria for Acceptability shall apply:

Technical Criteria:

1. Is your company capable of providing a yearly average of 11,000 tons of crushed AREMA 3, 4, and 5 stone ballast, composed of durable particles, free from injurious amounts of deleterious substances?
Ballast must conform to the AREMA Manual for Railway Engineering, Chapter 1, Part 2. and meet ballast gradation requirements in accordance with ASTM C136.
 2. During the past three years, has your company supplied AREMA 3, 4, and 5 stone ballast, to rail transit agencies or other rail systems?
Please provide a list of past sales/contracts during last three years for rail transit agencies, or other rail systems, including:
Rail Transit Agency/Rail System
 - Contract Number
 - Period of Performance
 - Tons of Material supplied
 - Contract/Purchase Order Amount
 - Contracting Officer Contact Information; to include Name, Phone Number, Email.
 3. Is your company capable of providing AREMA 3, 4, and 5 ballast subjected to tests in compliance with ASTM C117, C127, C142, C535, C131, C88, and D4791, and provide documentation of such testing?
- (b) The Authority reserves the right to award this Contract without discussions or further communications concerning the proposals received. Proposals should contain the offeror’s best terms from both a price and technical standpoint. The Contracting Officer reserves the right to engage in oral or written communications with proposers, if necessary to make an unacceptable proposal acceptable.
- (c) Price evaluations will be based on the total cost to the Authority for base year requirements, plus any option years.
- (d) The elements of the technical proposal will be rated in accordance with the Criteria for Acceptability. 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 Contracting Officer will evaluate price proposals for reasonableness, completeness, and realism as appropriate. Costs will be evaluated in terms of the following:
- (1) Submittal of proposed prices for both the base year (s) and the option year(s), if any;

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- (2) Any offer that is materially unbalanced may be rejected. An unbalanced offer is one (1) that is based on prices that are significantly overstated for some items and understated for other items;
- (3) The Contracting Officer will compare the price proposals to the Authority's estimate and otherwise determine reasonableness by performing a price analysis, if adequate competition exists. If, in the Contracting Officer's judgment, adequate price competition does not exist, he or she will conduct a cost analysis in order to ascertain whether the proposed price is fair and reasonable;

(b) The offeror shall provide certified cost or pricing data if the Contracting Officer requests it.

16. RATINGS FOR ACCEPTABILITY CRITERIA (LOW PRICE, TECHNICALLY ACCEPTABLE ONLY)

Each criterion will be rated using the following scoring method:

Definition:

Acceptable Meets criteria for acceptability/evaluation standards required under the technical provisions. Weaknesses are correctable.

Marginal Fails to meet criteria for acceptability/evaluation standards. Any significant deficiencies are correctable. Lacks essential information to support a proposal.

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

A rating of "Acceptable" is required to be eligible for award consideration. An initial proposal that is marginal must be determined to be either acceptable or unacceptable before any award(s) can be made. Offerors are cautioned to be aware of these standards when preparing proposals.

17. TECHNICAL PROPOSAL EVALUATION

FOR LOWEST PRICE, IF TECHNICALLY ACCEPTABLE RFPs:

The Authority will evaluate the technical proposals in accordance with the "Criteria for Acceptability" set forth in paragraph 14, above. A proposal that fails to meet the minimum standard for acceptability with respect to each element may be deemed technically unacceptable and thus ineligible for award, regardless of price.

18. PRE-AWARD INFORMATION/CONTRACTOR RESPONSIBILITY

- (a) In order to be eligible for award of a Contract, a proposer must affirmatively demonstrate to the Contracting Officer's satisfaction that it is responsible for purposes of this solicitation. Such demonstration must include 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

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to perform the Contract in a timely, satisfactory and appropriate manner. Failure to so demonstrate may result in rejection of the offeror as not responsible.

- (b) The Contracting Officer may conduct a pre-award survey and/or take other actions to obtain information regarding the proposer's responsibility, if its offer is in the competitive range or is otherwise under consideration for award. The proposer shall promptly supply information that the Contracting Officer requests regarding its responsibility in such manner and form as he or she requests.
- (c) Among other items, a proposer shall furnish the following when the Contracting Officer requests:
 - (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. The submittal of certain items and request for waiver (if applicable) are required if the proposal is \$150,000 or greater. Failure to submit forms B-12, B-13, and/or to request waivers (if applicable) may cause the proposal to be rejected. An offeror's failure to supply this information 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.

19. PRE-AWARD MEETING - NOT APPLICABLE

20. SITE VISIT/INSPECTION OFFEROR'S FACILITIES

A successful Offeror must maintain sufficient facilities that will allow it to adequately perform Contract as specified herein. WMATA may make site visits prior to Contract award to examine the offeror's facilities, and also to verify that necessary equipment, supplies, etc. are readily available.

21. CONTRACT AWARD

- (a) **FOR LOW PRICE, TECHNICALLY ACCEPTABLE AWARDS:** At the conclusion of reviewing the technical proposals for acceptability, the Contracting Officer shall award Contract to the responsible offeror whose proposal is the lowest priced out of all proposals that are technically acceptable. Such determination shall be based upon initial price proposals or revised price proposals where the Contracting Officer directs their submission.
- (b) A written award mailed or otherwise furnished to the successful offeror at any time prior to withdrawal of the proposal shall result in a binding Contract without further action by either party. Discussions conducted after receipt of an offer do not constitute the Authority's rejection or counteroffer.

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- (c) 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 best interests.

21. PERFORMANCE/PAYMENT BONDS NOT APPLICABLE

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

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 2% unless a good faith waiver is requested and approved.**

- (a) If the proposal is over \$150,000, in order for the offeror to be considered responsible, the following documents (**See Appendix B**) shall be completed and submitted with the proposal:

Schedule of DBE Participation

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

DBE Unavailability Certification
(Where applicable)

Written request for waiver, when DBE participation is less than stated percentage.

- (b) The provisions of Appendix B (if attached) do not become applicable and forms do not have to be completed, unless the total proposal price is \$150,000 or more. If the offer is \$150,000 or more and any portion of the submittal requirement is omitted, then the proposal may be found to be unacceptable and subsequently rejected. Appendix B forms and/or waivers must be completed with great care by each offeror to ensure that the proposal is acceptable

.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, creed, sex, religion, national origin, disability, sexual preference or gender identity in consideration for award.

24. WMATA'S TAX EXEMPT STATUS

- (a) Pursuant to Article XVI, Paragraph 78, of the Washington Metropolitan Area Transit Authority's Compact, as adopted by the State of Maryland, the District of Columbia, and the

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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) By submission of its proposal, the offeror certifies that none of the taxes that the Authority is exempt from 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. If a Contract is awarded on the basis of this 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 the Authority obtains it from another independent, legitimate source.
- (c) Except for the foregoing limitation, the Authority or its agents may duplicate, use, and disclose in any manner and for any purpose whatsoever, 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- NOT APLICABLE

- 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 (1) described by brand name will be considered for award, if such products are clearly identified in the proposals and the Authority determines them to fully

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meet the salient characteristics (physical, functional, or performance) requirements in the Statement of Work (SOW).

- (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 Authority's sole discretion.

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. 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 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 to make it conform to the RFP, it shall include in the proposal, a clear description of such proposed modifications, and clearly mark any descriptive material to show the proposed modifications.

28. REQUESTS FOR RECORDS

The Washington Metropolitan Area Transit Authority (WMATA), in the regular course of business, may receive from the public, including prospective vendors and bidders, requests for records on a variety of topics. It is WMATA's policy to make official agency records, including electronic records, available to the public, unless specifically prohibited by WMATA's policy or applicable laws.

- (a) "Records" means any existing writings, drawings, maps, recordings, tapes, film, microfilm, correspondence, forms, cards, photographs, optical disks, photo copies, and records stored by computer (electronic records) that are made or received by WMATA in connection with a public contract. A record does not include uncirculated personal notes, papers, electronic records and any other records that were created and retained solely as work papers for personal use of the Contracting Officer, Contract Administrator or other WMATA employee.
- (b) WMATA's contracting process allows for the release/posting of certain information concerning this Contract after its award. This includes the name of the successful offeror and the amount of the award. This information is available on WMATA's website under "Business with Metro" or directly from the Contract Administrator.
- (c) Upon WMATA's request, the successful offeror shall be required to provide a redacted copy of the successful technical and price proposals with confidential and proprietary information redacted.
- (d) After the award is announced, the winning proposal may be subject to release under WMATA's Public Access to Records Policy (PARP).
- (e) When WMATA determines that a successful proposal will be of wide public interest, WMATA will post the redacted proposal on its website. When WMATA receives three (3) or more requests for a successful proposal, WMATA will post the redacted proposal on its website.

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- (f) Requests for Records that are not made available during the procurement process and that are not generally made available during the de-briefing process will be submitted in accordance with the PARP. Requests must be in writing and sent by mail to the Office of General Counsel, Washington Metropolitan Area Transit Authority, 600 Fifth Street, NW, Washington, D.C. 20001, or by electronic mail at parpprivreq@wmata.com or by facsimile to the attention of the PARP Administrator at (202) 962-2550. If a request for records is sent directly from the requestor to a Contract Administrator, department, or independent office, that entity shall immediately forward the request to the PARP Administrator in the Office of General Counsel. If records are subject to a PARP request, a member of the PARP team will contact the company to begin the PARP document review process, which includes providing detailed written justifications for any information for which exemptions are claimed.
- (g) Neither WMATA's proposal/debriefing process nor the PARP process generally allow for the release of information that would cause competitive harm to the proposers, other organizations, WMATA's employees, or interests. Information that will be withheld includes the following:
- (1) The names of unsuccessful offerors;
 - (2) The technical and price proposals of unsuccessful offerors;
 - (3) Personal information (this does not include education and qualifications which are released) about the successful offeror or its employees that is not available to the public on the website of the successful offeror;
 - (4) Unit price details of the successful price proposal (this does not include the bottom line price, which is released);
 - (5) WMATA's technical evaluation of any proposals submitted to WMATA pursuant to a solicitation;
 - (6) The names of the vendors who file a protest to the solicitation or its award;
 - (7) The written adjudication of any protests;
 - (8) Personal information concerning WMATA's employees; and
 - (9) Trade secrets and confidential commercial or financial information obtained from an offeror.
- (h) If your company's records are subject to a PARP request (i.e., if it is the successful offeror), a broad claim of confidentiality for the entire proposal or pages of the proposal is rarely acceptable, and will likely be rejected during the PARP process. Therefore, WMATA suggests that you narrowly identify your confidential/proprietary information based on the following guidance:
- (i) Information that may be withheld/redacted:
- (1) Detailed pricing except bottom line offer amounts;
 - (2) Trade Secrets;
 - (3) Unique proprietary solutions not publicly known;
 - (4) Employee/personnel names below the executive level; however, information regarding qualifications of employees is released; and
 - (5) Subcontractor/vendor identities, if not publicly known.

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- (j) Public information subject to release:
- (1) Any information on your company's website;
 - (2) Publicly known information (even if not on your company's website);
 - (3) General company background;
 - (4) Mere compliance with RFP requirement; and
 - (5) Anything standard to the industry.

29. NOTICE OF PROTEST POLICY

- (a) The Authority's procedure for the administrative resolution of protests is set forth in Chapter 17 of WMATA's Procurement Procedures Manual (PPM). The procedures contain strict rules for filing a timely protest, for responding to a notice that a protest has been filed, and other procedural matters.
- (b) The basis on which FTA will review a grantee's protest decision is defined in §17-8. FTA will generally exercise discretionary jurisdiction over cases deemed to involve issues important to the overall third party contracting program. FTA's decision to decline jurisdiction over a protest does not imply approval of or agreement with the agency's decision or that FTA has determined that this Contract is eligible for Federal participation.
- (c) Alleged violation must be submitted to the Contracting Officer who will administratively decide the protest.
- (d) The United States District Courts for the Districts of Maryland, Virginia and the District of Columbia, and the local courts in Maryland, Virginia and the District of Columbia have jurisdiction over court actions concerning protest decisions.

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REPRESENTATIONS & CERTIFICATIONS

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 _____.

Name	Signature
Title	Company
Date	

2. AFFILIATION AND IDENTIFYING DATA

Each offeror shall complete 2.1, 2.2 if applicable, and 2.3 below, representing that:

2.1 It is, is not, owned or controlled by a parent company. For this purpose, a parent company is defined as one that either owns or controls the activities and basic business policies of the offeror. To own another company, means that 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 the offeror's basic business policy decisions, 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.

2.2 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)

2.3 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.: _____

Name	Signature
Title	Company
Date	

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3. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS

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

- 3.1 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; that prohibits discrimination on the basis of race, color, creed, national origin, sex, age; and
- 3.2 It [] has, [] has not, filed all required compliance reports; and
- 3.3 Representations indicating submittal of required compliance reports signed by proposed subcontractors will be obtained prior to subcontract awards.

Name	Signature
Title	Company
Date	

4. DISADVANTAGED BUSINESS ENTERPRISE

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

- 4.1 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 Individual" is defined in Appendix B. Notice of Requirements for Disadvantaged Business Enterprise (DBE). By submission of this offer, the offeror represents that:

- 4.2 It [] is, [] is not, currently certified by Metropolitan Washington Unified Certification Program (MWUCP) as a disadvantaged business enterprise.

- 4.3 **Special Certification Requirements for Transit Vehicle Manufacturers.** Each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA funded transit vehicle procurements, must certify that it has complied with the DBE requirements of 49 C.F.R. Part 26.

The offeror represents that it [] is or [] is not a transit vehicle manufacturer and [] has or [] has not complied with the DBE requirements of 49 C.F.R Part 26.

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Name	Signature
Title	Company
Date	

5. SMALL BUSINESS ENTERPRISE (MAY 2015)

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

5.1 It is, is not, a small business enterprise. A firm must be a small business as defined by the U.S. Small Business Administration (SBA) by applying current SBA business size standards found in 13 C.F.R. Part 121 that are applicable to the type of work the firm seeks to perform in USDOT assisted contracts. The fifty one percent (51%) owner must be a U.S. citizen or permanent resident. A firm must be organized for profit in order to be eligible for SBE certification. The firm’s average gross receipts cannot exceed the overall USDOT size standard for a small business [\$23.98 million averaged over the three (3) previous fiscal years or part of year that the business has been in existence.] Set forth in 49 C.F.R. § 26.65, at least fifty one percent (51%) of the firm’s ownership must be held by individuals who meet the personal net worth (PNW) cap of \$1.32 million as prescribed by 49 C.F.R. § 26.67.

5.2 It is, is not, currently certified by WMATA as a small business enterprise.

Name	Signature
Title	Company
Date	

6. 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:

6.1 It has a workforce of _____ employees.

6.2 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 C.F.R. §§ 60.1 and 60.2), or

6.3 It has not previously had contracts subject to the written affirmative action program requirements of the rules and regulations of the U.S. Secretary of Labor.

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Name	Signature
Title	Company
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7. 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, or administration of this Contract.

Name	Signature
Title	Company
Date	

8. CONTINGENT FEES

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:

8.1 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

8.2 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.

Name	Signature
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Date	

9. CLEAN AIR ACT AND CLEAN WATER ACT CERTIFICATION

This certification is applicable if the Contract will be federally assisted and the offer exceeds \$150,000, or the Contracting Officer believes that orders under an indefinite type Contract in any year will exceed \$150,000 or a facility to be used has been the subject of a conviction under the

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Clean Air Act [42 U.S.C. § 7413(c)(1)] or the Clean Water Act [33 U.S.C. § 1319(c)], is listed by the U.S. Environmental Protection Agency (EPA) as a violating facility, and the acquisition is not otherwise exempt:

- 9.1** Any facility to be utilized in the performance of this Contract [] is, or [] is not listed on the EPA's List of Violating Facilities;
- 9.2** 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 in the performance of this Contract is under consideration to be listed on the EPA's List of Violating Facilities; and
- 9.3** Offeror will include a certification substantially the same as this certification, including this paragraph, in every non-exempt subcontract.

Name	Signature
Title	Company
Date	

10. DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

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

10.1 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.

10.1.1 In accordance with the provisions of 2 C.F.R. Part 1200 and 2 C.F.R. Part 180, Subpart C, the offeror certifies to the best of its knowledge and belief that it and its principals:

10.1.1.1 are not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or state department or agency;

10.1.1.2 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;

10.1.1.3 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 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.

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- 10.1.2** Where the offeror is unable to certify to any of the statements in this certification, the offeror shall attach an explanation to this offer.
- 10.2** 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 this Contract.
- 10.2.1** 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.
- 10.2.2** 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.
- 10.3** The Certification required by 10.2, above, shall be included in all applicable subcontracts and the Contractor shall keep a copy on file. The Contractor shall be required to furnish copies of certifications to the Contracting Officer upon his or her request.

Name	Signature
Title	Company
Date	

11. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

- 11.1** By submission of its 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:
- 11.1.1** 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;
- 11.1.2** Unless otherwise required by law, the prices that are 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
- 11.1.3** 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.
- 11.2** Each person signing this offer certifies that:
- 11.2.1** He or she is the person in the offeror's organization responsible for the decision regarding the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to 11.1.1 through 11.1.3 above; or

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- 11.2.2** He or she is not the person in the offeror's organization responsible for the decision regarding 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 11.1.1 through 11.1.3 above; or and as their agent he or she does hereby so certify.

Name	Signature
Title	Company
Date	

12. CERTIFICATION OF NONSEGREGATED FACILITIES

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

- 12.1** 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:

12.1.1 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.

12.1.2 The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in this Contract.

12.1.3 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.

12.1.4 It further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will:

- 12.2** Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;

- 12.3** Retain such certifications in its files; and

- 12.4** 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 Non-segregated 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

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certification may be submitted either for such subcontract or for all subcontracts during a period (i.e., quarterly, semiannually or annually).

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Date	

13. NONDISCRIMINATION ASSURANCE

13.1 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, religion, national origin, sex, age, disability, sexual preference and/or gender identity in the performance of this Contract. The offeror is required to insert the substance of this clause in all subcontracts and purchase orders. The Contractor's failure to carry out these requirements is a material breach of this Contract, that 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.

Name	Signature
Title	Company
Date	

14. CERTIFICATION OF RESTRICTIONS ON LOBBYING

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

14.1 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:

14.1.1 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.

14.1.2 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."

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- 14.1.3** The undersigned shall require that the language of this certification be included in all sub-awards (including subcontracts, sub-grants and contracts under grants, loans and cooperative agreements) at all tiers and that all sub-recipients shall certify and disclose accordingly.
- 14.2** This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered. 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.
- 14.3** The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C.A. § 3801, *et.seq.* apply to this certification and disclosure, if any.

Name	Signature
Title	Company
Date	

15. 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 \$150,000.¹

- 15.1** 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.
- 15.2** 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:

15.2.1 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)

¹ If the funding for this Contract comes from an FTA grant issued before December 26, 2014, then the limit is \$100,000.

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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.

15.2.2 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.

Name	Signature
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Date	

16. CERTIFICATION OF NON-DELINQUENT TAXES

This certification is applicable to federally assisted contracts.

16.1 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:

16.1.1 It has not been convicted over the past three (3) years of violating any Federal criminal tax law or failed to pay any tax.

16.1.2 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.

16.1.3 The offeror agrees that a breach of this certification is a violation of the Federal Acquisition Regulation (FAR).

16.1.4 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.

16.1.5 It further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will:

16.2 Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the FAR.;

16.3 Retain such certifications in its files; and

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16.4 Forward the following notice to such subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

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

A Certification of Non-Delinquent Taxes must be submitted prior to award of a subcontract exceeding \$100,000 that 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).

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Date	

17. **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 interests include 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 its knowledge, information and belief in connection with this procurement:

17.1 [] 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.

17.2 [] 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
_____	_____
_____	_____
_____	_____

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17.3 The certification required by 17.1 and 17.2 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 his or her request.

Name	Signature
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Date	

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PRE-AWARD EVALUATION DATA

PROJECT DESCRIPTION: **STONE BALLAST AREMA No. 3, 4 and 5**

1. Name of firm _____
2. Address: _____
3. Individual Partnership Corporation Joint Venture
4. Date organized _____.
State where incorporated or organized _____.
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 (1) a list of similar current contracts that demonstrate 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 (2) 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 the offeror?

If the answer is yes, attach as Schedule Three (3) 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 the offeror?

If the answer is yes, attach as Schedule Four (4), the full particulars regarding each occurrence.
11. Financial resources available as working capital for the Contract:
 - a. Cash on hand: \$ _____

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b. Sources of credit: _____

12. Attach as Schedule Five (5) 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 (6), 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.
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 – TERMS AND CONDITIONS

1. AGREEMENT

The work to be performed under this Contract is to provide **Stone Ballast** AREMA size 3, size 4 and size 5 to be delivered to various WMATA locations and alternate locations within the District of Columbia, Maryland and Virginia including all necessary or incidental work, labor, training and training and materials. The Contractor agrees to perform the work in accordance with requirements and terms and conditions hereinafter set forth in this Contract. In consideration for the Contractor's complete, satisfactory and proper performance of the Contract, the Authority agrees to pay to the Contractor, and the Contractor agrees to accept as full compensation, 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, this Contract is divided into chapters, articles (also referred to as "clauses"), 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 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 shall be resolved by giving precedence to 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; (e) the technical proposal, if any, and other Contractor submissions generated as part of the Contract. In the event of a conflict within or between provisions entitled to equal precedence, the more stringent requirement shall apply.
- (b) Notwithstanding paragraph (a), if this Contract is funded, in whole or part, through the Federal Government, all contract terms mandated for inclusion by the Federal Government shall be deemed to supersede any other conflicting or inconsistent provisions of this Contract.

4. REQUIREMENTS CONTRACT - NOT APPLICABLE

- (a) Both the legal right and the legal duty to supply goods and/or services in an amount that is determined by WMATA's needs, rather than by a fixed quantity. If, however as the result of an urgent need, the Authority requires any quantity of goods or services 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) If the Contractor is unable or otherwise fails to provide goods or services within the time frames required in this Contract, the Authority reserves the right to procure them from any other source and in any other manner it deems appropriate. Nothing contained herein shall be deemed to waive, modify or impair the Authority's right to treat such failure as a material breach of the Contractor's obligations pursuant to the

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“Default” article of this Contract, or to pursue any other remedy to which the Authority may be entitled pursuant to this Contract, at law or in equity.

5. INDEFINITE QUANTITY CONTRACT

- (a) This is an indefinite-quantity Contract for the supplies or services specified, and effective for the period of performance stated in the Price Schedule. The quantities of supplies and/or services specified in the Price Schedule are estimates only and are not purchased by this Contract.
- (b) Delivery or performance shall be made only as the Contracting Officer authorizes through orders made in accordance with the “Ordering” and “Order Limitations” articles. The Contractor shall furnish to the Authority, when and if ordered, the supplies and/or services specified in the Price Schedule up to and including the quantity designated in the Price Schedule as the “maximum.” The Authority shall order at least the quantity of supplies and/or services designated in the Price Schedule as the “minimum.”
- (c) There is no limit on the number of orders that may be issued other than any limitations imposed by the “Order Limitations” clause. The Authority may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- (d) Any order issued during the effective period of this Contract and not completed within that period shall be completed by the Contractor within the time specified in the order. This Contract and WMATA’s Procurement Procedures Manual (PPM) shall govern the parties’ rights and obligations regarding that order to the same extent that they would have governed the order had it been completed during the Contract’s effective period.

6. ORDERING

- (a) The Contracting Officer shall order any supplies and/or services to be furnished under this Contract by the issuance of delivery orders or task orders. Such orders may be issued throughout the Period of Performance.
- (b) All delivery orders or task orders are subject to the terms and conditions of this Contract. In the event of a conflict between a delivery order or task order and this Contract, this Contract shall control.
- (c) If mailed, a delivery order or task order is considered “issued” when the Authority places the order in the mail. Orders may be issued electronically, if authorized by the Price Schedule.

7. ORDER LIMITATIONS

- (a) *Minimum order.* When the Authority requires supplies and/or services covered by this Contract in an amount less than **\$50,000.00** the Authority is not obligated to purchase, nor is the Contractor obligated to furnish those supplies and/or services under this Contract.
- (b) The maximum which may be ordered by one or more Orders shall be for **\$4,000,000.00.**

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- (1) The Contractor shall honor any order exceeding the maximum order limitations in this clause, unless that order (or orders) is returned to the Contracting Officer within 7 days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) ordered and the reasons. Upon receiving this notice, the Contracting Officer may acquire the supplies and/or services from another source.

8. AUDIT, AVAILABILITY, AND INSPECTION OF RECORDS- FTA

- (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 U.S. Comptroller General 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 sufficiently to properly reflect all costs incurred or anticipated to be incurred directly or indirectly in performance of this Contract. This right of examination shall include inspection of the Contractor's facilities engaged in performing this Contract at all reasonable times.
- (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, and together with all other accounts, records and cost information related to this Contract, shall be maintained and made available by the Contractor and subcontractor(s):
 - (1) At their offices at all reasonable times for inspection, audit, reproduction or such other purposes as the Contracting Officer or by anyone he or she authorizes may require 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, such records shall be maintained for a period of three (3) years from either the date of any resulting final settlement or the date of final payment, whichever is later. If a pricing adjustment is involved in any dispute or litigation related to this Contract, such records shall be maintained for a period equal to the later of three (3) years from the date of final payment or one (1) year following the final disposition of the dispute or litigation.
- (e) Subcontracts. The Contractor shall insert this article, in all subcontracts that exceed \$100,000.00.

9. AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR

Funds are not guaranteed for performance under this Contract beyond the current fiscal year that ends on **June 30th 2017**. The Authority's obligation for performance of this Contract beyond that date is contingent upon the availability of funds from which payment for Contract purposes can be made. The Authority's legal liability for any payment cannot arise for performance under this Contract, until funds are made available to the Contracting Officer for performance and until he or she notifies the Contractor of the availability, in writing. 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 that year and will be governed by the terms of this article.

10. CONTRACTING OFFICERS TECHNICAL REPRESENTATIVE (COTR)

- (a) The work will be conducted under the Contracting Officer's general directions. Authority will be delegated to the Contracting Officer's Technical Representative (COTR) to take the following actions;
- (1) Act as the principal point of contact with the Contractor. The COTR will 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 this Contract;
 - (4) Review and approve invoices and payment estimates. The COTR will forward invoices and receipts to accounting. The COTR will bring any significant discrepancies in, or disputes concerning, Contractor invoices or payments to the Contracting Officer's attention. In those cases requiring release of final retained percentages of payment, the COTR will make his or her recommendations to the Contracting Officer in writing;
 - (5) Coordinate correspondence with the Contract Administrator, if its importance significantly impacts the Contractual terms and conditions;
 - (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 DBE Office, if DBE, SBE, or SBLPP issue(s) appear that may require investigation.
 - (9) Advise the Contracting Officer whenever the COTR has reason to believe that the Contractual not-to-exceed amount will be exceeded;
 - (10) Prepare the Authority's estimate for proposed Contract modifications. Participate in negotiations for modifications;
 - (11) Approve, in writing, the Contractor's progress schedule when required.
 - (12) Receive from the Contractor, monthly, if applicable, DBE status reports and forward them to the DBE Office;
 - (13) 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;

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- (14) Maintain a comprehensive file/record of documents and correspondence concerning Contract activities and actions;
 - (15) Provide the Contract Administrator with a written notification after all supplies/services have been received with a statement that the COTR is not aware of any open issues that would preclude closeout of the Contract and that it is ready for closeout. The COTR will return the file, containing all records, correspondence, etc., to the Contract Administrator;
 - (16) Execute Standard Form 1420, which contains a detailed performance evaluation of the Contractor. If, there are one (1) or more categories in which the Contractor is deemed unsatisfactory, these evaluations must be provided to it for comment;
 - (17) 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 this Contract for exercise of the option; and
 - (18) The presence or absence of the COTR or his or her inspectors shall not relieve the Contractor from any requirements of this Contract.
 - (19) The COTR may not re-delegate or sub-delegate his or her authority to act on the Contracting Officer's behalf. If, for whatever reason the COTR is unable or unwilling to fulfill his or her responsibilities under this Contract, only the Contracting Officer can designate a new COTR.
- (b) The COTR's name and address will be provided after award.

CHAPTER II – TIME/DELAYS/LIQUIDATED DAMAGES

1. PERIOD OF PERFORMANCE

The period of performance is three hundred and sixty five (365) days commencing on the date of award.

The Authority has the unilateral right to extend this Contract by exercising up to **four (4) one (1) year option periods (or up to 48 months)** subject to all terms and conditions stated herein.

The Contracting Officer may exercise the option(s) (if any) by written notice to the Contractor prior to commencement of the option period. The Contracting Officer shall give the Contractor a preliminary notice of its intent to exercise an option within a reasonable time before the Contract expires. The preliminary notice does not commit the Authority to exercise an option.

2. OPTIONS- EVALUATION

In awarding this Contract, the Contracting Officer shall evaluate offers for any option quantities or periods contained in a solicitation in accordance with PPM §§ 4-21 through 4-23.

3. OPTIONS- EXERCISE

(a) When exercising an option, the Contracting Officer shall provide written notice to the Contractor within a reasonable amount of time before exercising the option.

(b) When the Contract provides for economic price adjustment and the Contractor requests a revision of the price, the Contracting Officer shall determine the effect of the adjustment on prices under the option before the option is exercised.

(c) In accordance with PPM § 4-23, the Contracting Officer may exercise options only after determining that—

- (1) Funds are available;
- (2) The requirement covered by the option fulfills an existing WMATA need;
- (3) The exercise of the option is the most advantageous method of fulfilling WMATA's needs, when price and other factors are considered.
- (4) Contractor is not listed in the System for Award Management's Exclusions (See www.sam.gov).
- (5) The Contractor's past performance evaluations on other Contract actions have been considered; and
- (6) The Contractor's performance on this Contract has been acceptable in that it received satisfactory ratings.

(d) The Contracting Officer, after considering price and other factors, shall make the determination on the basis of one (1) of the following:

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- (1) A new solicitation fails to produce a better price or a more advantageous offer than that offered by the option. If it is anticipated that the best price available is the option price or that this is the more advantageous offer, the Contracting Officer should not use this method of testing the market.
 - (2) An informal analysis of prices or an examination of the market indicates that the option price is better than prices available in the market or that the option is the more advantageous offer.
 - (3) The time between the award of the Contract containing the option and the exercise of the option is so short that it indicates the option price is the lowest price obtainable or the more advantageous offer. The Contracting Officer shall take into consideration such factors as market stability and comparison of the time since award with the usual duration of Contracts for such supplies or services.
- (e) The determination of other factors under subparagraph (d):
- (1) Should take into account WMATA's need for continuity of operations and potential costs of disrupting operations; and
 - (2) May consider the effect on DBEs.
- (f) Before exercising an option, the Contracting Officer shall make a written determination for the Contract file that the exercise is in accordance with the terms of the option, and the requirements of this clause. To satisfy requirements for full and open competition, the option must have been evaluated as part of the initial competition and be exercisable at an amount specified in or reasonably determinable from the terms of this Contract, such as:
- (1) A specific dollar amount;
 - (2) An amount to be determined by applying provisions (or a formula) provided in this Contract, but not including renegotiation of the price for work in a fixed-price type Contract;
 - (3) In the case of a cost-type Contract, if—
 - (a) The option contains a fixed or maximum fee; or
 - (b) The fixed or maximum fee amount is determinable by applying a formula contained in this Contract;
 - (4) A specific price that is subject to an economic price adjustment provision; or
 - (5) A specific price that is subject to change as the result of changes to prevailing labor rates provided by the U.S. Secretary of Labor.
- (g) The Contract modification or other written document that notifies the Contractor of the exercise of the option shall cite this article as authority.

4. OPTION FOR INCREASED OR DECREASED QUANTITIES OF SUPPLIES

WMATA may increase or decrease the quantities of supplies called for in the Price Schedule, at the unit price specified. WMATA may also require the delivery of a numbered line item, identified in the Price Schedule as an option item, in the quantity and at the price stated in

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the Price Schedule. The Contracting Officer may exercise the option by written notice to the Contractor within a reasonable amount of time before exercising the option. Delivery of the added items shall continue at the same rate as the like items called for under the Contract, unless the parties agree otherwise.

5. OPTIONS TO EXTEND SERVICES

WMATA may require continued performance of any services within the limits and at the rates specified in this Contract. These rates may be adjusted only as a result of revisions to the prevailing labor rates provided by the U.S. Secretary of Labor. This option provision may be exercised more than once, but the total extension of performance thereunder shall not exceed six (6) months. The Contracting Officer may exercise the option by written notice to the Contractor within a reasonable amount of time exercising the option.

6. OPTION TO EXTEND THE TERM OF THE CONTRACT

- (a) WMATA may extend the term of this Contract by written notice to the Contractor within a reasonable amount of time before exercising the option, provided that WMATA gives the Contractor a preliminary notice of its intent to extend within a reasonable amount of time before the Contract expires. The preliminary notice does not commit WMATA to the extension.
- (b) If WMATA exercises this option, the extended Contract shall include this option clause.
- (c) The total duration of this Contract, including any options under this clause shall be reasonable as determined by the Contracting Officer in consultation with counsel (COUN).

7. OPTIONS EXERCISED OUT OF SEQUENCE

WMATA may exercise options at any time, including during the base period, and in any sequence, even if it varies from the sequence stated in the Price Schedule. The Contractor may be entitled to an equitable adjustment in the Contract price, if exercising the option out of sequence causes any undue delay in performance of this Contract. If options are extended during the base period or out of sequence, any previously agreed to economic price adjustment for exercise of the option may not apply, at the Contracting Officer's discretion.

8. LIQUIDATED DAMAGES FOR DELAY – NOT APPLICABLE

- (a) *Time is of the essence to this Contract.* In the event of a delay under this Contract beyond the period of performance or beyond the period to which such time may be extended by the Contracting Officer, the Authority shall be paid damages for such delay. Since the amount of such damages and the loss to the Authority will be extremely difficult to ascertain, it is hereby expressly agreed that such damages will be liquidated and paid as follows:

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- (b) The liquidated damages for each and every day (per day), of unexcused delay, the sum of _____ dollars (\$_____.00) that is hereby agreed upon not as a penalty, but as liquidated damages.
- (c) The Authority shall have the right to deduct such liquidated damages from any monies due or which may become due to the Contractor under this Contract. If the amount that becomes due is less than liquidated damages due to the Authority, the Contractor shall pay the difference upon the Contracting Officer's demand.

9. EXTENSIONS OF TIME/FORCE MAJEURE

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

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- (e) The request for an extension of time shall be made within ten (10) days after the Contractor knows or should know of any cause for which it may claim an excusable delay. The Contractor's request shall contain any potential basis for an extension of time, describing, as fully as possible, the nature and projected duration of the delay and its effect on the completion of the work identified in the request. Within thirty (30) days after his or her receipt of all such information, the Contracting Officer shall advise the Contractor of his or her decision on such requested extension. Where it is not reasonably practicable for the Contracting Officer to render his or her decision in the thirty (30) day period, he or she shall, prior to the expiration of such period, advise the Contractor that he or she will require additional time and state the approximate date upon which he or she expects to render a decision.
- (f) In no event shall a delay in performance of the Contract occasioned solely by a force majeure event or the acts or omissions of any party **outside of the Contractor's control** 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 of the Contractor's control.

10. THE AUTHORITY'S DELAY

- (a) If the performance of all or any part of this Contract is delayed in a material manner or extent by the Authority's acts or omissions that are not expressly or impliedly authorized by this Contract or by applicable provisions of law, the Contracting Officer shall make an adjustment (excluding profit) for any increase in the cost of performance of this Contract caused by such delay and shall modify the Contract, in writing. The Contracting Officer shall make an adjustment to the delivery or performance dates and to any other Contractual provision, if such delay or interruption affected Contract compliance. The Contracting Officer shall make no adjustment under this Contract for any delay or interruption, if performance was or could have been delayed by any other cause, including, without limitation: (i) the fault or negligence of the Contractor or any subcontractor; (ii) an act constituting a force majeure event pursuant to this Contract; or (iii) any other cause for which an adjustment is provided under any other article of this Contract, at law or in equity.
- (b) An adjustment pursuant to paragraph (a) shall not be allowed:
 - (1) For any costs incurred more than twenty (20) days before the Contractor notifies the Contracting Officer, in writing, of the delay.
 - (2) Unless the claim, in a sum certain, is asserted in writing as soon as practicable after the termination of the delay. In no event, shall a Contractor assert a delay claim later than thirty (30) days after its termination. The delay claim shall be accompanied by appropriate documentation, specifically supporting the nature and extent of the claimed impact upon the cost and/or time required for performance. In any instance where it is not possible for the Contractor to fully project such impact within the thirty (30) day period, it shall support the claim with such documentation as is then reasonably available, along with a statement of the anticipated time frame when the Contractor expects to provide the additional materials. The Contracting Officer shall maintain the right throughout the process to request such additional materials as he or she shall reasonably require in consideration of the claim and shall be under no obligation to conclude his or her consideration of the claim prior

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to review of all relevant materials. Any adjustment to the Contract price pursuant this clause must be determined prior to final payment under this Contract.

11. 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 SERVICES

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

2. INSPECTION OF SUPPLIES

- (a) The Contractor shall provide and maintain an inspection system acceptable to the Authority covering supplies under this Contract and shall tender to the Authority for acceptance only supplies that have been inspected in accordance with the inspection

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system and that the Contractor determines to be in conformity with this Contract's 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 the 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. Reviews, whether exercised or not, do not relieve the Contractor of its obligations under this Contract.

- (b) The Authority has the right to inspect and test all supplies under this Contract, to the extent practicable, at all places and times, including during manufacturing, and before acceptance. The Authority shall perform inspections and tests in a manner that will not unduly delay the Contract. The Authority assumes no Contractual obligation to perform any inspection and/or test nor shall the Authority's failure to perform any inspection and/ or test relieve the Contractor of any obligation under this Contract.
- (c) If the Authority performs inspection(s) or test(s) on the Contractor's or subcontractor's premises, 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 inspections or tests.
- (d) When supplies are not ready at the time specified for inspection or testing, the Contracting Officer may charge the Contractor for any additional, associated costs. The Contracting Officer may also charge the Contractor for any additional costs of inspection or testing when prior rejection makes re-inspection or retesting necessary.

3. ACCEPTANCE OF SUPPLIES

- (a) The Authority shall accept or reject tendered supplies as promptly as practicable after delivery, unless otherwise provided in this Contract. The Authority's failure to inspect and/or accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability upon the Authority, for nonconforming supplies.
- (b) The Authority's acceptance shall be deemed conclusive, except for latent defects, fraud, willful misconduct, 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 it has under this Contract, at law or in equity, 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 the Contracting Officer determines, 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 the Contractor's receipt of a Notice of Defects or Nonconformance, the Contracting Officer may reduce the Contract price, as is equitable under the circumstances, if he or she elects not to require

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correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the 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 interests, the Contractor shall notify the Contracting Officer immediately in writing. The Contractor's notice shall include the reasons for the request, along with any proposed price reduction, that the Authority may take if the Contracting Officer agrees to authorize 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 this Contract or otherwise.

4. WARRANTY

Refer to Section 4.3 - Field Quality Control

Basis of acceptance will be based on materials placed on track. Vendor is responsible for ensuring that the materials supplied and as placed conform to the requirements specified herein. If material loaded, being loaded or installed does not conform to specified requirements, WMATA will reject the material and the vendor will not resume ballasting operations until the fault has been corrected and defective material has been disposed of by the vendor and without cost to WMATA.

- (a) Vendor will replace defective material, when required.
- (b) In the event that any work covered by the warranty provisions fails during the warranty period, the Contractor shall repair or replace the work within three (3) days without cost or expense to the Authority.
- (c) WMATA has the right to stop delivery of material to WMATA location after visual inspection, pending sampling and testing.
- (d) Two samples of the delivered ballast product from each 4000 tons will be inspected. Each sample will be representative and weigh not less than 100 pounds and will be tested for conformance with the specifications.
- (e) Any warranty work shall be accomplished with minimum disruption to the Authority's operations and to its maintenance and service facilities. The Authority shall at its sole discretion determine the availability of facilities for warranty work.
- (f) The Authority's rights 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. CORRECTION OF DEFICIENCIES

- (a) The Contractor must replace materials or correct workmanship not conforming to the Contract's requirements at no additional cost to WMATA. In addition, the Contractor is subject to any liquidated damages specified in this Contract or actual damages incurred by WMATA. If the Contractor fails to correct deficiencies, the Contracting Officer, may take specific action as follows:
- (1) Replace or correct the item or work at the Contractor's expense. This may be accomplished by award of a new contract or by use of WMATA's own resources.
 - (2) Accept the items with a reduction in price. This action will be accomplished by formal modification to this Contract. The reduced price will be based upon the reasonable value of the item, considering the possible cost of correcting the item.
 - (3) Terminate this Contract for default. If the item or work must be re-procured, the Contractor is normally liable for excess costs incurred by WMATA in accordance with the "Termination for Default" article of this Contract.

7. FIRST ARTICLE INSPECTION – NOT APPLICABLE

- (a) The Contractor shall deliver one (1) unit to the Authority for first article (pre-production) tests. The shipping documentation shall contain this Contract number and the lot/item identification number. The characteristics for the first article inspection and its testing requirements are stated in the technical specifications/ Statement of Work.
- (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 modifications, or repairs to the first article or select another first article for testing. The Contractor shall pay for all costs related to these tests. The Contractor shall furnish any additional first article under this Contract within the time specified by the Authority. The Contracting Officer may make an equitable adjustment to the Contract for any schedule extension related to these tests, at no cost to the Authority.
- (d) Unless otherwise provided in the Contract, the Contractor:
- (1) May deliver the approved first article as a part of the Contract quantity, if it meets all of the Contract's requirements for acceptance and was not damaged or impaired in testing; and

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- (2) 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 repairs to the first article during any first article test.
- (f) The Authority will inspect the first article in accordance with the Contract's requirements. A written report will be forwarded to the Contractor in accordance with (b) above.

8. 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 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 warehouse unloading platform, or receiving dock, at the Contractor's expense. WMATA shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery of the supplies to the destination, unless such charges are caused by WMATA's acts or omissions, acting in its Contractual capacity. If the Contractor uses a rail carrier or freight forwarder for less than full carload shipments, the Contractor shall assure that the carrier will furnish tailgate delivery, if transfer to truck is required to complete delivery to WMATA.
- (b) The Contractor shall:
 - (1) Pack and mark the shipment to comply with this Contract's 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 delivery point 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 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.

9. QUALITY ASSURANCE/QUALITY CONTROL

The Contractor shall be responsible for quality assurance and for assuring that the work conforms to the requirements of this Contract. The Contractor shall maintain an effective and economical quality control program planned and developed in conjunction with other Contractor functions necessary to satisfy this Contract's requirements. The quality control

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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 Contract's quality requirements and an organized approach to satisfying them. The program shall ensure that quality requirements are satisfied throughout all phases of Contract performance, including, as applicable, design development, purchasing, fabrication, processing, assembly, inspection, testing, packaging, delivery, and storage and shall provide for the early 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, and without notice to the sureties, if any, direct and implement change orders, within the general scope of this Contract, including but not limited to one or more of the following:
 - (1) Nature and/or extent of services to be performed or supplies to be furnished;
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.); or
 - (3) Place of performance of the services or delivery of the supplies.
- (b) If, in the Contracting Officer's judgment, any change causes an increase or decrease in the cost of, or the time required for, the performance of any part of this Contract, whether or not directly changed by the order, he or she shall make an equitable adjustment to the Contract price, the delivery schedule, or both, and shall modify the Contract, in writing, 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, it must submit a written claim 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, 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 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 as 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) Disagreement regarding either party's right 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 change orders or otherwise, that the Contractor believes may reasonably result in either an increase or decrease in the Contract price or the time

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required for performance of any part of the Contract and shall take action as the Contracting Officer directs. 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 this Contract, unless the Contracting Officer authorizes, it in writing.

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 it arises under the Contract or otherwise.
- (b) As part of its proposal for any Contract modification requiring a price adjustment in excess of \$100,000, the Contractor shall submit to the Contracting Officer, 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. At the Contracting Officer's discretion, the Contractor, 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 Contract price initiated by the Contractor or the Authority.
- (b) *Forward Price Adjustments.* Unless waived in writing, the Contractor shall furnish to the Contracting Officer, a proposed price adjustment in advance of performance of any work for which the 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 to price adjustments that either (i) are expected to exceed \$50,000; or (ii) 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, if pricing of an adjustment under this Contract is not agreed upon between the parties prior to the commencement of work for which the pricing adjustment is requested, the Contractor and any subcontractor engaged in work for which the pricing adjustment is requested, shall maintain accounts and original cost records specifically segregated and identified by job order or other appropriate accounting categories that the Contracting Officer approves 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

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

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

- (f) *Limitation on Price Adjustments.* If the Contractor or any subcontractor fails to generate, maintain, or make available any records required under this Contract, in addition to any 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, he or she shall determine the reasonable direct costs 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 the Contractor's or subcontractor's records made available to the Authority; and/or
 - (2) The Authority's estimate as the Contracting Officer adopts or modifies

- (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 Contract.

- (h) *Flow-down clause.* The Contractor shall ensure the inclusion of 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 this Contract, including, but not limited to, all labor and material required to be 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 this 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 and acceptance 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 (1) 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 (1) 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.

Also mail one (1) copy of each invoice to the Contracting Officer's Technical Representative (COTR). A letter appointing the COTR will be included in the Contract award package.

- (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, and contact name and email address. Final invoices must clearly be marked "Final" and cite the amount of this Contract, amount previously paid, and the balance due.
- (d) The Authority shall remit payment, generally within thirty (30) days of its receipt and acceptance of an invoice satisfying the requirements of paragraphs (b) and (c), at the prices stipulated in the Contract for supplies delivered and accepted or services rendered and accepted, less any applicable deductions.

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

If the Contracting Officer determines that any price, including profit or fee, previously negotiated in connection with any modification to this Contract involving changes in cost plus applicable profit in excess of \$100,000 was based upon the Contractor's or subcontractor's cost or pricing data that was not complete, accurate or current, such that the amount the Authority paid to the Contractor for such price adjustment was greater than the Contractor would have been entitled 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 amounts due pursuant to the terms of its subcontracts. The Contractor shall pay each subcontractor for satisfactory performance of its contract, or any billable portion thereof, no later than ten (10) days from the date of the Contractor's receipt of payment from the Authority for work by that subcontractor. The Contractor shall also release, any retention withheld from the subcontractor within ten (10) days of satisfactory completion of all work required by that subcontractor.
- (b) The Contractor shall certify on each payment request to the Authority that payment has been or will be made to all subcontractors in accordance with paragraph (a) above. The Contractor shall notify the Contracting Officer 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 the terms of this article, the Contractor agrees to fully cooperate in any Authority investigation, and, if deemed appropriate by the Authority, to implement appropriate remedial measures to ensure future compliance.
- (d) The Contractor agrees that the Contracting Officer may provide information that he or she 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 create a Contractual relationship between the Authority and any subcontractor, shall make the subcontractor an intended beneficiary of this Contract or shall alter or affect traditional concepts of privity of contract.

4. GARNISHMENT OF PAYMENTS

Payments 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 in this Contract, as appropriate.
- (b) If a SWO is cancelled or expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment to the delivery schedule or Contract price, or both, and shall modify the Contract in writing if, in his or her judgment:
 - (1) The SWO results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and
 - (2) The Contractor submits a written claim for such adjustment within thirty (30) days after the end of the period of work stoppage. At the Contracting Officer's discretion, the Authority may act upon any 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 this Contract.

2. TERMINATION FOR DEFAULT- FTA

- (a) The Contractor shall be in default if it commits a breach of any of its obligations under this Contract deemed material by the Contracting Officer. In addition to those instances specifically referred to in this Contract, the Contractor shall be in default in the following circumstances:
 - (1) It fails to begin, or abandons, the work of the Contract in accordance with the contractual requirements;
 - (2) It fails to deliver the supplies or perform the services within the time specified in this Contract or any extension that the Contracting Officer approves;

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- (3) It fails to make progress in a manner that the Contracting Officer deems unreasonable so as to endanger performance of this Contract; or
 - (4) In the view of the Contracting Officer, the Contractor is willfully violating this Contract or is not executing it reasonably and in good faith.
- (b) In the event the Contractor's material breach pursuant to paragraph (a), the Contracting Officer is authorized to direct a written notice (a "Notice to Cure") to the Contractor, specifying the nature of the breach and stating that the Contractor has ten (10) days to cure the breach or such additional time as the Contracting Officer authorizes. If the Contractor fails to cure the breach in the time specified in the Notice to Cure, the Contracting Officer may terminate this Contract, in whole or designated part, for default after providing 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, material costs, plant costs, tooling expenses, and equipment and property costs. The Authority may deduct the costs and expenses so charged and pay them out of any monies otherwise payable to the Contractor. Nothing contained herein shall be deemed to relieve the Contractor of its continuing obligation to perform any portion of this Contract that was not terminated.
- (d) The Contracting Officer may, at his or her 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 Contracting Officer may require the Contractor to transfer title and deliver to the Authority, 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. At the Contracting Officer's direction, the Contractor shall also protect and preserve property in its possession in which the Authority may have an interest.
- (f) Upon any termination for default, the Authority shall pay for supplies delivered and accepted and/or services rendered and accepted in accordance with the terms of this Contract. The Authority may also compensate the Contractor for actions that it reasonably takes at the Contracting Officer's direction for the protection and preservation of property. The Authority may withhold from these payments any sum that the Contracting Officer determines to be necessary to protect the Authority against loss because of outstanding or claimed liens, or pending or anticipated claims under the Contract.
- (g) If, at any time following the Authority's issuance of a termination for default hereunder, it is determined that the Contractor was not in default or that the default was excusable, the termination shall 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.

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- (h) Any dispute or disagreement 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 otherwise be 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 this article, including without limitation, its right to complete the work or its right to insist that the Contractor complete any portion of the Contract that was not terminated.
- (i) The Authority’s rights and remedies in this article are in addition to any other rights and remedies provided under this Contract, at law or in equity.

3. TERMINATION FOR CONVENIENCE- FTA

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

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- (8) Take any action that may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Contract that is in the Contractor's possession and in which the Authority has or may acquire an interest;
 - (9) Use its best efforts to sell, as the Contracting Officer authorizes, 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 that the Contracting Officer prescribes. The proceeds of any transfer or disposition will be applied to reduce payments to be made by the Authority under this Contract, credited to the price or cost of the work, or paid in any other manner that the Contracting Officer directs.
- (c) The Contractor shall submit complete termination inventory schedules not later than one hundred twenty (120) days from the effective date of termination, unless the Contracting Officer extends the time in writing.
 - (d) As soon as reasonably practicable, and 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 that 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 to 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 disagree on the whole amount to be paid because of the termination, the Contracting Officer shall pay the Contractor the amounts that 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 that the Authority accepted [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);

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

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any third-party claim, if the Contracting Officer is not satisfied that sufficient insurance coverage is in place; and

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

4. ASSIGNMENT- FTA

- (a) Except as otherwise provided in this article, the Contractor shall not transfer any of its rights and obligations under this Contract to third parties without the Contracting Officer's prior, written consent. The Contracting Officer may recognize a third party as successor in interest to this Contract in the event of a transfer of all or substantially all of the Contractor's assets, a change in a division of the Contractor involved in the performance of this Contract, or if a parent company provides performance guarantee(s) under this Contract, (i.e., sales of assets, transfer of assets pursuant to merger or consolation, or incorporation of a proprietorship or partnership). Such recognition shall be at the Contracting Officer's discretion after review of the facts and circumstances surrounding each request. The Contracting Officer, at his or her discretion, may conduct an evaluation of the successor party's capability to perform this Contract in the same manner and to the same extent that he or she conducted 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 that the Contracting Officer does not authorize shall constitute a material breach of this Contract and the Contracting Officer may

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terminate this Contract in accordance with the "Termination for Default" article set forth in this Contract.

- (c) Nothing contained herein shall be deemed to preclude the Contractor's assignment of claims for monies due or to be become due to it under this Contract to a bank, trust company or other financing institution, including any Federal lending agency, upon written notice of such assignment to the Contracting Officer.

5. DISPUTES- FTA

- (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 thereof to the Contractor. The Contracting Officer's decision shall be final and conclusive unless, within thirty (30) calendar days from the date of its receipt, the Contractor mails or otherwise furnishes to the Contracting Officer, a written notice of appeal addressed to the Authority 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 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 this Contract in accordance with the Contracting Officer's decision. The Armed Services Board of Contract Appeals (ASBCA) is the Board of Directors' authorized representative 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.

6. EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS FOR CONSTRUCTION ACTIVITIES- FTA

- (a) When undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Contractor agrees to comply with U.S. DOL regulations "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Part 60, and Executive Order 11246 "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000 (e) note.

CHAPTER VII – INDEMNIFICATION/INSURANCE/RISK OF LOSS

1. INDEMNIFICATION

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

2. INSURANCE REQUIREMENTS

EXHIBIT A

(NOTE TO BIDDERS: If you do not currently carry all of the required insurance for this RFP, a current certificate of insurance (COI) evidencing the insurance you do carry and a letter from your insurance agent/broker stating that 'if our client (you) are awarded the contract, the required coverage will be provided' will suffice.)

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I. MINIMUM REQUIRED INSURANCE: MINIMUM LIMITS OF INSURANCE

INSURANCE TYPE	LIMITS	BASIS
Workers' Compensation	Statutory	
Employers' Liability	\$1,000,000	Each Accident
	\$1,000,000	Disease Policy Limit
	\$1,000,000	Disease Each Employee
Commercial General Liability		
	\$1,000,000	Each Occurrence Limit
	\$2,000,000	General Aggregate Limit
	\$1,000,000	Products-Completed Operations Limit
Business Auto Liability		
	\$1,000,000	Combined Single Limit

Railroad Protective Liability Insurance (RRP)		
	NOT APPLICABLE	Each Occurrence Limit
	NOT APPLICABLE	Aggregate Limit

Professional Liability		
	NOT APPLICABLE	Each Claim
Pollution Liability		
	NOT APPLICABLE	Each Claim

Technology Errors & Omissions Liability		
	NOT APPLICABLE	Each Claim

II. MINIMUM REQUIRED INSURANCE: MINIMUM INSURANCE COVERAGES AND COVERAGE PROVISIONS

- 1) Contractor is required to maintain the prescribed insurance outlined in this Exhibit A during the entire period of performance under this contract. Notice to Proceed (NTP) will not be issued until all required insurance has been approved by WMATA.
- 2) The prescribed insurance coverage and limits of insurance are minimum required coverages and limits. Contractor is encouraged, at its sole cost and expense, to

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- purchase any additional insurance coverages and or limits of insurance that Contractor deems prudent and necessary to manage risk in the completion of this contract.
- 3) Upon written request from WMATA, contractor shall provide copies of any requested insurance policies, including applicable endorsements, within five (5) business days of such request.
 - 4) Receipt, review or communications regarding certificates of insurance (COI), insurance policies, endorsements, or other materials utilized to document compliance with these Minimum Insurance Requirements does not constitute acceptance by WMATA.
 - 5) Insurance companies must be acceptable to WMATA and must have an A. M. Best rating of at least A- VII.
 - 6) Unless otherwise noted, "Claims Made" insurance policies are not acceptable.
 - 7) Any insurance policy utilizing a Self-Insured Retention (SIR) requires written approval from WMATA.
 - 8) Contractor must incorporate these Minimum Insurance Requirements into contract requirements of all subcontractors of every tier; however, Contractor, at its sole peril, may amend these Minimum Insurance Requirements for its subcontractors, but doing so does not relieve Contractor from its respective liability to WMATA.
 - 9) Compliance with these Minimum Insurance Requirements does not relieve Contractor from Contractor's respective liability to WMATA, even if that liability exceeds the Minimum Insurance Requirements.

III. COVERAGE-SPECIFIC REQUIREMENTS

Commercial General Liability

- 1) Commercial General Liability (CGL) shall be written on ISO Occurrence Form CG0001 (12/04) or its equivalent. Equivalency determination shall be made in WMATA's sole and unreviewable discretion.
- 2) Required minimum limits of coverage may be achieved through a combination of the aforementioned CGL coverage form and an Umbrella/Excess Liability coverage form(s), provided that the Umbrella/Excess Liability coverage form(s) provides the same or broader coverage than the prescribed CGL coverage form.
- 3) Policy shall be endorsed with Additional Insured Endorsement(s) in compliance with the "Additional Insured" Section below.
- 4) Policy shall be endorsed with a Waiver of Subrogation Endorsement(s) in compliance with the "Waiver of Subrogation" section below.
- 5) The definition of "Insured Contract" shall be modified to provide coverage for contractual liability for any contracts involving construction or demolition operations that are within 50 feet of a railroad, and sidetrack agreements.
- 6) Defense Costs (Allocated Loss Adjustment Expense) must be included and outside of the policy limits for all primary liability and Umbrella/Excess Liability policies.

Business Auto Liability

- 1) Business Auto Liability insurance shall be written on ISO Business Auto Coverage Form CA 00 01 03 06, or its equivalent. Equivalency determination shall be made in WMATA's sole and unreviewable discretion.
- 2) Policy shall be endorsed with Additional Insured Endorsement(s) in compliance with the "Additional Insured" Section below.
- 3) Policy shall be endorsed with a Waiver of Subrogation Endorsement(s) in compliance with the Waiver of Subrogation" section below.
- 4) Business Auto Liability minimum Combined Single Limit requirements may be obtained through the combination of a primary business auto liability policy and an Umbrella/Excess Liability policy provided that the Umbrella/Excess Liability policy complies with items 2 and 3 above.
- 5) MCS-90 Endorsement for work involving the transportation or disposal of any hazardous material or waste off of the jobsite. If the MCS-90 Endorsement is required, minimum auto liability limits of \$5,000,000 per occurrence are also required.
- 6) Non-Owned Disposal Site (NODS) Endorsement providing coverage for the Contractor's legal liability arising out of pollution conditions at the designated non-owned disposal site.

IV. OTHER

Additional Insured

- 1) Contractor and subcontractors of every tier are required to add WMATA and WMATA Board of Directors as additional insured on all required insurance including excess liability policies, with the exception of Workers' Compensation and Professional Liability.
- 2) Coverage provided to Additional Insured shall be primary and non-contributory to any other insurance available to the Additional Insured, including coverage afforded to the WMATA as an additional insured by subcontractors, and from other third parties.
- 3) Coverage provided to any Additional Insured shall be for claims arising out of both ongoing operations and products and completed operations hazard.
- 4) Coverage available to any Additional Insured under the products and completed operations hazard can only be limited to the applicable statute of repose in the jurisdiction(s) where the contract scope of work takes place.
- 5) Commercial General Liability and Umbrella/Excess Liability forms must provide defense coverage for additional insureds. The Additional Insured Endorsement shall provide coverage for Ongoing as well as Products and Completed Operations with no limitation on when claims can be made.

Waiver of Subrogation

Contractor and subcontractors of every tier are required to have all insurance policies except Professional Liability endorsed to waive the respective insurance company's rights of recovery against WMATA, and the WMATA Board of Directors.

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

Certificate of Insurance (COI)

Contractor shall provide WMATA an ACORD Certificate of Insurance (COI) and copies of all required endorsements as evidence that the insurance requirements of this Section have been satisfied. Certificates of Insurance shall be sent to WMATA.

The Certificate Holder box should read:

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

Additionally:

- 1) Proposed material modifications to required insurance, including notice of cancellation, must be received by WMATA in writing at least 30 days prior to the effective date of such change or cancellation.
- 2) WMATA's receipt of copies of any COI, policy endorsements or policies does not relieve Contractor of the obligation to remain in compliance with the requirements of this Section at all times. Contractor's failure to comply with these insurance requirements shall constitute a material breach of this Contract.
- 3) Receipt of the COI does not constitute acceptance of the insurance outlined above.

3. TITLE AND RISK OF LOSS - NOT APPLICABLE

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

5. TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS – FTA – NOT APPLICABLE

- (a) The Contractor agrees to comply with applicable transit employee protective requirements as follows:
 - (1) *General Transit Employee Protective Requirements.* To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on this Contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees

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employed under this Contract and to meet the employee protective requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to WMATA's grant from which Federal assistance is provided to support work on this Contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection, however, do not apply to any Contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth below.

- (2) *Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities.* If this Contract involves transit operations financed, in whole or in part, with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub-recipient for which work is performed on this Contract, the Contractor agrees to carry out the project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333 (b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth in WMATA's grant agreement. The Contractor agrees to perform transit operations in connection with this Contract in compliance with the conditions stated in that U.S. DOL letter.
 - (3) *Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas.* If this Contract involves transit operations, financed, in whole or in part, with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
- (a) The Contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

5. VETERANS PREFERENCE – FTA

A veterans preference, as provided by 49 U.S.C. §5325(k), to the extent practical, (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. §2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with Federal assistance appropriated or made available for 49 U.S.C. chapter 53, and (2) Will not require an employer to give a preference to any veteran over an equally qualified applicant who is a member of any racial or ethnic minority, female, and individual with a disability, or former employee.

CHAPTER VIII – INTELLECTUAL PROPERTY RIGHTS

1. PATENT INDEMNITY

The Contractor shall indemnify the Authority and its Board members, 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. If the Contractor is not the original equipment manufacturer (OEM) for a manufactured product purchased under this Contract, it will ensure that the patent holder provides indemnity to WMATA under this article. 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. Such indemnity shall not apply to:

- (1) An infringement resulting from compliance with the Contracting Officer's specific written instructions 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 that is unreasonably settled without the Contractor's consent, unless required by final decree of a court of competent jurisdiction.

2. SET-OFF

The Authority has common law, equitable and statutory rights to set-off. These rights shall include, but are not limited to, the Authority's right to set-off any monies due to the Contractor under this Contract, by any amounts due and owing to the Authority with regard to, any Contract with the Authority, plus any amounts due and owing to the Authority for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The Authority shall exercise its set-off rights in accordance with applicable laws and 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- LIMITED - NOT APPLICABLE

- (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.

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- (b) The Authority shall have the limited right to use, duplicate, or disclose technical data, which includes computer software, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so, that is contained in or derived from:
- (1) Any manuals, instructional materials prepared for installation, operation, maintenance or training purposes;
 - (2) Technical data pertaining to end items, components or processes that were prepared for the purpose of identifying sources, sizes, configurations, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data; including specification control drawings, catalog sheets, and outline drawings. Except that for computer software, it means data identifying sources, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulae, and flow charts of the software.);
 - (3) Other technical data the Contractor or subcontractor normally furnishes without restriction; or
 - (4) Other specifically described technical data which the parties have agreed will be furnished without restriction.
- (c) The Authority shall have the right to use, duplicate, or disclose technical data other than that defined in paragraph (a) in whole or in part. 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 of the Authority;
 - (2) Used, in whole or in part, by the Authority for manufacturing; or
 - (3) Used by a party other than the Authority, except for emergency repair or overhaul work performed by or for the Authority where the item or process concerned is not otherwise reasonably available to enable timely performance of the Contract. Release or disclosure outside of the Authority shall be made subject to a prohibition against further use, release or disclosure.
- (d) Technical data provided in accordance with paragraph (b) shall be identified with a legend that suitably recites this limitation. Nothing herein shall impair the Authority's right to use similar or identical data acquired from other sources.
- (e) Material covered by copyright:
- (1) The Contractor agrees to and does hereby grant to the Authority, and to its 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 technical data now or hereafter covered by copyright.

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- (2) No such copyrighted matter shall be included in technical data furnished hereunder without the written permission of the copyright owner for the Authority to use such copyrighted matter in the manner above described.
- (3) The Contractor shall report to the Authority promptly and in reasonable written detail each notice or claim of copyright infringement it receives regarding any technical data delivered hereunder.
- (f) Relation to patents: Nothing contained in this article shall imply a license to the Authority under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Authority under any patent.
- (g) Any dispute under this article shall be subject to the "Disputes" article of this contract.
- (h) 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 Contract.

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 its designated representative 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 that is contained in or derived from:
 - (1) Any manuals, instructional materials prepared for installation, operation, maintenance or training purposes;
 - (2) Technical data pertaining to end items, components or processes that were prepared for the purpose of identifying sources, sizes, configurations, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data such as , specification control drawings, catalog sheets, and outline drawings Except for the computer software, it means data identifying sources, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulae, and flow charts of the software.);
 - (3) Other technical data that the Contractor or subcontractor , normally furnishes without restriction;
 - (4) Other specifically described technical data that the parties have agreed will be furnished without restriction;

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- (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 the Contractor developed or materially modified 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 as defined in paragraph (a), in whole or in part. 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 of the Authority,
 - (2) Used, in whole or in part, by the Authority for manufacturing, or
 - (3) Used by a party other than the Authority except for: (i) emergency repair or overhaul, (ii) where the item or process concerned is not otherwise reasonably available to the Authority to enable timely performance of this work, or (iii) administration of this Contract or the inspection of any products produced under it, 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 nondisclosure agreement.
- (d) Technical data provided in accordance with paragraph (c) shall be identified with a legend that suitably recites this limitation. This article shall not impair the Authority's right to use similar or identical data acquired from other sources.
- (e) Where any item is purchased as a separate line item in this Contract, that purchase includes all integral parts of that item, including any computer software, source code, algorithms, processes, formulae, and flow charts. The Authority has full rights to use, duplicate or disclose any or all parts of the item, including computer software, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so. Should disclosure of the computer software be required only under this paragraph, then the Contracting Officer may waive the provisions of this paragraph if he or she certifies in writing that the item is commercially available from multiple sources and will be fully compatible with existing Authority property.
- (f) Material covered by copyright:
 - (1) The Contractor grants 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 technical data and 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

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regarding any technical data or 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's specifications.

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 this Contract once the Contractor is notified thereof.
- (b) In the event of any claim or suit against the Authority based on any alleged patent or copyright infringement arising out of this Contract or out of the use of any supplies furnished or services performed hereunder, the Contractor shall furnish to the 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 for such infringement claims.
- (c) This article shall be included in all subcontracts.

6. ROYALTY INFORMATION

- (a) When a bid contains costs or charges for royalties totaling more than \$250, the following information shall be furnished with the bid on each separate item of royalty or license fee:
 - (1) Name and address of licensor;
 - (2) Date of license agreement;
 - (3) Patent numbers, patent application serial numbers or other basis on which the royalty is payable;
 - (4) Brief description, including any part or model numbers of each Contract item or component on which the royalty is payable;
 - (5) Percentage or dollar rate of royalty per unit;
 - (6) Unit price or Contract item;

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- (7) Number of units; and
 - (8) Total dollar amount of royalties.
- (b) In addition, at the Contracting Officer's request, prior to execution of the Contract, the successful offeror will provide copies of any current license agreements and identify applicable claims of specific patents.

CHAPTER IX – ADDITIONAL COVENANTS/LEGAL REQUIREMENTS

1. NONDISCRIMINATION ASSURANCE- FTA

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

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Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements that FTA may issue.

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

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 U.S. Secretary of Labor thereunder.

- (a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the Contract work that may involve the employment of laborers, mechanics, apprentices, trainees, watchmen, and guards shall require or permit any such employee in any workweek in which he or she is 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 (1 ½) times his or her basic rate of pay for all hours worked in excess of forty (40) hours in such work week.
- (b) *Violation.* Liability for Unpaid Wages - Liquidated damages. In the event of any violation of paragraph (a) the Contractor and any subcontractor responsible therefore shall be liable to any affected employee for his or her unpaid wages. In addition, such Contractor and subcontractor shall be liable to the Authority for liquidated damages. Liquidated damages shall be computed with respect to each individual laborer, mechanic, apprentice, trainee, watchman or guard employed in violation of paragraph (a) in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of his or her standard work week of forty (40) hours without payment of the overtime wages required by paragraph (a).
- (c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer may withhold from the Contractor, such sums as he or she determines to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in paragraph (b).
- (d) *Subcontracts.* The Contractor shall insert this article in all subcontracts at any tier. Contractor shall also require subcontractors to include this clause in any lower tier subcontracts. The Contractor shall be responsible for compliance by any and all subcontractors at every tier.

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

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

4. DAVIS-BACON ACT- FTA – NOT APPLICABLE

[FOR ALL CONSTRUCTION CONTRACTS EXCEEDING \$2,000]

- (a) Under 49 U.S.C. § 533(a), Davis-Bacon Act prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration or repair projects in excess of \$2,000.00, The Davis-Bacon Act requires that the Contractor pay wages to laborers and mechanics at a rate of not less than the minimum wages specified in the wage determinations made by the U.S. Secretary of Labor, at least one (1) time per week, without subsequent deductions or rebate on any account, except such payroll deductions as permitted by the U.S. Secretary of Labor. The Contractor understands that Contract award is conditioned upon its acceptance of U.S.DOL's prevailing wage determinations that are attached to the solicitation. The Contractor agrees to comply with the Davis-Bacon Act, 40 U.S.C. § 3141, *et. seq.* and implementing DOL regulations "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction. 29 C.F.R. Part 5.
- (b) WMATA may upon its own action or upon written request of an authorized representative of the U.S. Department of Labor, withhold or cause to be withheld from the Contractor under this Contract, or any other Federal contract that the Contractor has with WMATA, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, so much of the accrued payments or advances as may be necessary to pay laborers and mechanics, including apprentices, trainees, and helpers employed by the Contractor or any subcontractor, the full amount of the wages required by this Contract. In the event that the Contractor fails to pay any laborer or mechanic, including any apprentice

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trainee or helper employed or working on the jobsite, all or part of the wages required by this Contract, WMATA may, after written notice to the Contractor, suspend further payments or advances or guarantees until such violations have ceased.

- (c) The Contractor shall maintain payrolls and basic records relating thereto during this Contract and for three (3) years thereafter. The Contractor shall submit weekly for each week in which any Contract work is performed, a copy of all payrolls to the COTR, for transmission to FTA. The payrolls shall contain all information required by 29 C.F.R. Part 5. Each payroll submitted shall be accompanied by a "Statement of Compliance" signed by the Contractor or subcontractor. Falsification of any required certification may subject the Contractor or subcontractor to criminal prosecution or a civil suit pursuant to 18 U.S.C. § 1001 and/or 31 U.S.C. § 23, respectively. The Contractor or subcontractor shall make the records required under this article available to authorized representatives of FTA or U.S. DOL and shall permit such representatives to interview employees during working hours on the jobsite. If the Contractor or subcontractor fails to submit the required records or make them available, the Federal agency may take further action to cause the suspension of payments, advances or guarantee of funds. Failure to submit the required records may be grounds for suspension or debarment.
- (d) The Contractor or subcontractor shall insert the clauses contained in 29 C.F.R. § 5.5(a) and such other clauses that FTA may require in all subcontracts issued hereunder. The Contractor shall require subcontractors to include these clauses in lower tier subcontracts. The Contractor will be responsible for the compliance by any subcontractor with all of the clauses contained in 29 C.F.R. § 5.5.
- (e) Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general "Disputes" article of this Contract. Such disputes shall be resolved in accordance with U.S. Department of Labor procedures set forth in 29 C.F.R. parts 5, 6 and 7. Disputes within the meaning of this article include disputes between the Contractor (or any of its subcontractors) and WMATA, the U.S. Department of Labor or any of its employees or representatives.
- (f) By entering into this Contract, the Contractor certifies that neither it nor any person or firm who has an interest in the Contractor's firm is a person or firm that is ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis- Bacon Act of 29 C.F.R. § 512.

5. COPELAND ANTI-KICKBACK ACT – FTA

- (a) The Contractor agrees to comply with section 1 of the Copeland "Anti-Kickback Act," 18 U.S.C. § 874 that prohibits anyone from inducing, by any means, any person employed on construction, prosecution, completion or repair of a Federally assisted building or work, to give up any part of his or her compensation to which he or she is entitled. Contractor further agrees to comply with section 2 of the Act, 40 U.S.C. §3145, as amended, and implementing U.S. DOL regulations, "Contractors and Subcontractors on Public Buildings or Public Works Financed in Whole or in Part, by Loans or Grants from the United States." Contractor agrees to comply with 29 C.F.R. Part 3 which imposes record keeping requirements for all such contracts in excess of \$2,000.

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- (b) Contractor shall insert this clause in all subcontracts, and require that subcontractors insert this clause in any and all of their subcontracts, at any tier.

6. 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—
 - (a) The worker is paid or is in an approved work or training program on a voluntary basis;
 - (b) Representatives of the local union's central bodies or similar labor union organizations have been consulted;
 - (c) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades where there is a surplus of available gainful labor in the locality, or impair existing contracts or services;
 - (d) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality where the work is being performed; and
 - (e) 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.

7. COVENANT AGAINST CONTINGENT FEES

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

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this Contract and/or appropriate Federal, state and/or local law enforcement authorities.

8. 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 these requirements in each subcontract awarded for work relating to this Contract.

9. 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 U.S.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

10. 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 services and/or supplies to be provided under this Contract. Further, the Contractor shall be responsible to obtain, at its own cost and expense, any and all licenses/permits required to transact business in any political jurisdictions where work will be performed.

**11. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA
NOT APPLICABLE**

- (a) The Contractor agrees to submit a Material Safety Data Sheet (U.S. Department of Labor Form OSHA-20), as prescribed in Federal Standard No. 313B, for all hazardous materials five (5) days before delivery of the material, whether or not listed in Appendix A of the Standard. This obligation applies to all materials delivered under this Contract that involve exposure to hazardous materials or items containing these materials.
- (b) "Hazardous material," as used in this clause, is defined in Federal Standard No. 313B, in effect on the date of this Contract.
- (c) Neither the requirements of this clause nor the Authority's acts or omissions shall relieve the Contractor of any responsibility or liability for the safety of Authority's, 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 requirement to obtain licenses and permits) in connection with hazardous materials.
- (e) The Authority's rights in data furnished under this Contract regarding hazardous materials are as follows:

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- (1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to (a) apprise personnel of the hazards that they may be exposed to in using, handling, packaging, transporting, or disposing of hazardous materials (b) obtain medical treatment for those affected by the materials; and (c) 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 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 of the Authority, in whole or in part, for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this clause applies -

"This data furnished under this Contract shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the Contracting Officer's permission. This legend shall be marked on any reproduction of this data."
- (5) The Contractor shall not place any restrictive legend on any data that (i) the Contractor or any subcontractor previously delivered to the Authority without limitations; or (ii) should be delivered without limitations under the "Rights in Technical Data" clause.
- (6) 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 materials.

12. LIVING WAGE

- (a) The Authority's Living Wage Policy and implementing regulations apply with respect to all contracts for services (including construction) awarded in an amount that exceeds \$150,000.00 in a twelve (12) month period. If this Contract meets those criteria, the following requirements are applicable:
- (b) 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.
- (c) The Contractor shall:
 - (1) Pay the Authority's living wage rate, effective during the time the work is performed, to all employees who perform work under this Contract;
 - (2) Include this "Living Wage" article in all subcontracts that exceed \$15,000.00 in a twelve (12) month period awarded under this Contract;

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- (3) Maintain payroll records, in accordance with the requirements of this Contract, and include a similar provision in affected subcontracts that requires the subcontractor to maintain its payroll records for the same length of time; and
 - (4) Certify with each monthly invoice that the Authority's living wage rate was paid to affected employees, or if applicable, certify prior to Contract award or Contract extension, if any, that one or more of the exemptions in paragraph (d) below applies.
 - (5) The Contractor shall not split or subdivide this Contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor to avoid compliance with this "Living Wage" article
- (d) Exemptions to this "Living Wage" article include:
- (1) Contracts and agreements subject to higher wage rates required by Federal law or collective bargaining agreements;
 - (2) Contracts or agreements for regulated utilities;
 - (3) Emergency services to prevent or respond to a disaster or imminent threat to public health and safety;
 - (4) Contractor employees who work less than full time; and
 - (5) Contractors who employ fewer than ten (10) employees.
- (e) The Authority may adjust the living wage rate effective in January of each year. The adjustment will reflect the average living wage rate among Metro's Compact jurisdictions with living wage rates. If after Contract award the living wage rate increases, the Contractor is entitled to an equitable adjustment to the Contract price in the amount of the increase for employees who are affected by the escalated wage.
- (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, where no fraud is suspected.
- (g) If fraud is suspected, the Authority's only remedy prior to adjudication by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any state or Federal agency providing funding under this Contract and/or appropriate Federal, state and/or local law enforcement authorities.

13. 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.

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14. MANDATORY DISCLOSURE

The Contractor shall timely disclose, in writing, to WMATA's Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this Contract or any subcontract hereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed—

- (a) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or
- (b) A violation of the civil False Claims Act (31 U.S.C. §§ 3729-3733).
 - (1) WMATA, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by the law and regulation, such information will not be released by WMATA to the public pursuant to a Public Access to Records (PARP) request. WMATA may transfer documents provided by the Contractor to any department or agency within the state, Federal or local government, if the information relates to matters within the organization's jurisdiction.
 - (2) If the violation relates to an order against a government-wide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor shall notify the OIG of the ordering agency and the OIG of the agency responsible for the basic contract.

15. WHISTLEBLOWER PROTECTION – FEDERAL

- (a) The Contractor and its subcontractors shall encourage their employees and independent contractors to report information without fear of actual or threatened discrimination, retaliation or reprisal that they in good faith reasonably believe is evidence of gross mismanagement; gross misuse or waste of public resources or funds; fraud; violation of law; abuse of authority in connection with the conduct of WMATA operations or contracts; or a substantial and specific danger to health, security or safety. The Contractor and its subcontractors shall notify their employees that they may make reports under this paragraph to:
 - (1) WMATA's Office of Inspector General (OIG), in person, in writing, through the OIG Hotline (888-234-2374) or email wmata-oig-hotline@verizon.net or by any other reasonable means;
 - (2) WMATA's Metro Transit Police 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;

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- (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
 - (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 his or her intent not to perform or authorize work.
- (d) The Contractor shall include, or shall cause to be included, the substance of this 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) 6 U.S.C. §1142, which prohibits discharging, demoting, suspending, reprimanding or in any other way discriminating against an employee as a reprisal for the employee lawfully and in good faith:
- (1) Reporting a hazardous safety or security condition;

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- (2) Refusing to work when a hazardous safety or security condition presents an imminent danger of death or serious injury, there is no reasonable alternative to refusal, there is not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, has notified the Contractor or subcontractor of the condition and of his or her intent to not perform work;
 - (3) Refusing to authorize the use of any safety or security related equipment, track or structures, if the individual is responsible for their inspection or repair and reasonably believes they are in a hazardous safety or security condition, there is no reasonable alternative to refusal, there is not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, has notified the Contractor or subcontractor of the condition and of his or her intent not to authorize use of hazardous equipment or infrastructure unless corrected;
 - (4) Providing information for or directly assisting in an investigation of conduct that the individual reasonably believes to be in violation of Federal law regarding safety, security or fraud, waste or abuse of funds intended for safety or security;
 - (5) Refusing to violate or assist in violation of Federal public transportation safety or security law;
 - (6) Cooperating with a safety or security investigation by the U.S. Secretary of Transportation, U.S. Secretary of Homeland Security or the National Transportation Safety Board;
 - (7) Furnishing information to law enforcement agencies relating to an accident or incident resulting in damage to property, injury or death; or
 - (8) Filing a complaint under the NTSSA (6 U.S.C. §1142), or testifying regarding such complaint.
- (f) The Contractor shall notify the Authority of any instance, related to this Contract, of a report under subparagraph (e)(1) or refusal under subparagraphs (e)(2), (3) or (5).
 - (g) The enforcement, filing and investigation of complaints, and remedies under this clause shall be governed by the NTSSA (6 U.S.C. §1142), applicable Federal regulations and Federal law.
 - (h) This article shall be interpreted in accordance with the NTSSA (6 U.S.C. §1142). If any provision is found to be in conflict with the NTSSA, the NTSSA shall govern.
 - (i) The Contractor shall include, or shall cause to be included, this article, including this paragraph, in its subcontracts at all tiers.

16. WORKPLACE VIOLENCE/ZERO TOLERANCE

Pursuant to Metro Policy/Instruction 7.8.3, all Metro Contractors must: (1) establish zero tolerance for acts of workplace violence for their employees and those of subcontractors at

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any tier, and (2) not retaliate against any of their employees or independent contractors for cooperating with investigations.

17. DRUG AND ALCOHOL TESTING (FOR SAFETY SENSITIVE FUNCTIONS ONLY) – FTA

- (a) Contractors who perform “safety sensitive” (as defined in the “Combined Glossary” attached hereto) functions shall be subject to compliance with a drug and alcohol testing program according to Federal guidelines published in FTA regulations. The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Parts 40 and 655, produce any documentation necessary to establish its compliance with these regulations, and permit any authorized representative of the U.S. Department of Transportation or its operating administrations, applicable state oversight agency, or the Authority to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. Part 655 and review the testing process. The Contractor further agrees as follows:
- (b) To certify its compliance with 49 C.F.R. Parts 40 and 655 and to submit a Management Information System (MIS) report, as required by Federal regulations, to WMATA’s Medical Compliance Monitor (MCM) and the Contracting Officer before February 15th of each year. To certify compliance, the Contractor shall use the "Alcohol and Controlled Substances Testing" certification contained in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," that is published annually in the Federal Register.
- (c) To submit to the MCM and the Contracting Officer before February 15th of each year, a copy of the policy statement developed to implement its drug and alcohol testing program.
- (d) To provide to the MCM and the Contracting Officer before February 15th of each year the following:
 - (1) Employee and supervisor training documentation;
 - (2) The name and location of the collection site(s), laboratory(ies), Medical Review Officer(s), Breath Alcohol Technician(s), Collector(s), and Substance Abuse Professional(s); and a description of their random selection drug and alcohol testing process.
- (e) The Contractor further agrees to submit quarterly management reports summarizing test results to the MCM and the Contracting Officer by the 15th of the month following the end of each quarter.

18. EMPLOYMENT RESTRICTION WARRANTY

- (a) The Contractor warrants that it will not offer employment to, solicit or discuss prospective employment with, or otherwise engage in substantive employment related discussions or communications with, any present or former Board member of the Authority who has been involved, directly or indirectly, in any matter of financial interest to the Contractor until at least two (2) years after the Board member has

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ceased involvement in the matter. The post-employment restriction on former Authority employees is one (1) year from the date of their last employment with WMATA. The Contractor shall not knowingly engage in communications of the nature described above with any immediate family member or member of the household of any Authority employee or Board member during the period when such employee or Board member is involved in any matter of financial interest to the Contractor.

- (b) If a former Board member or employee of the Authority is eventually hired, the Contractor shall ensure that the former Board member or employee is not involved in negotiating or otherwise dealing with the Authority on any particular matter over which he or she had responsibility during his or her tenure.
- (c) Should the Contractor fail to comply with the provisions hereof, and no fraud is suspected, the Contracting Officer shall have the right to withhold payment under this Contract in an amount not to exceed two percent (2%) of the total Contract amount as liquidated damages to the Authority, such withholding to be in addition to any other withholding or retainage under this Contract. Any dispute shall be settled in accordance with the "Disputes" clause of this Contract.
- (d) If fraud is suspected, the Authority's only remedy prior to a final decision by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any state or Federal agency providing funding under this Contract and/or appropriate Federal, state and/or local law enforcement authorities.

19. GRATUITIES

- (a) In connection with performance of this Contract, or any changes or modifications relative thereto, the giving of or offering to give gratuities (in the form of entertainment, gifts or otherwise) by the Contractor, or any agent, representative or other person deemed to be acting on behalf of the Contractor, or any supplier or subcontractor furnishing material to or performing work under this Contractor, to any Board member, employee or agent of the Authority; with a view toward securing this Contract or securing favorable treatment regarding this Contract is expressly forbidden. The terms of this "Gratuities" clause shall be strictly construed and enforced in the event of violations hereof.
- (b) Reported instances of the giving or offering to give gratuities within the context of this "Gratuities" article will be investigated by the Authority's Board of Directors or its duly authorized representative. A preliminary investigation will be made to determine whether there is probable cause to suspect that a violation of this article exists. If such probable cause exists, the Board of Directors, or its duly authorized representative, shall formally notify WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any state or Federal agency providing funding under this Contract and/or appropriate Federal, state and/or local law enforcement authorities.

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- (c) The rights and remedies of the Authority provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided under this Contract, at law or in equity.

20. OFFICIALS NOT TO BENEFIT

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

21. ORGANIZATIONAL CONFLICTS OF INTEREST

- (a) An organizational conflict of interest (OCI) exists when the nature of the work to be performed under a proposed contract or a subcontract may, without some restriction on future activities result in an unfair competitive advantage to the Contractor or subcontractor; because of (1) unequal access to information, (2) biased ground rules or (3) impaired objectivity. An unequal access to information OCI may exist if in performing a Contract, a Contractor obtains access to non-public information that provides it with a competitive advantage in a later competition. A biased ground rules OCI may exist if the Contractor has a role in setting rules for a source selection in which it will compete. An impaired objectivity OCI may exist if, in performing a Contract, a Contractor is called upon to evaluate an offer from or performance by, itself or an affiliated entity.
- (b) In the event that the Contractor believes that it or any of its potential subcontractors may have an OCI, it shall notify the Contracting Officer, in writing, within five (5) working days after it becomes aware of the potential or actual OCI. The written notification shall identify the nature and circumstances of the perceived conflict and propose appropriate measures to eliminate or mitigate the OCI. The Contracting Officer will review the circumstances and the proposed mitigation plan and notify the Contractor stating whether: (1) no mitigation is required; (2) the conflict cannot be mitigated; or (3) the conflict can be mitigated and he or she accepts the proposed measures, or recommends additional measures.
- (c) The Contractor's failure to identify such perceived conflicts may result in the Contract being rescinded or terminated.
- (d) Should the Contractor identify or become aware of a conflict during the term of this Contract, including any extension thereof that it could not reasonably anticipate prior to award, it shall notify the Contracting Officer in accordance with paragraph (b), 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.

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- (e) If the proposed measures are not determined to be feasible or are otherwise not acceptable to the Contracting Officer, he or she may terminate this Contract. If the Contracting Officer does not grant a request for an exception, and this Contract is not terminated, the Contractor shall be notified in writing and be given ten (10) days from the date of the written notification to take all necessary actions to comply with this clause.
- (f) If the proposed measures are determined to be acceptable to the Contracting Officer, he or she may grant a specific exception to this restriction, when in the Contracting Officer's judgment, the exception will not create a conflict between the Contractor's duties and obligations under this Contract and the duties and obligations imposed on the Contractor under another contractual or other relationship.
- (g) If the Contractor fails to comply with the terms of this article, and no fraud is suspected, the Contracting Officer, may withhold payments due under this Contract until such time as the Contractor is in compliance or, should the noncompliance remain uncorrected at the expiration of ten (10) days from the Contracting Officer's written notice as provided in paragraph (b), terminate the contract for default pursuant to this Contract.
- (h) If fraud is suspected, the Authority's only remedy prior to a final determination by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any state or Federal agency providing funding under this Contract and/or appropriate Federal, state and/or local law enforcement authorities.
- (i) The Contractor, in performing this Contract, shall avoid any conduct that might result in or give the appearance of creating for Board members or employees of the Authority in their relationship with the Contractor, any conflicts of interest or favoritism and/or the appearance thereof and shall avoid any conduct that might result in a Board member, or employee failing to adhere to any Code of Ethics or standards of conduct adopted by the Authority's Board of Directors.
- (j) The Contracting Officer's determination under this article shall be final and shall be considered a question of fact within the meaning of the "Disputes" article of this Contract.

22. CONTRACTOR PERSONNEL

- (a) The Authority may direct the replacement of the Contractor's employees reasonably deemed to be unsuitable by the Contracting Officer, or whose continued participation in the work is deemed contrary to the best interests of the Authority. Except in circumstances deemed exigent by the Contracting Officer, the reason for replacement will be discussed between the Contractor and the Authority before a replacement directive is issued. Upon receipt of a written replacement directive from the Authority specifying the date by which the replacement must occur, the Contractor shall proceed with the replacement and shall do so in a manner that minimizes, to the greatest extent practicable, any impact upon the Contract.

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- (b) Contractor personnel required to work on WMATA's property must obtain a WMATA vendors' badge and successfully complete the mandatory safety training that must be renewed yearly. The Contractor must advise its affected personnel that, to obtain a vendor's badge, a signed waiver to perform a background check is required.

23. FALSE STATEMENTS, CLAIMS OR SUBMISSIONS

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

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) If a statute, court decision, written ruling or regulation regarding any Federal excise tax or duty on the transactions or property covered by this Contract takes effect after the Contract date, and:
- (c) Results in the Contractor being required to pay or bear the burden of any such Federal excise tax or duty or rate increase that would not otherwise have been payable on such transactions or property, the Contract price shall be increased by the amount of such tax or duty or rate increase, if the Contractor warrants in writing that no amount for such newly imposed Federal obligation was included in the Contract price as a contingency reserve or otherwise; or
- (d) Results in the Contractor not being required to pay or bear the burden of, or in its obtaining a refund or drawback of, any Federal excise tax or duty that would otherwise have been payable on such transactions or property or that was the basis of an increase in the Contract price, the Contract price shall be decreased by the amount of the relief, refund, or drawback, or that amount shall be paid to the Authority, as the Contracting Officer directs. If the Contractor fails to follow the Contracting Officer's instructions, it will be required to pay or bear the burden of, any such Federal excise tax or duty through a decrease in the Contract price.
- (e) Paragraph (b) above shall not be applicable to social security taxes or to any other employment tax.
- (f) No adjustment of less than \$250 shall be made in the Contract price pursuant to paragraph (b).
- (g) As used in paragraph (b), the term "Contract date" means the date the Contract was executed by the Authority. As to additional services, supplies or construction procured by modification to this Contract, the term "Contract date" means the effective date of such modification.
- (h) The Contractor shall promptly notify the Contracting Officer of matters that may result in either an increase or decrease in the Contract price under this clause and shall take action as the Contracting Officer directs. The Authority shall be entitled to a reduction in the Contract price reflecting such amount and a refund of monies paid related to such taxes, plus applicable interest.

2. PUBLIC COMMUNICATION

The Contractor shall not issue communications to the media, place advertisements, nor publicize through any means the services, goods or construction that it is providing to WMATA under this Contract, without prior written consent of the Contracting Officer. The

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Contractor shall not publish, in print or online, any communications products such as newsletters, press releases, blogs or other communications without the Contracting Officer's prior, written consent. Approval of any such requests shall be at the Contracting Officer's sole discretion.

3. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

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

4. 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.

5. SURVIVAL

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

CHAPTER XI – ADDITIONAL FEDERAL PROVISIONS

1. NOTIFICATION OF FEDERAL PARTICIPATION- FTA

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

2. ALL NECESSARY FEDERAL PROVISIONS DEEMED INCLUDED- FTA

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

3. ACCESS TO THIRD PARTY CONTRACT RECORDS- FTA

(a) The Contractor agrees to provide the Authority, the FTA Administrator, the U.S. Comptroller General or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 C.F.R. §633.17 to provide FTA Administrator or his or her authorized representatives including any Project Management Oversight (PMO) Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U. S. C. § 5302(a)(1), which is receiving Federal financial assistance through the programs described at 49 U. S. C. §§ 5307, 5309 or 5311.

(b) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(c) The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract. In the event of litigation or settlement of claims arising from the performance of this Contract, the Contractor agrees to maintain such records until the Authority, the FTA Administrator, the U.S. 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)].

4. AMERICANS WITH DISABILITIES ACT ACCESSIBILITY – FTA

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

(b) Facilities to be used in public transportation service must comply with 42 U.S.C. § 12101 *et seq.*; DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37; and Joint ATBCB/DOT regulations,

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

5. RIGHTS IN DATA AND COPYRIGHTS — FTA

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

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

- (e) Nothing contained in this article shall imply a license to WMATA or the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to WMATA or the Federal Government under any patent.
- (f) The requirements of paragraphs (b) and (c), do not apply to material furnished by the Authority to the Contractor and incorporated in the work carried out under the contract provided that the Contractor identifies the incorporated material at the time of delivery of the work.
- (g) Any dispute arising under this article shall be subject to the "Disputes" article of this Contract.
- (h) Notwithstanding any other payment provision in this Contract, the Contracting Officer may retain from payments due and owing the Contractor up to 10 percent (10 %) of the contract price until final delivery and acceptance of the subject data defined in this article and as required to be furnished by the Price Schedule or the Contract's specifications.

6. PATENT RIGHTS – FTA - NOT APPLICABLE

- (a) Depending on the nature of the project, the Federal Government may acquire patent rights when the Contractor produces a patented or patentable invention, improvement or discovery. The Federal Government's rights arise when the patent or patentable information is conceived, or first reduced to practice. When a patent is issued or patentable information becomes available, the Contractor will report the same to the Authority, to enable it to notify FTA and provide a detailed report satisfactory to FTA.
- (b) Unless the Federal Government determines otherwise in writing, regardless of the status of any contractor, WMATA will transmit the Federal Government's patent rights to FTA as specified in 35 U.S.C. § 200, *et. seq.* and the Department of Commerce's regulations "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements," 37 C.F.R. Part 401.

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7. BUY AMERICA ACT- FTA

- (a) The Buy America Act requirements apply to the following types of contracts: construction
- (b) 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.
- (c) Contractor is responsible for flowing down these requirements to subcontractors at every tier. The dollar threshold only applies to the prime contract. All subcontracts thereunder are subject to the Buy America Act requirements.
- (d) An offeror must submit to WMATA the appropriate Buy America Act certification with all offers on FTA funded contracts, except those subject to a general waiver. Offers that are not accompanied by the appropriate Buy America Act certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

8. PRE-AWARD AND POST DELIVERY AUDIT REQUIREMENTS – FTA

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

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

9. CHARTER BUS REQUIREMENTS- FTA – NOT APPLICABLE

Contractor shall comply with 49 U.S.C. §§ 5323(d) and (g) and 49 C.F.R. Part 604, which state that recipients and sub-recipients of FTA assistance are prohibited from providing charter service for transportation projects that use Federally funded equipment or facilities, if there is at least one (1) private charter operator willing and able to provide the service, except as permitted by 49 C.F.R. § 604.9, the terms and conditions of which are incorporated herein by reference. Any charter service provided under one (1) of the exceptions must be “incidental,” i.e. it must not interfere with or detract from the provision of mass transportation.

10. SCHOOL BUS REQUIREMENTS- FTA -NOT APPLICABLE

(a) Pursuant to 69 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.

(b) Violations. If WMATA or any Contractor has operated school bus service in violation of FTA’s school bus laws and regulations, FTA may: (1) Require WMATA or the Contractor to take such remedial measures as FTA considers appropriate, or (2) Bar WMATA or the Contractor from receiving Federal transit funds.

11. BUS TESTING- FTA- NOT APPLICABLE

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

- (1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration, shall provide copies of the final test report(s) to WMATA, prior to WMATA’s final acceptance of the first vehicle.
- (2) A manufacturer who releases a report under paragraph (a) 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 must have the identical configuration and major components as the vehicle in the test report, which must be provided to WMATA prior to its final acceptance of the first vehicle. If configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

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12. CARGO PREFERENCE- FTA

The Contractor agrees:

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

13. CLEAN AIR ACT- FTA

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

14. CLEAN WATER ACT- FTA

- (a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act, as amended, 33 U.S.C. §§1251-1377. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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- (b) The Contractor will protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§300 (f)-(j).
- (c) The Contractor will comply with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368.
- (d) The Contractor will facilitate compliance with Executive Order 11738, "Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants or Loans," 42 U.S.C. §7606 note.
- (e) Flow-down requirement. The Contractor also agrees to include this clause in each subcontract exceeding \$150,000 financed, in whole or in part, with Federal assistance provided by FTA.

15. RECOVERED MATERIALS/ RECYCLED PRODUCTS- FTA

- (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 CFR 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.

16. RETAINAGE

- a) *No Retainage.* No provision of this Contract shall serve to deny Contractor's entitlement to full payment for properly performed work or suitably stored materials. No amounts shall be withheld from any payment request submitted by Contractor based on percentage of the work performed during the period of performance and no amounts shall be assigned to the line items, other than as assigned by Contractor in its payment requests.

17. ENERGY CONSERVATION- FTA

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

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18. CHANGES TO FEDERAL REQUIREMENTS- FTA

- (a) Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (22) dated October 1, 2015) between the Authority and FTA, as they may be amended or promulgated 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 the Article shall not be modified, except to identify the subcontractor who will be subject to its provisions.

19. FLY AMERICA REQUIREMENTS- FTA

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

20. PAYMENT DEDUCTIONS - NONCOMPLIANCE WITH DBE REQUIREMENTS- FTA

- (a) For Federally funded contracts that exceed \$150,000 and to which the Disadvantage Business Enterprise (DBE) Requirements (Appendix B) apply, the failure to perform in accordance with requirements of Appendix B may result in a partial or full suspension of payment, including progress payments, if applicable.
- (b) If the Contractor is found to be in noncompliance with the DBE requirements of Appendix B, the progress of the work shall also be deemed to be unsatisfactory, and an amount equal to the DBE participation in the Contract shall be retained from payment (or progress payments, if any) made to the Contractor.
- (c) If the contract value is over \$150,000, the prime contractor will be responsible for submitting a monthly report of the status of its DBE subcontractors as outlined in Appendix B to the Contracting Officer.

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- (d) If the Contractor fails to submit the required monthly DBE reports, the Contracting Officer may suspend payment (or progress payments) until such time as the monthly reports are submitted and accepted by the Authority.

21. GOVERNMENT-WIDE DEBARMENT OR SUSPENSION- FTA

- (a) The Contractor is bound by its certification contained in its offer to the Authority that neither the Contractor its principals, or affiliates, are excluded or disqualified, from Federal contracting. The certification is a material representation of fact, relied upon by the Authority in entering into this Contract. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 C.F.R, part 180, subpart C as adopted and supplemented by U.S. DOT regulations at 2 C.F.R, part 1200 "Nonprocurement Suspension and Debarment," including any amendments thereto, Executive Orders Nos. 12549 and 12689 "Debarment and Suspension" 31 U.S.C. § 6101 note, and other applicable Federal laws, regulations or guidance regarding participation with debarred or suspended contractors throughout the term of this Contract.
- (b) Flow-down requirement. The Contractor agrees to include this article in all subcontracts at all tiers under this Contract requiring lower tier contractors to comply with Federal suspension and debarment requirements, and review the System for Award Management (SAM) at www.sam.gov in order to comply with U.S. DOT regulations at 2 C.F.R, Part 1200 prior to awarding any subcontract under this Contract.

22. 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 other Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F and FTA Master Agreement (22) October 1, 2015 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 of the Authority's requests that would cause the Authority to be in violation of the FTA terms and conditions.
- (b) Flow-down requirement. The Contractor agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

23. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES- FTA

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

24. FALSE STATEMENTS OR CLAIMS CIVIL AND CRIMINAL FRAUD- FTA

- (a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U. S. C. § 3801 *e.t seq.* and U. S. DOT Regulations, "Program Fraud Civil Remedies," 49 C.F. R. Part 31, apply to its actions pertaining to this Contract. Upon execution of this Contract, the Contractor certifies and affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Contract or 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 it 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 the provisions.

25. LOBBYING- FTA

- (a) The Contractor agrees that it will not use Federal funds to influence any officer or employee of a Federal agency, member of Congress or an employee of a member of Congress or an officer or employee of Congress on matters that involve this Contract or the underlying grant or agreement, including any award, extension or modification.
- (b) Contractor agrees that it will comply with 31 U.S.C. § 1352, as amended, U.S. DOT regulations "New Restrictions on Lobbying" 49 C.F.R, Part 20, to the extent consistent with 31 U.S.C. § 1352, as amended and other applicable Federal laws,

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regulations and guidance prohibiting the use of Federal funds for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature unless an exception exists in current Federal law.

- (c) Flow-down requirement. The Contractor agrees to include these requirements in all subcontracts at all tiers under this Contract.

26. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS-FTA

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.

27. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS- FTA

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

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

28. PROGRESS PAYMENTS

When satisfactory progress has not been achieved by a Contractor during any period for which a progress payment is to be made, a percentage of the progress payment may be retained. Retainage should not be used as a substitute for good contract management, and the Contracting Officer should not withhold funds without cause. Determinations to retain and the specific amount to be withheld shall be made by the Contracting Officer on a case-

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by-case basis. Such decisions will be based on the Contracting Officer's assessment of past performance and the likelihood that such performance will continue. The amount of retainage withheld shall not exceed ten percent (10%) of the approved, estimated amount in accordance with the terms of this Contract and may be adjusted as the Contract approaches completion to recognize better than expected performance, the ability to rely on alternative safeguards, and other factors. Upon completion of all Contract requirements, retained amounts shall be paid promptly.

29. BONDING FOR CONSTRUCTION PROJECTS EXCEEDING \$100,000 – FTA – NOT APPLICABLE

The Contractor agrees to comply with applicable bonding requirements as follows:

- (a) *Proposal Security.* A proposal bond must be issued by a fully qualified surety company acceptable to WMATA and listed as a company currently authorized under 31 C.F.R. Part 223 as possessing a Certificate of Authority as described thereunder.
- (b) *Rights Reserved.* In submitting its offer, it is understood and agreed by offeror that the right is reserved by WMATA to reject any and all offers, or part of any offer. It is also understood and agreed that if the offeror refuses or is unable to enter into this Contract, or refuses or is unable to furnish adequate and acceptable performance bonds and labor and material payments bonds, or refuses or is unable to furnish adequate and acceptable insurance, it shall forfeit its security to the extent of WMATA's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefore.

It is further understood and agreed that to the extent that the defaulting offeror's proposal bond, certified check, cashier's check, treasurer's check, and/or official bank check (excluding any income generated thereby that was retained by WMATA) shall prove inadequate to fully compensate WMATA for the damages occasioned by default, then the offeror agrees to indemnify WMATA and pay over to WMATA the difference between the proposal security and WMATA's total damages, so as to make WMATA whole.

- (c) *Performance and Payment Bonding Requirements (Construction).* The Contractor shall be required to obtain performance and payment bonds as follows:
 - (1) *Performance bonds.* The penal amount of performance bonds shall be one hundred percent (100%) of the original Contract price, unless WMATA determines that a lesser amount would be adequate for its protection.
 - (2) WMATA may require additional performance bond protection when the Contract price is increased. The increase in protection shall generally equal one hundred percent (100%) of the increase in Contract price. WMATA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- (d) *Payment bonds.* The penal amount of the payment bonds shall equal:
 - (1) Fifty percent (50%) of the Contract price, if it is not more than \$1,000,000.

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- (2) Forty percent (40%) of the Contract price, if it is more than \$1,000,000, but not more than \$5,000,000; or
- (3) Two and one half million (\$2,500,000), if the Contract price is more than \$5,000,000.
- (1) If the original Contract price is \$5,000,000 or less, WMATA may require additional protection, if the Contract price is increased.

30. BONDING REQUIREMENTS – GENERAL

(a) *Performance and Payment Bonding Requirements (Non-Construction)*. The Contractor may, as a condition to the issuance of a Notice to Proceed, be required to obtain performance and payment bonds on forms acceptable to the Authority when necessary to protect the WMATA's interests. The following situations may warrant a performance bond:

- (1) WMATA's property or funds will be provided to the Contractor for use in performing the Contract or as partial compensation (as in retention of salvaged material).
- (2) If Contractor sells assets to or merges with another concern, and WMATA, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

Substantial progress payments will be made before the delivery of end items begins.

- (3) This Contract is for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds, as follows:

- (1) The penal amount of performance bonds shall be one hundred percent (100%) of the original Contract price, unless WMATA determines that a lesser amount would be adequate for its protection.
- (2) WMATA may require additional performance bond protection when the Contract price is increased. The increase in protection shall generally equal one hundred percent (100%) of the increase in Contract price. WMATA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in WMATA's interests. When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

- (1) Fifty percent (50%) of the Contract price, if it is not more than \$1,000,000;
- (2) Forty percent (40%) of the Contract price, if it is more than \$1,000,000, but not more than \$5,000,000; or

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- (3) Two and one half million (\$2,500,000), if the Contract price is increased.
- (d) *Advance Payment Bonding Requirements.* The Contractor may be required to obtain an advance payment bond, if the Contract contains an advance payment provision and a performance bond is not furnished. WMATA shall determine the amount of the advance payment bond necessary to protect it.
- (e) *Patent Infringement Bonding Requirements (Patent Indemnity).* The Contractor may be required to obtain a patent indemnity bond, if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. WMATA shall determine the amount of the patent indemnity required to protect it.
- (f) *Warranty of the Work and Maintenance Bonds.* The Contractor warrants to WMATA, the architect and/or engineer that all materials and equipment furnished under this Contract will be of highest quality and new, unless WMATA specifies otherwise, free from faults and defects and in conformance with the Contract. All work not conforming to these standards shall be considered defective. If required by the Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- (1) The work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The work must be safe, substantial and durable in all respects. The Contractor hereby guarantees that the work will not contain defective materials or faulty workmanship for a minimum period of one (1) year after final payment by WMATA. The Contractor shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to WMATA. As additional security for these guarantees, the Contractor shall, prior to the release of final payment, furnish separate maintenance (or guarantee) bonds in a form acceptable to WMATA written by the same corporate surety that provides the performance bond and labor and material payment bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after final payment and shall be written in an amount equal to one hundred percent (100%) of the Contract amount, as adjusted.

31. SEISMIC SAFETY – FTA – NOT APPLICABLE

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

CHAPTER XII-WMATA POLICIES

1. SAFETY REQUIREMENTS

- (a) The Contractor shall be responsible for ensuring compliance with the most stringent provisions of the applicable statutes and regulations of the District of Columbia, State of Maryland, Commonwealth of Virginia or political subdivision where the work is being performed, as well as the METRO Construction Safety and Environmental Manual (1984, as amended) issued by the Authority, and the U.S. Department of Labor OSHA standards pertaining to the safe performance of the work. In the absence of a specific construction industry standard, the Contractor is required to comply with either an established OSHA General Industry Standard, National Institute for Occupational Safety and Health (NIOSH) guidelines, American Conference of Governmental Industrial Hygienists (ACGIH) guidelines, American National Standards Institute (ANSI) guidelines, the WMATA System Safety Program Plan, the WMATA Construction Safety and Environmental Manual, or the Metrorail Safety Rules and Procedures Handbook. For contracts where work will be performed on, or will interface with the Metrorail System, the Contractor shall also comply with the publication entitled "Metrorail Safety Rules and Procedures Handbook." In the event of a conflict between these guidelines and applicable Federal, State or local health and safety laws, regulations or standards, the more stringent standard shall apply. Further, the Contractor shall ensure that all methods of performing the work do not involve danger to the personnel working at the site, and the public and private property, whether or not these methods are cited or indicated in the Contract. The Contractor shall immediately provide to the Contracting Officer, a copy of all citations and/or warnings of safety violations received from any Federal, State or local jurisdiction or agency thereof, and/or all notifications of safety violations from insurance companies. The Contractor shall also provide to the Contracting Officer, copies of any and all subpoenas, complaints or other documents relating to any law suit alleging safety violations.
- (b) The Contractor shall employ and assign a full-time Safety Superintendent for Contracts involving "safety sensitive" functions. (See Combined Glossary attached hereto for a definition). The Safety Superintendent shall have a minimum of three (3) years of construction safety experience and hold an OSHA thirty (30) hour course card. He or she shall have the ability to develop and conduct safety training courses. He or she shall be familiar with industrial hygiene equipment and testing as required for the protection of all employees. The Safety Superintendent shall be employed exclusively for the purpose of supervising the safety of persons on or about the worksite and the property affected thereby. The Safety Superintendent shall also be responsible for providing first aid at the worksite and must have a current Red Cross First Aid Certificate. The Contractor shall notify the Contracting Officer a reasonable amount of time beforehand, any time that the Safety Superintendent will not be on site during work hours. If, at any time, the worksite is without the services of an approved Safety Superintendent for a period of three (3) calendar days or more, the work may be closed down at the Contracting Officer's discretion. The Safety Superintendent must be acceptable to the Contracting Officer and his or her performance will be reviewed on a continuing basis. If the Safety Superintendent's effectiveness is below standard, the Contractor shall provide immediate replacement at the Contracting Officer's direction. Once employed, the Safety Superintendent shall not be changed

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without the Contracting Officer's permission. The Safety Superintendent can be terminated at any time, at the Contracting Officer's discretion.

- (c) The Contractor shall provide, at the site of the work, a first aid kit which shall be fully equipped to meet the needs of the anticipated work force.
- (d) The Contractor shall follow all appropriate RAIL Operational Rules, Operational Administrative Procedures (OAPs), Standard Operational Procedures (SOPs) and General and Special Orders while on the operational railroad and all Start-Up Rules and Manager's Notices when in declared start-up areas.

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's 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. Contractors' badges are valid for one (1) year from the date of issuance.

3. WORKPLACE VIOLENCE/ZERO TOLERANCE

Pursuant to Metro Policy/Instruction 7.8.3, all Metro Contractors and subcontractors at any tier must: (1) establish zero tolerance for acts of workplace violence for their employees and independent contractors, and (2) 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 | |



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Washington Metropolitan Area Transit Authority
600 5th Street, NW
Washington, DC 20001

SPECIFICATIONS PACKAGE

Stone Track Ballast: Numbers 3, 4, and 5

ORIGINATED BY: <u></u> Kevin Greig, TRST Project Manager	DATE: <u>09/21/16</u>
APPROVED BY: <u></u> Michael Davis, TRST General Superintendent	DATE: <u>9/21/16</u>

SCOPE

1.1 SUMMARY

1.1.1 This package includes all labor, materials, and equipment for the production, testing, and delivery of stone track ballast for use in the WMATA Metrorail system.

1.1.2 This procurement includes Number 3 ballast for use with concrete crossties, Number 4 ballast for use with wood crossties, and Number 5 ballast for use in rail yards.

1.1.3 Stone ballast is a critical material used for track construction, stabilization, and drainage, therefore, it must meet the required specifications in this package.

2. APPLICABLE DOCUMENTS (MOST CURRENT VERSIONS)

2.1 GENERAL REQUIREMENTS

2.1.1 American Railway Engineering and Maintenance of Way Association (AREMA):

2.1.1.1 AREMA Manual for Railway Engineering, Chapter 1, Part 2 Ballast - Latest Edition

2.1.2 ASTM International (Formerly known as American Society for Testing and Materials):

2.1.2.1 ASTM C29/C29M - Test Method for Bulk Density ("Unit Weight") and Voids in Aggregate

2.1.2.2 ASTM C88 - Standard Test Method for Soundness of Aggregates by Use of Sodium Sulfate or Magnesium Sulfate

2.1.2.3 ASTM C117 - Standard Test Method for Materials Finer Than 75-Micrometers (No.200) Sieve in Mineral Aggregates by Washing

2.1.2.4 ASTM C127 - Standard Test Method for Density, Relative Density (Specific Gravity), and Absorption of Coarse Aggregate

2.1.2.5 ASTM C131 - Standard Test Method for Resistance to Degradation of Small-Size Coarse Aggregate by Abrasion and Impact in the Los Angeles Machine

2.1.2.6 ASTM C136 - Standard Test Method for Sieve Analysis of Fine and Coarse Aggregates

2.1.2.7 ASTM C142 - Standard Test Method for Clay Lumps and Friable Particles in Aggregates

2.1.2.8 ASTM C535 - Standard Test Method for Resistance to Degradation of Large-Size Coarse Aggregate by Abrasion and Impact in the Los Angeles Machine

2.1.2.9 ASTM C702 - Practice for Reducing Samples of Aggregate to Testing Size

2.1.2.10 ASTM D75 - Practice for Sampling Aggregates

2.1.2.11 ASTM 04791 - Test Method for Flat Articles, Elongated Particles, or Flat and Elongated Particles in Coarse Aggregate

2.2 RELATED WMATA SECTIONS (Provided Upon Request)

2.2.1 Section 05652 - Ballasted Track Construction

2.2.2 Section 05654 - Special Track work Construction - Ballasted

3. TECHNICAL SPECIFICATIONS

3.1 Stone Track Ballast

3.1.1. The vendor will provide ballast consisting of crushed stone or rock composed of hard, strong, and durable particles, free from injurious amounts of deleterious substances with angular fragments resulting from crushing by mechanical means and conforming to the requirements of the AREMA Manual for Railway Engineering, Chapter 1, Part 2. Use only the following types of rocks quarried from undisturbed deposits:

3.1.1.1 Granite and similar igneous rocks.

3.1.1.2 Extrusive igneous rocks.

3.1.1.3 Massive metamorphic quartzite or similar rocks.

.3.1.1.4 Neither gravel nor boulders passing through 5-inch opening are acceptable.

3.1.1.5 Boulders exceeding 5-inch minimum size before crushing may be considered subject to meeting all other requirements.

3.1.2 Ballast Gradation Requirements

3.1.2.1 Ballast furnished for mainline and yard track will meet the requirements of AREMA Number 4 provided in Table 1

3.1.2.2 Ballast furnished for walking surfaces in yard areas will meet the requirements of AREMA Number 5 provided in Table 1.

3.1.2.3 Conformance will be based on as-placed materials.

3.1.2.4 Ballast gradation will be determined in accordance with ASTM C136.

3.1.2.5 Percentage fines will be determined by the wash method, ASTM C117.

3.1.2.6 All gradation test results will include percentage values for all sizes shown in Table 1

Table 1
Ballast Gradation Requirements in Accordance with ASTM C136

Sieve Size	Percent Passing by Weight	
	Mainline AREMA Size 4	Yard AREMA Size 5
2-1/2 Inches		-
2 Inches	100	-
1 1/2 Inches	90-100	100
1 Inch	20-55	30-70
3/4 Inch	0-15	0-20
1/2 Inch	-	0-8
3/8 Inch	0-5	
No. 4	-	

3.1.3 Quality Requirements

- 3.1.3.1 **Fine particles: Material finer than Size 200 sieve, ASTM C117, AREMA Size 4: 0.5 percent by weight maximum according to ASTM C117.**
- 3.1.3.2 **Flat and elongated particles (longer than 1:3 ratio) are not to exceed a weighted average of 5 percent by weight as determined by ASTM 04791.**
- 3.1.3.3. **Clay lumps and friable particles: 0.5 percent maximum in accordance with ASTM C142.**
- 3.1.3.4 **Wear of ballast material will not exceed 25 percent for traprock, including basalt and 35 percent for granite in accordance with ASTM C535.**
- 3.1.3.5 **Absorption: 1.0 percent maximum in accordance with ASTM C127.**
- 3.1.3.6 **Soundness: Loss will not exceed 5-percent maximum after five cycles when tested in accordance with ASTM C88 using sodium-sulfate test**
- 3.1.3.7 **Determine bulk density in accordance with ASTM C29/29M using 3-inch and 2-inch nominal maximum sizes, respectively.**
- 3.1.3.8 **Use of limestone ballast with concrete ties is prohibited since they do not provide adequate support and will tend to degrade under load when wet, causing deterioration of the line. Number 3 ballast will be provided for concrete ties, upon request by WMATA.**

4. INSPECTION, TESTING, AND ACCEPTANCE

4.1 Source Qualification TESTING

- 4.1.1 Laboratory testing will be by an independent third-party laboratory with certification for the types of testing required herein.
- 4.1.2 Vendor will test proposed source or source of ballast in accordance with the requirements herein.

4.2 Test Reports

- 4.2.1 Ballast deliveries will not be allowed to proceed until the vendor has secured WMATA's acceptance of the proposed ballast source.
- 4.2.2 WMATA's acceptance of the vendor's proposed ballast source does not relieve the vendor of the responsibility of furnishing ballast meeting these requirements.
- 4.2.3 Testing frequency will be as prescribed herein or whenever material deviations in approved ballast material are evident or identified by WMATA.

4.3 Field Quality Control

- 4.3.1 WMATA has the right to stop delivery of material to WMATA location after visual inspection, pending sampling and testing.
- 4.3.2 Basis of acceptance will be based on as-placed materials in track. Vendor is responsible for ensuring that the materials supplied and as placed conform to the requirements specified herein. If material loaded, being loaded or installed does not conform to specified requirements, WMATA will reject the material and the vendor will not resume ballasting operations until the fault has been corrected and defective material has been disposed of by the vendor and without cost to WMATA.
- 4.3.3 Vendor will replace defective material, when required.
- 4.3.4 Two samples of the delivered ballast product from each 4000 tons will be inspected. Each sample will be representative and weigh not less than 100 pounds and will be tested for conformance with the specifications.

4.4 Production Testing and Sampling:

- 4.4.1 Vendor will subject ballast to specified tests, except gradation test, at an approved independent testing facility.
- 4.4.2 Vendor will conduct testing, except gradation test, to determine if ballast meets specified requirements.

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- 4.4.3 Visual inspection and gradation testing will be performed by WMATA:
- 4.4.3.1 30 days prior to initial delivery.**
 - 4.4.3.2 Prior to placement on the track bed.**
 - 4.4.3.3 For each 4,000 tons of ballast delivered.**
- 4.4.4 WMATA, or its representatives, reserve the right to visit the producers facility during typical business hours unscheduled to:
- 4.4.4.1 Observe sampling and testing procedures.**
 - 4.4.4.2 Obtain samples of the prepared material being produced and shipped.**
 - 4.4.4.3 Review plant inspection methods, quality control procedures, equipment and examine test results of current and previous tests.**
- 4.4.5 Prior to delivery, the supplier will provide the WMATA COTR/Engineering with certified test reports of ballast quality and gradation as conducted by a testing laboratory accepted by the WMATA COTR/Engineering. The supplier will receive approval of the WMATA COTR/Engineering for the Testing Laboratory prior to performing the aforementioned tests.
- 4.4.6 Recommended limiting values of testing for ballast material identified in the following chart:

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Property	Ballast Material							
	Granite	Traprock	Quartzite	Limestone UNDESIRABLE	Dolomitic Limestone UNDESIRABLE	Blast Furnace Slag	Steel Furnace Slag	ASTM Test
% Material Passing No. 200 Sieve	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	C 117
Bulk Specific Gravity (See Note 2)	2.60	2.60	2.60	2.60	2.65	2.30	2.90	C 127
Absorption %	1.0	1.0	1.0	2.0	2.0	5.0	2.0	C127
Clay Lumps & Friable Particles	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	C 142
Degradation	35%	25%	30%	30%	30%	40%	30%	See Note 1
Soundness (Sodium Sulfate) 5 cycles	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	C 88
Flat and/or Elongated Particles	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	D 4791
Note 1:	Materials having gradation containing particles retained on the 1 inch sieve shall be tested by ASTM C 535. Materials having gradations with 100% passing the 1 inch sieve shall be tested by ASTM C 131. Use grading most representative of ballast material gradation.							
Note 2:	The limit for bulk specific gravity is a minimum value. Limits for the remainder of the tests are maximum values.							

4.5 Submittals

Within 14 days after Notice to Proceed, samples, test results, certification including Certificates of Compliance and handling procedures must be submitted to WMATA's Contracting Officer for review and approval.

- 4.5.1 Vendor will submit the following for approval in accordance with the General Requirements and with the additional requirements as specified for each:

4.5.1.1 Samples:

- a. 200-pound samples from each proposed ballast source for gradation test unless otherwise directed by WMATA. Submit 30 days prior to shipping ballast to work site.

4.5.1.2 Certificates:

- a. Submit source of supply and certification of quantities to be supplied sufficiently in advance to obtain approval not less than 5 days prior to the anticipated date of delivery.
- b. At time of delivery, submit Certificates of Compliance attesting that material furnished to the site conform to the requirements of these specifications.

- 4.5.2 Reports of Qualification Testing and Production Testing

4.5.1 Certified Test Results:

- a. The testing laboratory will submit timely, professional test reports containing a description of each test, identification of test equipment, an explanation of deviations from test procedures, tabulations and/or plots of test results, the testing service's evaluation of the results, and sketches or diagrams necessary to clarify the test or results. Submit the test reports of results to WMATA within two days of the time the test was performed.

4.5.2.2 Handling Procedures:

- a. Submit the proposed method of handling ballast, including but not limited to, traffic routes, proposed stockpiling areas, agreements from private property owners for use of stockpiling areas, and means and methods for handling ballast.
- b. Production plan for producing ballast including all requirements of this section and AREMA specifications.
- c. Procedures for installation of ballast are not required under this Section but will be addressed as part of the Work Plan for Ballasted

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Track Construction as indicated in WMATA Section 05652.

5. WARRANTY

5.1 Refer to Section 4.3 "Field Quality Control"

6. DELIVERY, HANDLING, AND STORAGE

6.1 DELIVERY INSTRUCTIONS

6.1.1 Stone track ballast will be delivered to:

Alexandria Yard
3101 Eisenhower Avenue
Alexandria, VA 22314

Branch Ave Yard
5700 Capital Gateway Drive
Suitland, MD 20747

Glenmont Yard
12750 Layhill Road
Silver Spring, MD 20906

Greenbelt Yard
5801 Sunnyside Avenue
College Park, MD 20740

New Carrollton Yard
4300 Garden City Drive
New Carrollton, MD 20785

Shady Grove Yard
15903 Somerville Drive
Derwood, MD 20855

West Fall Church Yard
7251 Idylwood Road
Falls Church, VA 22043

Alternate locations within the WMATA rail system (DC, MD, VA)

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- 6.1.2 Deliveries will be coordinated by Blyden Davis, Track Supervisor, at 202-374-1236.
- 6.1.3 All deliveries must include a detailed bill of lading.
- 6.1.4 WMATA staff will inspect all stone ballast deliveries upon receipt. WMATA will not incur any additional cost for replaced stone ballast.
- 6.1.5 Vendor will deliver, handle, and store the stone ballast by methods which prevent damage, fouling and segregation.
- 6.1.6 Vendor's certification that the materials delivered to the site are in compliance with these specifications will be provided with each delivery to the work site.
- 6.1.7 The aggregate production facility will be of such design to permit production and or blending without excessive working of the materials and the facility must be approved by WMATA.
- 6.1.8 Blending, stockpiling and other production and handling operations will be managed by the vendor to minimize segregation of the finished product. Stockpiling operations will be minimized as practical the breakage or excessive fall in stockpiling operations and the movement of wheeled or tracked machines over stockpiled materials will be limited.
- 6.1.9 Stockpile ballast on level, well-drained sites free of all foreign materials and of adequate bearing capacity to support the weight of the materials to be placed thereon.
 - 6.1.9.1 Except where stockpiled on concrete or asphaltic concrete foundations or on otherwise acceptably stabilized areas, provide a stockpile base approved by WMATA.**
 - 6.1.9.2 Build stockpiles in layers not to exceed three feet in depth, for each layer, completing each layer over the entire area of the stockpile before beginning the next layer. Uniformly spot-dump aggregates delivered to the stockpile in trucks. Coning of the piles or spilling of material over the edges of the pile is prohibited.**
- 6.1.10 Processed ballast will be washed and/or rescreened as necessary to remove fine particle contamination as defined by the specification or as directed by WMATA prior to stockpiling in operations using stockpiles or immediately prior to loading operations.
- 6.1.11 Unless otherwise permitted by the WMATA, remove rejected materials from the property within 48 hours of rejection.
- 6.1.12 Do not allow ballast to fall from a height in a manner that the larger particles are thrown beyond the smaller particles. When placing ballast in a bin, drop the material vertically over the center of the bin.

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6.1.13 The following are prohibited:

6.1.13.1 Storage of ballast in cone-shaped piles.

6.1.13.2 Subjecting ballast to repeated passes of equipment over same levels in stockpile area.

TECHNICAL EVALUATION CRITERIA
FQ17050/LTR BALLAST AREMA 3, 4, AND 5

The offeror shall submit the Compliance Matrix with the Technical Proposal. The offeror shall check the 'Y' for Yes or 'N' for No box for each section or sub-section listed.

COMMENTS	Section No.	Y	N
Is your company capable of providing a yearly average of 11,000 tons of crushed AREMA 3, 4, and 5 stone ballast, composed of durable particles, free from injurious amounts of deleterious substances? Ballast must conform to the AREMA Manual for Railway Engineering, Chapter 1, Part 2 and meet ballast gradation requirements in accordance with ASTM C136.	3.1		
During the past three years, has your company supplied AREMA 3, 4, and 5 stone ballast, to rail transit agencies or other rail systems? Please provide a list of past sales/contracts during last three years for rail transit agencies, or other rail systems, including: Rail Transit Agency/Rail System - Contract Number - Period of Performance - Tons of Material supplied - Contract/Purchase Order Amount - Contracting Officer Contact Information, Name, Phone Number, Email	4.1		
Is your company capable of providing AREMA 3, 4, and 5 ballast subjected to tests in compliance with ASTM C117, C127, C142, C535, C131, C88, and D4791, and provide documentation of such testing?	4.4		

APPENDIX B

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ATTACHMENT A

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

May 2015

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

~APPENDIX B~

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

1. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENT:

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

2. POLICY:

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

3. CONTRACT GOAL:

- a. If the offeror is not a DBE, the bidder agrees that the DBE goal for this Contract shall be met by subcontractors or by joint ventures with DBEs. The goal set forth for this Contract is **2%** of the final Contract price, including amendment and modification. The amount of DBE participation will be determined by the dollar value of the work performed and/or supplies furnished by DBE firms as compared to the total value of all work performed and/or supplies furnished under this Contract. The Contractor shall have met this goal if the Contractor's DBE participation meets or exceeds this goal.
- b. In cases where work is added to the Contract by modification such that additional DBE participation is necessary to meet this goal, the Contractor shall increase the participation of one or more firms listed on the "Schedule of DBE Participation" or submit additional DBE certified firms to meet the goal. In cases where work is deleted from the Contract, the goal shall be applicable to the new Contract amount. The Contractor shall be permitted to meet the goal by revising its DBE participation, provided, however, that the revision shall not result in DBE participation that is less than the original goal.

4. DEFINITIONS:

- a. **Appendix B.** The Notice of Requirements for Disadvantaged Business Enterprise, which when attached to a solicitation, implements the DBE requirements of the Authority's DBE Program Plan in the award and administration of federally funded Authority contracts.
- b. **Certified DBE.** means a for-profit small business concern (a) that is at least fifty one percent (51%) owned by one or more individuals who are both socially and

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economically disadvantaged or, in the case of a corporation, in which fifty one percent (51%) of the stock is owned by one or more such individuals; (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and (c) whose eligibility is evidenced by a current WMATA Certification letter, a D.C. Department of Transportation Certification letter, or a certification letter issued by the Metropolitan Washington Unified Certification Program (MWUCP).

- c. **Contractor.** One who participates, through a contract or subcontract (at any tier), in a US DOT assisted highway, transit or airport program.
- d. **D.C. DOT.** The District of Columbia Department of Transportation.
- f. **Good Faith Efforts.** Efforts to achieve a DBE goal or other requirements of the Authority's DBE Program Plan which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the goal program requirement.
- g. **Joint Venture.** An association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and shares in the capital contribution, control, management, risks, and profits of the joint venture commensurate with its ownership interest.
- h. **Metropolitan Washington Unified Certification Program (MWUCP).** A unified certification program mandated by 49 C.F.R. §26.81 between two Federal transit recipients (WMATA and the D.C. Department of Transportation). The agreement became effective January 2005.
- i. **Pre-certification.** A requirement under 49 C.F.R. §26.81(c) that all certifications by the MWUCP be made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.
- j. **Race-conscious.** A measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs.
- k. **Race-neutral.** A measure or program that is, or can be, used to assist all small businesses. For the purposes of the DBE program, race-neutral includes gender-neutrality.
- l. **Small Business Concern.** With respect to firms seeking to participate as DBEs in US DOT assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration implementing regulations (13 C.F.R. Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR § 26.65(b).
- m. **Socially and Economically Disadvantaged Individual.** Any individual who is a citizen (or other lawfully admitted permanent resident) of the United States and who the Authority finds to be a socially and economically disadvantaged individual on a case-by-case basis, and any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged.

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- (1) Black Americans, which includes persons having origins in any of the Black racial groups of Africa;
 - (2) Hispanic Americans, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (3) Native Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (4) Asian-Pacific Americans, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the North Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - (5) Subcontinent Asian Americans, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (6) Women; and
 - (7) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- n. US DOT Assisted Contract. Any contract between the Authority and a contractor (at any tier) funded in whole or in part with U.S. DOT financial assistance, including letters of credit or loan guarantees.
- o. Unified Certification Program (UCP). The program mandated by 49 C.F.R. § 26.81(a), which requires all U. S. DOT recipients of Federal financial assistance to participate in a statewide certification program by March 2002.
- p. WMATA. Washington Metropolitan Area Transit Authority, the transit system (rail and bus) serving the metropolitan Washington area, including parts of Virginia and Maryland.

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

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

- A. When a DBE participates in a contract, only the value of the work actually performed by the DBE is counted towards the DBE goal.
- (1) This amount includes the entire amount of that portion of a construction contract that is performed by the DBE's own forces. This amount includes the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE

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(except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

- (2) This amount includes the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the contract, towards the DBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (3) When a DBE subcontracts part of its work under the contract to another firm, the value of the subcontract work may be counted towards the DBE goal only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count towards the DBE goal.
- B. When a DBE performs as a participant in a joint venture, the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that a DBE performs with its own forces towards the DBE goal may be counted.
- C. Expenditures to a DBE contractor towards the DBE goal may be counted only if the DBE is performing a commercially useful function on that contract.
- (1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Authority will consider the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
 - (2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.
 - (3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work, the Authority will presume that the DBE is not performing a commercially useful function.
- D. The following factors will be used by the Authority in determining whether a DBE trucking company is performing a commercial useful function:
- (1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible for on a particular

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- contract, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.
- (2) The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract.
 - (3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers, it employs.
 - (4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - (5) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
 - (6) The lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the terms of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
- E. The following factors will be used to count expenditures with DBEs for materials or supplies towards the DBE goal:
- (1) If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies will be counted towards the DBE goal. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the contract.
 - (2) If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies will be counted towards the DBE goal. A regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if this person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by long-term lease agreement and not on an ad hoc or contract-by-contract

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basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.

(3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials and supplies required on a job site, may be counted towards the DBE goal, provided the fees are reasonable and are not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves may not be counted towards the DBE goal.

F. All DBE firms must be pre-certified. Participation by a firm that is not currently certified as a DBE by the Authority at the time of the due date for bids or offers on a contract, does not count towards the DBE goal. All DBE firms must be in compliance with 49 CFR, Part 26.

G. The dollar value of work performed under the contract by a firm who has been decertified as a DBE by the MWUCP does not count towards the DBE goal.

H. The participation of a DBE subcontractor does not count towards the Contractor's DBE goal until the amount being counted towards the goal has been paid to the DBE.

6. OFFERS AND REQUIREMENTS (WITH THE OFFER):

The offeror shall submit the following with its offer. Any offeror who fails to complete and return this information with its offer shall be deemed to be not responsive and may be ineligible for Contract award. Offerors that fail to meet the DBE goal above and fail to demonstrate "good faith efforts" to justify waiver of the DBE goal (See paragraph 6.C. below) shall be deemed to be not responsible and will be ineligible for Contract award.

A. Completed "Schedule of DBE Participation" (Attachment B-1) sufficient to meet the above goal. If the offeror is a DBE firm and intends to satisfy the appropriate DBE requirement with its own firm, it must indicate in the Schedule the area of work and percentage it will perform to satisfy the goal. All offerors must attach current WMATA, DC DOT or MWUCP certification letters for each DBE listed on the Schedule.

B. Executed "Letters of Intent to Perform as a Subcontractor/Joint Venture" (Attachment B-2). If the offeror is not a DBE or intends to satisfy the requirements through other DBE firms, then it must attach these letters from each certified DBE listed on the Schedule.

C. Justification for grant of relief (Appendix B waiver of DBE goal). If in the submittal of its offer, the offeror fails to meet the DBE goal above, the offeror has the burden of furnishing sufficient documentation with its offer of its "good faith efforts" to justify a grant of relief (waiver) from the goal or portion of the goal. Such justification shall be in the form of a detailed report. The following is a list of actions which shall be considered as part of the offeror's good faith efforts to obtain DBE participation. This list is neither a mandatory checklist nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases:

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- (1) Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The offeror must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The offeror must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- (2) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out Contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- (3) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- (4) Negotiating in good faith with interested DBEs. It is the offeror's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work. "DBE Unavailability Certifications" (Attachment B-3) shall be completed as appropriate.
- (5) An offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as the Contract goal into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the offeror of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- (6) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of offers in the Contractor's efforts to meet the project goal.
- (7) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

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- (8) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (9) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

7. OFFER REQUIREMENTS (APPARENT SUCCESSFUL OFFEROR):

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

- a. A copy of a current WMATA, D.C. DOT or MWUCP certification letter(s) shall be attached to the DBE Schedule of Participation to evidence DBE pre-certification.
- b. DBE Manufacturer's Affidavit, if applicable, must be submitted in order to receive 100 percent of the allowable credit for expenditures to DBE manufacturers/suppliers (Attachment B-4). By submission of this Affidavit, the offeror certifies this it is satisfied that the manufacturer meets the requirements of 49 CFR Part 26.
- c. Schedule B Information for Determining Joint Venture Eligibility, if applicable (Attachment B-5, pgs. 1-4). Submittal shall be signed by all parties, dated and notarized.
- d. Copy of Joint Venture Agreement, if applicable. Submittal shall be signed by all parties, dated and notarized.
- e. Certification letter of the DBE regular dealer/supplier, if applicable. If the offeror wants to receive the maximum allowable credit of its expenditures for material(s) or supplies required under this Contract, from DBE regular dealers/suppliers, the DBE must submit a signed and notarized statement on their letterhead, that they are a regular dealer of the material(s) or supplies. By submission of this statement, the offeror certifies that it is satisfied that the subcontractor is a regular dealer/supplier that meets the requirements of 49 CFR Part 26.
- f. For Design-Build contracts, if a DBE goal is specified in the solicitation, the offeror shall submit with its initial offer, a list of DBE-certified firms that it intends to enter into subcontract agreements with for this Contract. If no goal is specified in the solicitation and the offeror still intends to utilize DBEs in the performance of this Contract, the offeror shall submit with its initial offer a list of those DBE-certified firms. The documentation requirements of the solicitation shall be completed and submitted at the time set forth for the submittal of Best and Final Offer (BAFO) to the Authority for any Contract in which a DBE goal is applicable or for any Contract in which there was no goal established, but the offeror identified DBE-certified firms that it intends to enter into subcontract agreements with in its initial offer. Any offeror who fails to complete and return the following information, if applicable, with their BAFO may be deemed to be not responsible and may be ineligible for contract award. Offerors that fail to meet the DBE goal, if any, specified in the solicitation and fail to demonstrate a good faith effort and to justify waiver of the DBE goal may be deemed to be not responsible and may be ineligible for Contract award.

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8. CONTRACT ADMINISTRATION REQUIREMENTS:

The following requirements apply after contract award:

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

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

- B. (1) The Contractor shall monitor the performance of, collect and report data on DBE participation to the WMATA's DBE office on the attached “Prompt Payment Report-Prime Contractor's Report” (Attachment B-6) which shall be submitted monthly with each payment request. Failure to submit these reports may result in suspension of contract payments. The Contractor shall certify with each payment request that payment has been or will be made to all subcontractors due payment, within ten (10) days after receipt of payment from the Authority for work by that subcontractor. The Contractor shall inform the COR or COTR, with their payment request, of any situation in which scheduled subcontractor payments have not been made and the reason therefore.

- (2) The Contractor shall require each subcontractor to complete and forward to the DBE Liaison Officer on a monthly basis a “Prompt Payment Report-Subcontractor's Report” (Attachment B-7). The subcontractor shall certify that payment has been received.

- C. The Contractor shall have a continuing obligation to maintain a schedule for participation by DBE contractor(s) to meet its goal set forth above in this Appendix. The Contractor shall not have work performed nor the materials or supplies furnished by any individual or firm other than those named in the “Schedule of DBE Participation.” If at any time, the Contractor believes or has reason to believe that it needs to obtain a substitute for a DBE contractor named in the “Schedule of DBE Participation”, the Contractor shall, within ten (10) days, notify the Contracting Officer and the DBE office of that fact in writing. Situations which may warrant substitution for a DBE firm include, but are not limited to the following:

- (1) Evidence of change in ownership or circumstances regarding the firm's status as a DBE.
- (2) Death or physical disability, if the named subcontractor or DBE partner of the joint venture is an individual.
- (3) Dissolution, if a corporation or partnership.
- (4) Bankruptcy of the subcontractor, subject to applicable bankruptcy law, and only instances where the bankruptcy affects the Contractor's ability to perform.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT RFP FQ17050/LTR

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

Within thirty (3)0 days thereafter, the Contractor shall, if necessary to achieve the Appendix B goal, make every reasonable effort to subcontract the same or other work equivalent in value to other certified DBE firms. The Contractor must have the prior, written approval of the Contracting Officer and the DBE Office before substitution of a DBE subcontractor, regardless of the reason for substitution. Failure to obtain the Authority's approval could result in the Contractor's suspension or debarment.

- D. The Contractor shall forward copies of all subcontracts to the DBE Office at the time of their execution.
- E. If the Contracting Officer or other delegated Authority representative determines that the Contractor has failed to comply with this Appendix B, he/she will notify the Contractor of such noncompliance and the action to be taken. The Contractor shall, after receipt of such notice, take corrective action. If the Contractor fails or refuses to comply promptly, the Contracting Officer or other delegated Authority representative may issue a "stop work order" stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop work order shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor. When the Authority proceeds with such formal actions, it has the burden of proving that the Contractor has not met the requirements of this Appendix. The Contractor's failure to meet its Appendix B goal shall shift the burden to it to show that it has met the good faith requirements of this Appendix. After exhausting all of its administrative and legal remedies, if the Contractor is found to have failed to exert a "good faith effort" to involve DBEs in the work, the Authority may suspend or debar the Contractor
- F. The Contractor agrees to cooperate in any studies or surveys as may be conducted by the Authority which are necessary to determine the extent of the Contractor's compliance with this Appendix.
- G. The Contractor shall keep records and documents for two (2) years following performance of this Contract to indicate compliance with this Appendix. These records and documents, or copies thereof, shall be made available at reasonable

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
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times and places for inspection by any authorized representative of the Authority and will be submitted upon request, together with any other compliance information that such representative may require.

- H. If the Authority, FTA or the US DOT has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements regarding the DBE Program, the matter shall be referred to the WMATA's DBE office, and WMATA's Office of Inspector General (OIG).
- I. Failure by the Contractor to carry out the requirements of this Appendix is a material breach of this Contract, that may result in the termination of this Contract or such other remedy as the Authority deems appropriate.

SUMMARY OF SUBMITTALS

With the Offer

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

Offer Requirements (Apparent Successful Offeror)

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

After Contract Award

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

(Attachment B-1)

SUBMIT WITH OFFER
SCHEDULE OF DBE PARTICIPATION

Contract No. _____

Project Name _____

Name of Offeror _____

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

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

_____ Signature of Contractor Representative

_____ Title

_____ Date

M

(Attachment B-2)

Contract Number: _____

Project Name: _____

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

TO: _____
(Name of Offeror)

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

_____ An individual _____ A corporation
_____ A partnership _____ A Joint venture

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

at the following price: \$

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

Name of DBE Subcontractor/Joint Venture

Phone Number

Address

WMATA Vendor ID #/DBE Cert. #

Signature & Title

Date

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

To: _____
(Name of DBE)

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

WORK ITEMS	PROJECTED DBE COMMENCEMENT DATE	PROJECTED DBE COMPLETION DATE
_____	_____	_____

(Date)

(Name of Prime Contractor &
Acceptance Signature)

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
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(Attachment B-3)

SUBMIT WITH OFFER

DBE UNAVAILABILITY CERTIFICATION

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

certify that on _____ I contacted the following DBE contractor(s) to obtain offer(s) for work
(Date)
items to be performed on Contract Number _____

DBE Contractor	Work Items Sought	Form of Bid Sought (i.e., Unit Price, Materials and Labor Only, Etc.)
_____	_____	_____

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

Signature: _____

Date: _____

_____ was offered an opportunity to submit an offer on the above
(Name of DBE Contractor)

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

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

(Signature of DBE Contractor)

(Title)



DBE Certification Instructions

Important Notice

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

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

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

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

Instructions

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

General (All firms must submit these documents.)

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

Corporations

- Articles of Incorporation
- By-Laws
- Copies of any Stock Options
- Copies of Stock Certifications of Each Holder
- Copies of Stockholders’ Voting Rights
- Record of First Organizational Meeting

Partnerships

- Partnership Agreement

Proprietorships

IRS Employer ID Number
WMATA Vendor ID#

Limited Liability Companies

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

Change of Status Review

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

Affidavit Enclosure

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

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(Attachment B-4)
DBE MANUFACTURER'S AFFIDAVIT

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

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

Equipment

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

Number of employees involved in the manufacturing process: _____

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

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

Date: _____ State: _____ County: _____

On this _____ day of _____, 19 _____,

before me appeared _____
(Name)

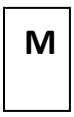
to me personally known, who, being duly sworn, did execute the foregoing Affidavit, and did state that he or she was properly authorized by _____
(Name of Firm)

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

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

Commission Expires: _____

23.29 (10/99)



(Attachment B-5)
Information for Determining Joint Venture Eligibility

Page 1

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

Contact Person: _____ Telephone: _____

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

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

Name and address of Joint Venture partner: _____

Contact Person: _____ Telephone: _____

Status of firm: DBE. Non-Minority.

Does firm have current WMATA, D.C. DOT or MWUCP DBE certification? Yes No
.....

Name and address of Joint Venture partner: _____

Contact Person: _____ Telephone: _____

Status of firm: DBE. Non-Minority.

Does firm have current WMATA, D.C. DOT or MWUCP DBE certification? Yes No
.....

Describe the nature of the Joint Venture's business:

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

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

Information for Determining Joint Venture Eligibility

Page 2

.....

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

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

TOTALS:

.....

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

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

Name: _____ Race: _____

Title: _____ Sex: Male Female

Company affiliation: _____

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

Name: _____ Race: _____

Title: _____ Sex: Male Female

Company affiliation: _____

3. Supervision of field operations:

Name: _____ Race: _____

Title: _____ Sex: Male Female

Company affiliation: _____

.....



Information for Determining Joint Venture Eligibility

Page 3

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

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

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

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

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

.....
23.29 (10/99)



Information for Determining Joint Venture Eligibility

Page 4

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

On this _____ day of _____, 19_____,

before me appeared _____
(Name)

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

(Name of Firm)

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

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

Commission Expires: _____

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

On this _____ day of _____, 19_____,

before me appeared _____
(Name)

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

(Name of Firm)

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

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

Commission Expires: _____

.....

M

 23.06c (Rev 10/99)

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT RFP-FQ17050
Washington Metropolitan Area Transit Authority
(Attachment B-6)
 DISADVANTAGED BUSINESS ENTERPRISE (DBE)
 MONTHLY PROMPT PAYMENT REPORT

PRIME – CONTRACTOR’S REPORT

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

Contract No.: _____ Reporting Period: _____

Name of Prime Contractor: _____ DBE – Yes or No _____

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

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

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

By: _____ Title: _____ Date: _____

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT RFP-FQ17050

Washington Metropolitan Area Transit Authority
(Attachment B-7)
 DISADVANTAGED BUSINESS ENTERPRISE (DBE)
 MONTHLY PROMPT PAYMENT REPORT

SUBCONTRACTOR'S REPORT

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

Contract No.: _____ Reporting Period: _____

Name of Subcontractor: _____ DBE – Yes or No

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

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

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

By: _____ Title: _____ Date: _____

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT RFP-FQ17050

DBE List

[Apex Petroleum Corporation](#)
ralphi@apexpetroleum.com

[BA Construction t/a Gutierrez Trucking, Inc.](#)
sanchez54@verizon.net

[Bay Associates Environmental, Inc.](#)
skenney@hazardouswastepros.com

[Bulldog Distribution Trucking, LLC](#)
mlambert@thebulldoggroupllc.com

[C. Jones Trucking, LLC](#)
randerson@cjonestrucking.net

[Congressional Trucking, LLC.](#)
elhayman@comcast.net

[D and D Trucking, LLC](#)
danddtrucking.md@gmail.com

[Davis Freight Management](#)
davisfrt@verizon.net

[Driveways and Highways, LLC](#)
binny63@hotmail.com

[Duffield Hauling, Inc.](#)
nduffield@duffieldhauling.com

[Eco-Battery](#)
jlane.1@netzero.com

[Eminence Group, LLC](#)
dmckinney@eminencegroup.biz

[Hodges Enterprises, Inc.](#)
Heiinc2004@Aol.Com

[J.N. Newman Trucking, LLC](#)
jntrucking@gmail.com

[James L. Taylor Trash Removal Contractor, Inc.](#)

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT RFP-FQ17050

DBE LIST (Continuation)

[K & B Summers, Inc.](#)
kandb@summerstrucking.com

[L. R. Waller and Son, Inc.](#)
Mz99tcc@yahoo.com

[M.C. Trucking Company, Inc.](#)
mctruckingcoinc@comcast.net

[MGE, Inc.](#)
marco@mcenter.net

[MRI USA, Inc.](#)
gayle.bernstein@mriusa.biz

[Nelson Enterprises, Inc.](#)
nei.construction@yahoo.com

[Pdi-Sheetz Construction Corporation](#)
Bkight@Pdisheetz.Com

[Seeram Enterprises, LLC](#)
lseeram@seeramenterprise.com

[Sitework Safety Supplies, Inc.](#)
peter@siteworksafety.com

[SJ and Son Construction and Trucking, LLC](#)
mhernandez@sjandson.com

[Streets Trucking, LLC](#)
jstreets28@hotmail.com

[The Mayberry Group, Inc.](#)
ncollier@themayberrygrouponline.com

[Tomar Trucking, Inc.](#)
tti8420@AOL.COM

[TSC Transport, Inc.](#)
tsctrans@aol.com

[Twin Trucking, LLC](#)
twintruckingllc@gmail.com

[W.D. Trucking, LLC](#)
wdtruckingllc@aol.com

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 solicitation, during which period offerors may not withdraw their offers.

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

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

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 Contracting Officer's request, 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 that is produced or controlled by one or more entities, including trademarks, manufacturer names, or model names or numbers that are associated with a manufacturer.

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

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

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

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

Competitive Range: Those initial proposals that are determined by the Authority to have a reasonable chance of being selected for award and that may be selected for additional negotiations or discussions to the extent deemed appropriate by the Contracting Officer. Proposals not in the

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT RFP-FQ17050

competitive range are given no further consideration. For low price, technically acceptable awards, "competitive range" means all proposals that are technically acceptable.

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.

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

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

Contracting Officer Representative: The person to whom the Contracting Officer delegates the authority and responsibility for post award administration 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 this Contract, including all incidentals that are necessary to complete the work in accordance with this Contract.

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

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

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

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

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 (1) 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 shows a product's characteristics or construction of a product or explains its operation. The term includes only that information needed to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

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Directed, ordered, designated, prescribed or words of like importance: 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.

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 to be followed by the Contracting Officer's request for receipt of Best and Final Offers (BAFOs).

Evaluation Criteria: Those factors to be considered by the Authority, in determining the successful proposal.

Explanation: Additional information or clarification provided by an Authority representative to one (1) or more prospective offerors in response to an inquiry relating to the solicitation, that will be binding upon the Authority, only to the extent specified in this Contract.

Equivalent: Of equal or better quality and/or performance to that specified in this 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 this Contract.

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, that 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: 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 part of the Contract unless specifically listed in the Statement of Work.

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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 this Contract.

Milestone: A specified date in this 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 Authority's interests.

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, a person, corporation or other business entity is unable or potentially unable to render impartial assistance or advice to the Authority, or its objectivity in performing the Contract is or might be otherwise impaired, or it has an unfair competitive advantage.

Period of Performance: The time allotted in this Contract for completion of the work. The period of performance begins upon the effective date of Contract execution and ends on the last date for complete performance of the final option. The period of performance incorporates the milestones established for the Contract.

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

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

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 Administrator or Contracting Officer, often as a result of discussions. Best and Final Offers are one form of revision.

Safety Sensitive: FTA regulations at 49 C.F.R. § 655.4 define "safety sensitive functions" as any of the following duties when performed by WMATA as a grant recipient, or any of its contractors: (a) Operating a revenue service vehicle, including when it is not in revenue service; (b) Operating a

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nonrevenue service vehicle, when required to be operated by the holder of a commercial driver's license (CDL); (c) Controlling dispatch or movement of a revenue service vehicle; (d) Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service vehicles; and (e) Carrying a firearm for security purposes. WMATA's definition of safety sensitive functions extends beyond FTA's requirements and includes (f) Employees and contractors who maintain escalators and elevators (including repairs, overhauls and rebuilding) and (g) Station managers.

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.

Small Business Enterprise Set-Aside: Competitive procurement(s), less than \$500,000, exclusively for SBE certified bidders/proposers.

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 (SOW): The portion of this Contract or Request for Proposals 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).

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

Similar: Generally the same, but not necessarily identical. Details will be worked out regarding location and relation to other parts of the work.

Site: The areas that are occupied by or used by the Contractor and subcontractors during performance of this Contract.

Small Business Enterprise (SBE): A for profit small business concern that has been certified by the Authority to be at least fifty-one percent (51%) owned by one (1) or more individuals who are economically disadvantaged.

Small Business & Local Preference Program: Board mandated small business contracting program for WMATA funded contracts with firm(s) located in the District of Columbia, Maryland or Virginia.

Subcontract: An agreement between the Contractor and another party, or between other subcontractors at any tier, to perform a portion of this 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 subcontractors or suppliers.

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Submittal: Written or graphic document or samples 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 it can be utilized for the purpose for which it is intended, and only incidental work remains for physical completion in accordance with the Contract.

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.

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

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

WMATA Safety Manual: A compilation of the appropriate safety and reporting requirements for the project as specified in the Contract.

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

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