



Request For Proposals (Non-Federal)

Digital Wall Scapes & Display Terminals

RFP No.: CQ18193

Date: May 16th, 2018

~~Due Date: June 15th, 2018~~

Due Date: June 25th, 2018

Date: May 16, 2018

SUBJECT: RFP No. CQ18193

Dear Sir/Madam:

The Washington Metropolitan Area Transit Authority (WMATA) requires the services of a qualified contractor(s) to design, fabricate and install integrated panoramic Wall Scapes and interactive display units for maps, news, information and advertising at various metro station locations. In addition to locations, spaces and display components identified by WMATA, Contractors are highly encouraged to propose complementary locations, designs and display components that fully leverage WMATA's unique rail stations and space dimensions to drive customer engagement and revenue generation. The media for the digital Wall Scapes and display terminals shall be controlled through a contemporary Content Management System (CMS) to facilitate coordinated messaging, content displays and centralized management. Contractors shall be prepared to operate and maintain system as described in this solicitation. If you have any technical, contractual, or administrative questions, please e-mail them to sntolliver@wmata.com no later than Close of Business, **May 31st, 2018**. 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, ~~June 15th, 2018~~** June 25th, 2018 at WMATA, Office of Procurement and Materials, 600 Fifth Street, NW, Room 3C-02, Washington, DC 20001-2651.

Sincerely,

Contracting Officer
Office of Procurement and Materials

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INTRODUCTORY INFORMATION
SOLICITATION CERTIFICATIONS PAGE

CQ18193ST

Digital Wall Scapes and Display Terminals

APPROVED FOR RELEASE

Project Manager/Office Designee

Date

Contracting Officer

Date

END OF SECTION

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 3C-02
Attn: Sherreen Tolliver

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) ~~June 15th, 2018~~ June 25th, 2018 ON DAY OF PROPOSAL CLOSING.

NOTICE TO OFFERORS

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

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

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

Questions concerning this Request for Proposals may be directed to Sherreen Tolliver on 202-962-1647, sntolliver@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 sent to clm@wmata.com.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT RFP-CQ18193ST



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SOLICITATION, OFFER AND AWARD

CONTRACT NO. CQ18193	SOLICITATION NO. RFP CQ18193ST <input type="checkbox"/> ADVERTISED <input checked="" type="checkbox"/> NEGOTIATED	DATE ISSUED 5/16/2018	ADDRESS OFFER TO OFFICE OF PROCUREMENT Office of Procurement 600 Fifth Street NW Washington, DC 20001
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SOLICITATION

Sealed offer in original and TWO (2) copies for furnishing the supplies or services in the schedules will be received at Authority until 2:00 P.M. Local time June 25th, 2018
(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 (GRAND TOTAL)
	[SEE – ATTACHED PRICE SCHEDULE]			→	\$

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	<table style="width: 100%;"> <tr> <td style="width: 60%;">Signature</td> <td style="width: 40%;">Offer Date</td> </tr> </table>	Signature	Offer Date
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
Digital Wall Scapes & Display Terminals	(See price Schedule)		

The total amount of this award is \$ _____

Name of Contracting Officer (Print of Type)

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

AWARD DATE

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SOLICITATION, OFFER AND AWARD

CONTINUATION SHEET

THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF THE FOLLOWING AMENDMENTS

TO SOLICITATION **RFP CQ18193ST**

Amendment Number _____ Dated _____

Amendment Number _____ Dated _____

Amendment Number _____ Dated _____

Amendment Number _____ Dated _____

Amendment Number _____ Dated _____

Amendment Number _____ Dated _____

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

Authorized Signature

Company Name

Date

PRICE SCHEDULE SHEET

See Attachment C

RFP SOLICITATION INSTRUCTIONS

1. INTRODUCTION

- (a) The Authority seeks to award a contract to qualified Contractor(s) to design, fabricate and install integrated panoramic Wall Scapes and interactive display units for maps, news, information and advertising at various metro station locations. In addition to locations, spaces and display components identified by WMATA, Contractors are highly encouraged to propose complementary locations, designs and display components that fully leverage WMATA's unique rail stations and space dimensions to drive customer engagement and revenue generation. The designs should enhance customer experience on the WMATA system for commuters and visitors to the national capital region, engage and inform riders, and promote advertisements as a source of revenue to support core transit services.

The media for the digital Wall Scapes and display terminals shall be controlled through a contemporary Content Management System (CMS) to facilitate coordinated messaging, content displays and centralized management. Contractors shall be prepared to operate and maintain system as described in this solicitation.

- (b) Since this is a Best Value solicitation, award of a Contract hereunder shall be to the offeror whose proposal provides the best overall value to the Authority, based upon application of the evaluation criteria set forth in herein.
- (c) The Authority contemplates award of a firm fixed price contract.
- (d) **REQUIREMENTS CONTRACT** This is a requirements Contract. A requirements Contract provides the Contractor with 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. Offerors are advised that the quantities of supplies and/or services specified in the Price Schedule are estimates only, included for purposes of price evaluation and to provide information to assist offerors in formulating their proposals. While they represent the Authority's best such estimate as of the time of the solicitation, they do not constitute a commitment on the part of the Authority to procure supplies or services at the estimated level.
- (e) In the event that 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 "Default" article under this Contract, or to pursue any other remedy to which the Authority may be entitled pursuant to this Contract, at law or in equity.

2. GOODS TO BE FURNISHED/SERVICES TO BE SUPPLIED

In preparing their proposals, offerors are advised that:

- (a) If "services" are to be performed pursuant to this solicitation, they must be provided in all respects as specified in the Contract 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.

3. COMMUNICATIONS WITH THE AUTHORITY

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

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 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 –

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 2:00 p.m. on May 25th, 2018 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 receipt, 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

The original of Volumes 1 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, SBLPP requirements per Appendix C (if applicable).

(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, SBLPP requirements per Appendix C (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 receipt will not be considered unless it was sent, properly addressed:

- (1) By registered or certified U.S. or Canadian mail not later than the fifth (5th) day before the date specified for 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
- (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, in his or her discretion engage in oral or written discussions with one (1) or more offerors regarding the Authority's understanding of the proposals and/or to discuss deficiencies in the initial proposals. In determining those offerors with whom he or she chooses to engage in discussions, the Contracting Officer shall first make a determination regarding the initial proposals that he or she deems to be within the competitive range for Contract award. The Contracting Officer shall conduct discussions with all offerors submitting proposals that are within the competitive range.

- (e) The Contracting Officer may, following such discussions, direct those offerors whose proposals are within the competitive range to submit Best and Final Offers ("BAFOs"). In such instances, the Contracting Officer shall award the Contract based upon his or her review of the BAFOs in accordance with the Evaluation Criteria. Nothing contained herein shall limit, modify or impair the Contracting Officer's right to engage in any additional oral or written discussions or other communications relating to the solicitation that may, be consistent with the Authority's best interests.
- (f) The Contracting Officer may conduct discussions with offerors only for the purpose of making an unacceptable proposal acceptable. If all initial proposals are technically acceptable, the Authority may not conduct further discussions with offerors prior to Contract award.
- (g) The Contracting Officer may request revised price proposals from all offerors who are technically acceptable.
- (h) The Authority maintains the right to waive informalities and minor irregularities in proposals at any time during the solicitation process.

14. EVALUATION CRITERIA AND BASIS FOR AWARD

BEST VALUE

Proposals will be evaluated based upon application of the following Evaluation Criteria:

1. **Technical Approach** – Knowledge and Understanding of the Requirement
 - a. Contractors shall submit proposed installation locations, size and conceptual design based on Attachment A, as well as their suggested designs.
 - b. Contractors shall have a minimum 5 years in providing similar scope of services to companies and agencies as requested under this RFP.
 - c. Contractors shall identify key team members who will guide implementation of the services requested under this scope of services.
2. **Implementation Timeline**
 - a. WMATA shall review, and at its discretion, approve or reject specific Wall Scape and display terminal locations. WMATA will select the Contractor whose proposal best meets WMATA's goal for timely installation, customer engagement and revenue generation.
 - b. WMATA expects that the evaluation, design, fabrication, and installation of Wall Scapes and digital display terminals to be completed 120 days of the issuance of a Notice to Proceed to Contractor by WMATA. percent of base contract value if all services, except Content Management are completed within ninety (90) days of WMATA's Notice To Proceed.

3. **Past Experience**

- a. Contractors shall provide 3 references of similar nature over the past 5 years.

4. **Price Proposal**

- a. The proposed cost to design, fabricate and install each proposed digital Wall Scapes and display terminal; as well as the proposed cost for Content Management shall be a factor in WMATA's selection of a vendor.
- b. The price proposal for Content Management shall be provided separately from the cost to design, fabricate and install each digital wall scape and display terminal.
- c. For Content Management, Contractor shall provide a price for one (1) base year and four option years.

The Authority will award a contract to the responsible offeror whose proposal conforms to the solicitation and is judged to be the most advantageous to the Authority based on an overall assessment of technical merit and price in accordance with the Evaluation Criteria.

15. **RATINGS FOR PROPOSAL EVALUATION CRITERIA – (BEST VALUE ONLY)**

Each criterion will be rated using the adjectival scoring method as follows:

Definition of adjectival rankings:

- | | |
|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Exceptional | Exceeds specified performance or capability in a beneficial way to WMATA, and has no weakness. |
| Acceptable | Meets evaluation standards required under the technical provisions. Weaknesses are correctable. |
| Marginal | Fails to meet evaluation standard; however any significant deficiencies are correctable. Lacks essential information to support a proposal. |
| Unacceptable | Fails to meet an acceptable evaluation standard and the deficiency is uncorrectable. Proposal would have to undergo a major revision to become acceptable. Demonstrated lack of understanding of WMATA's requirements or omissions of major areas. |

A rating of "Acceptable" or higher is required to be eligible for award consideration. Offerors are cautioned to be aware of this standard when preparing proposals.

16. **RATINGS FOR ACCEPTABILITY CRITERIA (LOW PRICE, TECHNICALLY ACCEPTABLE, ONLY): N/A**

17. 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;
 - (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.

18. TECHNICAL PROPOSAL EVALUATION

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

19. 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 to perform the Contract in a timely, satisfactory and appropriate manner.
- (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) Small Business Local Preference Program (SBLPP) documentation (if applicable) as set forth in Appendix C. The 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.

20. PRE-AWARD MEETING

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

21. SITE VISIT/INSPECTION OFFEROR'S FACILITIES - N/A

22. CONTRACT AWARD

- (a) At the conclusion of the technical and price evaluation processes, the Contracting Officer will award a Contract to the responsible offeror whose proposal conforms to the solicitation and is the most advantageous to the Authority based upon application of the Evaluation Criteria. Such determination shall be based upon the initial proposals received where the Contracting Officer determines not to conduct discussions or shall be based upon the BAFOs, if 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.
- (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.

23. PERFORMANCE/PAYMENT BONDS – N/A

24. 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.

25. 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 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.

26. 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."

27. 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.

28. BRAND NAME OR EQUAL – N/A

29. 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.
- (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.
- (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.

30. NOTICE OF PROTEST POLICY

- (a) The Authority's procedure for the administrative resolution of protests is set forth in Chapter 17 of the Procurement Procedures Manual. 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) Alleged violations must be submitted to the Contracting Officer who will administratively decide the protest.
- (c) 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.

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	

3. SMALL BUSINESS & LOCAL PREFERENCE PROGRAM (SBLPP)

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

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

Name	Signature
Title	Company
Date	

4. 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	

5. 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:

- 5.1** 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
- 5.2** 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
Title	Company
Date	

6. DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

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

6.1 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.

6.1.1 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:

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

6.1.1.2 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;

6.1.1.3 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.

6.1.2 Where the offeror is unable to certify to any of the statements in this certification, the offeror shall attach an explanation to this offer.

6.2 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.

6.2.1 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.

6.2.2 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.

6.3 The Certification required by 6.2, 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	

7. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

7.1 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:

7.1.1 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;

7.1.2 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

7.1.3 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.

7.2 Each person signing this offer certifies that:

7.2.1 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 7.1.1 through 7.1.3 above; or

7.2.2 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 7.1.1 through 7.1.3 above; or and as their agent he or she does hereby so certify.

Name	Signature
Title	Company
Date	

8. NONDISCRIMINATION ASSURANCE

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

not discriminate on the basis of race, color, creed, 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	

9. 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:

9.1 ☐ 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.

9.2 ☐ 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

9.3 The certification required by 9.1 and 9.2 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
Title	Company
Date	

10. CRIMINAL BACKGROUND SCREENING CERTIFICATION (QUARTERLY)

By submission of this offer, the offeror certifies that:

- 10.1** It will contract with or engage a reputable third-party vendor to conduct, criminal background screenings of all Contractor personnel who will have access to WMATA's customers, WMATA's property, or WMATA's information in connection with this Contract. This requirement also applies to Contractors who engage with the general public on WMATA's behalf.
- 10.2** It will screen for criminal convictions, taking into consideration (1) the nature of the services or work being performed under the contract with particular regard for the individual's access to, and interaction with, WMATA's customers, property, and confidential information; (2) the nature or gravity of the offense or conduct resulting in a criminal conviction; and (3) the time that has lapsed since the conviction and/or completion of the sentence, all Contractor personnel who will have access to WMATA's customers, the general public, WMATA's property, or WMATA's information and who work on this Contract during each calendar year within this Contract's period of performance. The Offeror will provide certification that it conducted these screenings to the Contracting Officer's Technical Representative (COTR) on a quarterly basis, on a form provided.
- 10.3** The Contractor shall submit to the COTR, a list of all employees and agents who will require Contractors' access badges not less than 7 days prior to the date on which access will be required.
- 10.4** The Offeror will determine that all Contractor personnel working on this Contract during the calendar year passed the Contractor's criminal background screening and will be in good standing and otherwise fit to work on this Contract.
- 10.5** The Offeror has not obtained or otherwise been made aware of any information about any Contractor personnel working on this Contract that contradicts or otherwise impacts the Contractor's determination that such persons passed the Contractor's criminal background screening and/or are fit to work on this Contract.
- 10.6** The Contractor will flow this requirement down to all of its subcontractors who will have access to WMATA's customers, the general public, WMATA's property, or WMATA's information within this Contract's period of performance.

Name	Signature
Title	Company
Date	

111. CERTIFICATION REQUIRED FOR ALL SAFETY-SENSITIVE¹ CONTRACTS.

- 11.1** By submission of this offer, the offeror represents and certifies that it will comply with the Federal Transit Administration (FTA) regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 655, and applicable provisions of the U.S. Department of Transportation (DOT) regulations, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," 49 C.F.R. Part 40.
- 11.2** Offeror agrees that its employees and agents, including but not limited to, safety-sensitive subcontractors will be enrolled in a drug and alcohol testing program that meets the policy and procedural requirements listed in Appendix A of this document.
- 11.3** Offeror understands that Washington Metropolitan Area Transit Authority (WMATA) will perform oversight during the contract's period of performance to ensure that the successful offeror complies with the DOT/FTA regulations.
- 11.4** Failure to comply with this certification may result in WMATA issuing sanctions and pursuing available contractual remedies.

Name	Signature
Title	Company
Date	

¹ See the Combined Glossary for a definition of "safety-sensitive."

PRE-AWARD EVALUATION DATA

PROJECT DESCRIPTION: _____

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: \$ _____
- 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 may briefly be described as design, fabrication and installation of panoramic Wall Scapes and interactive display units for maps, news, information and advertising at various metro locations, including all necessary or incidental work, labor and materials. The Contractor agrees to perform the work in accordance with requirements and terms and conditions hereinafter set forth in 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 funding provided by the Federal Government, all contract terms mandated for inclusion by the Federal Government shall be deemed to supersede any other conflicting or inconsistent provisions of the Contract.

4. REQUIREMENTS CONTRACT

- (a) This is a requirements Contract. A requirements contract provides the Contractor with 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

“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- N/A**

6. **ORDERING – N/A**

7. **ORDER LIMITATIONS - N/A**

8. **AUDIT, AVAILABILITY, AND INSPECTION OF RECORDS**

- (a) Authorized persons. The Contracting Officer and his or her representatives, including representatives of the Authority’s governing jurisdictions and any other Federal, state, or local entity providing funding for this Contract and the 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.
- (e) 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 \$150,000.

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. 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 OFFICER'S 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;

- (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

All work must be completed within 120 calendar days after the issuance of Notice-to-Proceed.

For Content Management, the Authority has the unilateral right to extend this Contract by exercising up to 4 option years. Option periods subject to all terms and conditions stated herein.

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

1. 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.

2. 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:

- (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), should take into account WMATA's need for continuity of operations and potential costs of disrupting operations.
- (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 the basic contract, such as:
- (1) A specific dollar amount;
 - (2) An amount to be determined by applying provisions (or a formula) provided in the basic 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 the 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 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 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 article.
- (c) The total duration of this Contract, including any options under this article 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- N/A

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 delivery(ies) will be actually and necessarily delayed;
 - (3) The delay cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures available to the Contractor, whether before or after the cause of delay; and
 - (4) The Contractor makes a written request and provides other information to the Contracting Officer, as described below.
- (c) 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.
- (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 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.

12. NOTIFICATION OF BANKRUPTCY OR INSOLVENCY

In the event the Contractor becomes insolvent or files or has filed against it a petition in bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of such to the Contracting Officer. This notification shall be furnished as soon as possible, but in no

event more than ten (10) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all WMATA Contract numbers for all WMATA contracts against which final payment has not been made. This obligation remains in effect until final payment under 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 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.
- (d) 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.
- (e) 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 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 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.

5. WARRANTY OF SUPPLIES

- (a) All workmanship, parts and materials furnished for this Contract shall be unconditionally warranted against failures or defects for a period of one (1) year after the Authority accepts them or places them in service, whichever is earlier. The Contractor shall accept the Authority's records regarding the date the item was placed in service.
- (b) In the event that any work covered by the warranty provisions fails during the warranty period, the Contractor shall repair or replace the work within three (3) days without cost or expense to the Authority.
- (c) Should the Contractor shall fail to repair or replace any part or do any work in accordance with the terms of this warranty, or if immediate replacement or work is necessary to maintain operations, the Authority shall have the right to cause such replacement to be made, utilizing its own forces and/or those of third parties as the Authority shall reasonably deem appropriate, at Contractor's expense.
- (d) Each piece of equipment, component or part thereof that the Contractor replaces, repairs, adjusts or services in any manner under the terms of this warranty during the warranty period shall be reported to the Contracting Officer on the Authority's forms. Each report shall indicate in detail all repairs, adjustments and servicing to each and every component, unit or part thereof.
- (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 Contractor shall make adequate service facilities available, along with spare parts, for all the items under warranty. Trained technical service personnel shall be available to the Authority sufficient to meet the Contractor's warranty obligations.
 - (1) The Contractor shall provide field service representatives who are competent and fully qualified in the maintenance and operation of the warranted items. These field service representatives shall assist the Authority in overcoming any difficulties in the operation or maintenance of the warranted items. They shall further serve as the Contractor's on-site representatives for any component failure claims or warranty claims under this Contract.
 - (2) During the warranty period, a field service representative shall be available within twenty-four (24) hours.

- (g) 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. WARRANTY OF SERVICES

- (a) Definitions.

"Acceptance," as used in this clause, means the act(s) of WMATA's authorized representative by which WMATA approves specific services, in partial or complete performance of the Contract.

- (b) Notwithstanding inspection and acceptance by WMATA or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Contracting Officer shall give written notice of any defect or nonconformance to the Contractor within thirty (30) days from the date of acceptance by WMATA. This notice shall state either --

- (1) That the Contractor shall correct or re-perform any defective or nonconforming services; or

- (2) That WMATA does not require correction or re-performance.

- (c) If the Contractor is required to correct or re-perform, it shall be at no cost to WMATA, and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the Contracting Officer may, by contract or otherwise, correct or replace the services with similar services and charge the Contractor with the cost, or make an equitable adjustment to the Contract price.

- (d) If WMATA does not require correction or re-performance, the Contracting Officer shall make an equitable adjustment to the Contract price.

6. CORRECTION OF DEFICIENCIES

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 – N/A

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 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

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 \$150,000, 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 \$150,000.
- (c) The Contractor shall ensure that this article is included in all subcontracts at any tier, if the value of the subcontracted work exceeds \$150,000.

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 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.
- (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 \$150,000 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

- (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;

- (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.

- (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

- (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.

- (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);

- (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

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

- (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 consolidation, 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

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

- (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.

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

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.

I. MINIMUM REQUIRED INSURANCE: MINIMUM LIMITS OF INSURANCE

INSURANCE TYPE	LIMITS	BASIS
Workers' Compensation	Statutory	
Employers' Liability	\$500,000	Each Accident
	\$500,000	Disease Policy Limit
	\$500,000	Disease Each Employee
Commercial General Liability		
	\$2,000,000	Each Occurrence Limit
	\$4,000,000	General Aggregate Limit
	\$2,000,000	Products-Completed Operations Limit
Business Auto Liability		
	\$1,000,000	Combined Single Limit

Railroad Protective Liability Insurance (RRP)		
	\$2,000,000	Each Occurrence Limit
	\$6,000,000	Aggregate Limit

**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 accepted 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 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.

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. Evidence of this modification shall be provided to WMATA along with all other required documents.
- 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.

Railroad Protective Liability

Railroad Protective Liability Insurance is required for any work within 50 feet of WMATA railroad tracks or work within WMATA rail stations.

- 1) The Railroad Protective Liability (RRP) policy must be on a policy form and with an insurance company that is acceptable to WMATA.
- 2) WMATA shall be the Named Insured.
- 3) The original RRP policy shall be sent to WMATA at following address:

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

WMATA Blanket RRP Program Option

WMATA may offer to waive the requirement for the Contractor to procure RRP if 1) the work qualifies for coverage under WMATA's blanket RRP program, and 2) the Contractor prepays the RRP premium which shall be determined by the rate schedule promulgated by the insurer in effect as of the effective date of this Contract.

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.

- 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 – N/A

6. INAPPLICABILITY OF CLAUSES REQUIRING UNAUTHORIZED OBLIGATIONS

- (a) Except where the Chief Procurement Officer specifically agrees in writing, when any supply or service acquired under this Contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), Master Agreement, Terms and Conditions or similar legal instrument or agreement, that includes any clause requiring WMATA to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability or that would create an unauthorized obligation, the following shall govern:
 - (i) Any such clause is unenforceable against WMATA.
 - (ii) Neither WMATA nor any authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind WMATA or any WMATA authorized end user to such clause.
 - (iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.
- (b) When any supply or service acquired under this Contract is subject to any End Use License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, any clause requiring WMATA to pay pre-judgment interest, taxes to which it is exempt, or automatic fines is void and without effect.

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 law 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 – N/A

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;
 - (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 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.

(b) This article shall be included in all subcontracts.

6.ROYALTY INFORMATION – N/A

CHAPTER IX – ADDITIONAL COVENANTS/LEGAL REQUIREMENTS

1. NONDISCRIMINATION ASSURANCE

- (a) *Nondiscrimination Assurance.* In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000 (d), section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the American with Disabilities Act of 1990, 42 U.S.C. §12132, D.C. law and Federal transit law at 49 U.S.C. §5332, the Contractor, sub-recipient, or subcontractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, 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 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.
- (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

- (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, 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 clause available to authorized representatives of FTA or 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

- (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.

- (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 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. Section 40119(b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 CFR Part 15, and with 49 U.S.C. Section 114(s) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 CFR Part 1520.

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

- (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:
 - (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 parties, 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 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 \$13.85 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 \$150,000 in a twelve (12) month period awarded under this Contract;
 - (3) Maintain payroll records, in accordance with the requirements of this Contract, and include a similar provision in affected subcontracts that requires the subcontractor to maintain its payroll records for the same length of time; and
 - (4) Certify with each monthly invoice that the Authority's living wage rate was paid to affected employees, or if applicable, certify prior to Contract award or Contract extension, if any, that one or more of the exemptions in paragraph (d) below applies.
 - (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.

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 – NON-FEDERAL

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

that they may make reports under this paragraph to:

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

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

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 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)

- (a) Contractors who perform "safety sensitive" functions (as defined in the Combined Glossary attached hereto) 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 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" clause will be investigated by the Authority's Board of Directors or its duly authorized representative. A preliminary investigation will be made to determine whether there is probable cause to suspect that a violation of this clause exists. If such probable cause exists, the Board of Directors, or its duly authorized

representative, shall formally notify WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any state or Federal agency providing funding under this Contract and/or appropriate Federal, state and/or local law enforcement authorities.

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

20. OFFICIALS NOT TO BENEFIT

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

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.

- (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 the Contract. If the Contracting Officer does not grant a request for an exception, and the 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 clause, and no fraud is suspected, the Contracting Officer, may withhold payments due under this Contract until such time as the Contractor is in compliance or, should the non-compliance 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 clause 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.

- (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 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 PROVISIONS

1. AMERICANS WITH DISABILITIES ACT ACCESSIBILITY –

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

2. RETAINAGE

Final Payment Only Retainage. All amounts withheld from Contractor as retainage, based on a percentage of the work completed, or as a line item tied to the completion of the work shall be retained solely out of the Contractor’s final payment. Payment of any fund withheld from Contractor’s final payment shall be released to Contractor within thirty (30) days after completion of Contractor’s Work and Closeout Release.

3. GOVERNMENT-WIDE DEBARMENT OR SUSPENSION

- (a) The Contractor is bound by its certification contained in its offer to the Authority that neither the Contractor its principals, or affiliates, are 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.

4. FALSE STATEMENTS OR CLAIMS CIVIL AND CRIMINAL FRAUD

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

5. 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-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.

6. BONDING FOR CONSTRUCTION PROJECTS EXCEEDING \$150,000 – N/A

7. 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
 - (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.

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

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. CRIMINAL BACKGROUND CHECK REQUIREMENT

- (a) As a prerequisite to eligibility for a WMATA-issued identification and access badge ("One Badge"), access to WMATA's customers, property, or confidential information, and in consideration for this Contract, the Contractor shall have the sole responsibility for, and shall assure, adequate criminal background screenings on a routine basis of all of its personnel who are or will be working on WMATA's premises (whether they receive a One Badge or not) or otherwise have access to WMATA's customers, property, or confidential information.
- (b) Contractor shall implement, not later than notice to proceed, a criminal background check screening of the Contractor's personnel that shall take into consideration (1) the nature of the services or work being performed under the contract with particular regard for the individual's access to, and interaction with, WMATA's customers, property, and confidential information; (2) the nature or gravity of the offense or conduct resulting in a criminal conviction; and (3) the time that has lapsed since the conviction and/or completion of the sentence.
- (c) The Contractor shall contract with, or otherwise engage, a reputable third-party vendor to conduct the required criminal background screenings, and shall provide the vendor with a copy of its criminal background check screening policies and procedures.
- (d) The Contractor shall not place any person on or engage any person under this Contract, unless that person passes the Contractor's criminal background screening. At the end of each calendar quarter, the Contractor shall certify to the Contracting Officer's Technical Representative on a form provided, its compliance with this criminal background screening requirement and confirm that all persons required to be screened passed the contractor's criminal background screening before working on this Contract. For the sole purpose of monitoring the Contractor's compliance, WMATA reserves the right to request additional documents or perform its own criminal background screening of Contractor's personnel. The Contracting Officer will inform the Contractor, in writing, of any proposed action within a reasonable time before such action is taken.
- (e) The Contractor shall indemnify and hold WMATA harmless from any and all claims, demands, damages, costs and expenses, including attorneys' fees and other costs and expenses associated with any claims, demands, requests for relief, and/or other liabilities arising out of or resulting from the contractor's criminal background screening obligations and processes.

- (f) The Contractor will include this requirement in all subcontracts under this Contract, and receive certifications from their subcontractors to ensure that its subcontractors' personnel who are or will be working on WMATA's premises (whether they receive a One Badge or not) or otherwise have access to WMATA's customers, property, or confidential information undergo the required criminal background checks.

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 COOPERATIVE RIDER CLAUSE

The Mid-Atlantic Purchasing Team (MAPT) is the agreement between the Metropolitan Washington Council of Governments (“MWCOG”) and the Baltimore Metropolitan Council (“BMC”) to aggregate the public entity and non-profit purchasing volumes in the Maryland, Virginia and Washington, D.C. region (“region”).

Format

A lead agency format is used to accomplish this work. The Lead Agency in this procurement has included this MAPT Cooperative Rider Clause in this solicitation indicating its willingness to allow other public entities to participate pursuant to the following Terms and Conditions:

1. Terms
 - 1.1 Participating entities, through their use of the Cooperative Rider Clause, agree to the terms and conditions of the resulting contract to the extent that they can be reasonably applied to the participating entity.
 - 1.2 Participating entities may also negotiate additional terms and conditions specific to their local requirements upon mutual agreement between the parties.
2. Other Conditions - Contract and Reporting
 - 2.1 The contract resulting from this solicitation shall be governed by and "construed in accordance with the laws of the State/jurisdiction in which the participating entity officially is located;
 - 2.2 To provide to MWCOG and/or BMC contract usage reporting information, including but not limited to quantity, unit pricing and total volume of sales by entity, as well reporting other participating entities added on the contract, on demand and without further approval of contract participants;
 - 2.3 Contract obligations rest solely with the participating entities only;
 - 2.4 Significant changes in total contract value may result in further negotiations of contract pricing with the lead agency and participating entities.

In pricing and other conditions, vendors are urged to consider the broad reach and appeal of MAPT with public and non-profit entities in this region.

A list of the participating members of the Mid-Atlantic Purchasing Team can be found at the following web links www.mwcog.org/purchasing-and-bids/cooperative-purchasing/member-links/ and <http://www.baltometro.org/our-work/cooperative-purchasing/brcpc-representatives>

PART III TECHNICAL SPECIFICATIONS

WMATA intends to select qualified Contractor(s) to design, fabricate and install integrated panoramic Wall Scapes and interactive display units for maps, news, information and advertising at various metro station locations (see Attachment A and B). In addition to locations, spaces and display components identified by WMATA, Contractors are highly encouraged to propose complementary locations, designs and display components that fully leverage WMATA's unique rail stations and space dimensions to drive customer engagement and revenue generation. The designs should enhance customer experience on the WMATA system for commuters and visitors to the national capital region, engage and inform riders, and promote advertisements as a source of revenue to support core transit services.

The media for the digital Wall Scapes and display terminals shall be controlled through a contemporary Content Management System (CMS) to facilitate coordinated messaging, content displays and centralized management. Contractors shall be prepared to operate and maintain system as described in this solicitation.

Contractors are expected to quickly inspect WMATA's station layout and spaces, develop Wall scape and digital display designs and coordinate installation with WMATA. WMATA desires for speedy installation of the digital wall Scapes and display terminal to increase revenues.

Along with reviewing and approving digital Wall Scape and display terminal locations, shapes and sizes, WMATA will coordinate with Contractors to determine installation priority based on approved locations and designs.

DIGITAL WALL SCAPES AND DISPLAY TERMINALS

1. Attachment A is a list of suggested station locations and display terminals. However, Contractors are strongly encouraged to use their expertise to propose unique digital Wall Scape designs and display terminals that leverage unique station elements and open space in order to maximize customer communication, station enhancement and advertising revenues.
2. Attachment B is a list of drawings showing associated layout for some of the rail stations.
3. The number, size, dimensions and location of digital Wall Scapes and display terminals will be determined by WMATA based upon WMATA's suggested locations and Contractor's market expertise and design proposals.

DISPLAY CONTROL SYSTEM

1. All displays within the digital media network shall be controlled by a single system from a central location to schedule content, monitor display play-back, and adjust displays or content as required.
2. Contractors shall propose a contemporary display control system which is proven technology that has been deployed in similar transit, airport, shopping malls or entertainment venues.
3. The Display Control System shall be integrable to existing digital display terminals.

4. The display control system must provide a fully functional operating system capable of Computer Graphics, exposure time tracking, and full motion video playback. The systems shall be capable of playing both still and animation file formats and automatically relay diagnostics of various system components, including various sensors, and environmental conditions such as temperate and light.
5. The display control system shall provide password protected remote interface featuring a display monitoring dashboard capable of activating stored content remotely and providing real-time performance auditing. This secure interface will be capable of accessing these features for all the displays within the network.
6. The display control system shall be capable of accepting data, news, sports and weather feeds from third party data sources, closed captioning and social media as required; provided further that the system shall interface with WMATA train information and data, as well as with the DC Metro Emergency Management System.
7. The display control system shall provide image playback which is stutter-free for both static and animated graphics, and must be capable of receiving and displaying HTML5, including dissolving HTML5 from multiple sources.
8. The display control system shall have hot key functionality, with the ability for displays to be triggered with a single button and include all required components, racks, and wiring necessary to manage and control the LED display from a location outside of the display housing. The system architecture shall allow for 100 percent processing and control redundancy, including capability for 1:1 fail over system if required.
9. The display control system is required to have digital video outputs of DVI, HDMI, Display Port, VGA and the capacity for all signs within visual range to be in automatic frame sync and to change content at the same time.
10. The display control system shall meet or exceed current industry standard for video and audio code and formats; provided further that the system shall meet or exceed highest display standards for dynamic and pre-loaded content, screen segmentation and technical capabilities.

CONTRACTOR QUALIFICATIONS

1. Contractors shall have a minimum five (5) years' experience in providing professional digital media display design, fabrication and system installation, product selection and required engineering with full Construction Documentation for proposed System.
2. Contractors shall have the capability to complete visual renderings of all proposed display designs, locations, equipment and digital media technology.
3. Contractors must have sufficient resources, relevant skills for the project and personnel assigned to the project will have experience with equipment and system installations to ensure speedy implementation, project management and quality assurance.
4. Contractors shall provide name, e-mail, address, key contact person and description of work performed for three (3) client references for whom Contractor has provided similar services within the last five (5) years, at least of one which must be a transit or transportation agency.

SOLUTION IMPLEMENTATION Services

Contractor will also provide services to support the implementation of the future Digital Wall Scapes and Display Terminals solution, including:

1. Integration with WMATA specific digital display terminals and its associated applications.
2. Coding, configuration and integration with enterprise grade Security/ACL/Dynamic Data Streams, advanced tagging and real-time analytics along with authorization and authentication via Active Directory integration.
3. Installation, configuration, and tuning of system hardware and software. Establishing local data cache for short duration and connectivity redundancy for long duration disaster recovery support process. Configuring alert and monitoring capabilities to health check system availability, capacity and performance metrics.
4. Develop, apply and leverage inbuilt operating system hardware and software beaconing solution; including contextual emergency messaging integration capabilities.
5. Develop, integrate (with audio/visual paging system) and implement ADA (Americans with Disabilities Act) compliance capabilities (such as voice to text and text to voice) to digital display signage systems.
6. Establish system and integration test plans and test cases, including functional, regression, load, security and performance testing with full traceability to requirements. Review all elements of quality assurance aspects with WMATA and gain approval.
7. Rigorously follow and apply WMATA source control system for software components of digital signage systems implementation and operation efforts.
8. Compile operation runbook, review/gain approval from WMATA and perform knowledge transfer with supporting technical materials.

OPTIONAL Services

In addition to basic Wall Scapes and digital display terminals design, fabrication and installation, WMATA may at its own discretion, request Contractor to provide content management services, including display management and maintenance, and technical support for the Display Control System.

Content Management Services

Contractor will also provide ongoing content management services (CMS) for the Display Control System, including, display management, technical support during revenue hours and system maintenance. The Content Management services shall be integrable to existing digital display terminals.

Content Creation

1. Contractors shall provide content management services which shall include, but not be limited to 2D and 3D still graphics, 2D and 3D full animations, templates for display of real-

time data, news feeds, content features and games, emergency messaging & announcements and schedules and advertising

2. Contractors shall also provide content guidance and information on best practices for enhancing agency digital display operations and management.

Content Management & Scheduling Services

1. Contractors shall manage and schedule daily display content within the central CMS; with content update or changes required daily.
2. Contractors shall manage content process, including accountability for technical specifications, content oversight and uploading to the CMS.
3. Contractors shall monitor content remotely via the CMS's web-based dashboard and provide content/sponsor time exposure reports and proof of performance.
4. Contractors shall integrate and manage the display of HTML5 and other Web Sources with real-time information from various data feeds, including but not limited to: train information, social media, time and date, weather, news, sports and financial market information.

System Maintenance and Support

1. Contractors shall provide onsite personnel to conduct daily site management and maintenance to ensure that displays are functioning properly.
2. Contractors shall perform monthly, weekly and daily hardware and software systems testing, monitoring and maintenance; and shall propose and follow a predetermined Preventative Maintenance Schedule for the system and display terminals including reasonable technical support, during times Metrorail system is closed with the following response times:
 - a. Respond to any service request within one (1) hour
 - b. Provide remote system dial-in assistance within three (3) hours
 - c. Unresolved issues shall require onsite personnel within four (4) hours from 7am-7pm or six (6) hours between 7pm-7am
3. Include password protected online support system to log and track all service calls, with automated email updates.

OPPORTUNITY FOR DISADVANTAGED BUSINESS ENTERPRISES (DBE) TO PROPOSE AND PRIME CONTRACTORS TO WORK WITH DBE'S

1. The Washington Metropolitan Area Transit Authority hereby notifies all prospective Contractors 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.
2. The Washington Metropolitan Area Transit Authority is committed to and encourages the utilization of DBE's by providing maximum practicable opportunities for these entities to

participate in its procurement process. While there is no DBE goal, the Authority will evaluate proposals to determine which Contractor(s) propose the best value in terms of including DBE's as a part of their team.

SUBMISSION REQUIREMENTS

1. As part of its submission, Contractors shall propose conceptual design and cost to design, fabricate and install each digital Wall Scape or display terminal based on WMATA suggested locations and Contractors shall propose conceptual design and cost to design, fabricate and install each digital Wall Scape or display terminal for other locations that Contractor may suggest based on their unique market insight.
2. Submission shall include information on firm experience, including years designing, fabricating, operating, maintaining or servicing similar system for transit systems, airports, shopping malls or entertainment venues. Contractor's submission shall identify key team members that will guide implementation of services requested under this scope of services.
3. Contractors shall include project plan showing project implementation and completion schedule for each location based on WMATA suggested locations, as well as Contractor inspired locations. WMATA shall review, and at its discretion, approve or reject specific digital Wall Scape or display terminal installation proposal.
4. Contractors shall provide a price proposal covering the cost to design, fabricate, install and maintain each proposed digital Wall Scape or display terminal. In addition, Contractor shall provide pricing for Content Management included in the RFP as a stand-alone service.

PERFORMANCE INCENTIVE

1. The Contractor shall be paid an additional one (1) percent of base contract value if all services, except Content Management are completed within one hundred (100) days of WMATA's Notice To Proceed or an additional two (2) percent of base contract value if all services, except Content Management are completed within ninety (90) days of WMATA's Notice To Proceed.

SELECTION CRITERIA

1. Technical Approach – Knowledge and Understanding of the Requirement
 - a. Contractors shall submit proposed installation locations, size and conceptual design based on Attachment A, as well as their suggested designs.
 - b. Contractors shall have a minimum 5 years in providing similar scope of services to companies and agencies as requested under this RFP.
 - c. Contractors shall identify key team members that will guide implementation of the services requested under this scope of services.

2. Implementation Timeline

- a. WMATA shall review, and at its discretion, approve or reject specific Wall Scape and display terminal locations. WMATA would select Contractor whose proposal best meets WMATA's goal for timely installation, customer engagement and revenue generation.
- b. WMATA expects that the evaluation, design, fabrication, and installation of wall Scapes and digital display terminals to be completed 120 days of the issuance of a Notice to Proceed to Contractor by WMATA.

3. Past Experience

- a. Contractors shall provide 3 references of similar nature over the past 5 years.

4. Price Proposal

- a. The proposed cost to design, fabricate and install each proposed digital Wall Scapes and display terminal; as well as the proposed cost for Content Management shall be a factor in WMATA's selection of a vendor.
- b. The price proposal for Content Management shall be provided separately from the cost to design, fabricate and install each digital wall scape and display terminal.
- c. For Content Management, Contractor shall provide a price for (1) base year and four option years.

APPENDIX C – SMALL BUSINESS LOCAL PREFERENCE PROGRAM
(SBLPP)

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

November 2016

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

APPENDIX C

SMALL BUSINESS & LOCAL PREFERENCE PROGRAM (SBLPP)

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

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

2. POLICY:

The Washington Metropolitan Area Transit (WMATA) Board of Directors approved and adopted Resolution #2005-45 in May 2003 for the implementation of the Small Business and Local Preference Program (SBLPP) and its amended requirements on April 23, 2011. The Board mandated that the program provide small and local businesses located in the District of Columbia, the State of Maryland, and the Commonwealth of Virginia be given an opportunity to compete for non-federally funded procurement actions up to the simplified acquisition threshold.

3. EVALUATION REQUIREMENTS:

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

4. DEFINITIONS:

- (a) **Appendix C.** The Notice of Requirements for Small Business and Local Preference Program (SBLPP), which when attached to a solicitation, implements the requirements of the Authority's SBLPP policies and procedures in the award and administration of operating funded Authority contracts.
- (b) **Bidder.** A party submitting a bid in response to this solicitation/invitation for bid.

- (a) **Certified SBLPP.** Is a for-profit small business concern, whose eligibility is evidenced by a current SBLPP certification letter issued by WMATA's Disadvantaged Business Enterprise Office. Certification must be obtained by the deadline of bid/proposal submittal.
- (d) **COMPACT Jurisdictions.** Jurisdictions of the District of Columbia, the State of Maryland, and the Commonwealth of Virginia.
- (e) **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.
- (f) **Good Faith Efforts.** Efforts to encourage SBLPP participation or other requirements of the Authority's SBLPP Program which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.
- (g) **Joint Venture.** An association of an SBLPP firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the SBLPP is responsible for a distinct, clearly defined portion of the work of the contract and shares in the capital contribution, control, management, risks, and profits of the joint venture commensurate with its ownership interest.
- (h) **Local Business.** A firm that self-certifies it is located in the District of Columbia, State of Maryland, or Commonwealth of Virginia.
- (i) **Offeror.** A party submitting a proposal in response to this solicitation.
- (j) **Proposal.** A submission by an offeror to the solicitation that, if accepted by the Authority, would bind the offeror to perform the resultant Contract.
- (k) **Small Business Concern.** With respect to firms seeking to participate as SBLPP's, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration implementing regulations (13 CFR Part 121).
- (l) **Small Local Business.** A firm that is a Local Business and self-certifies that it is a small business, as defined by the U.S. Small Business Administration.
- (m) **WMATA.** Washington Metropolitan Area Transit Authority, also known as the "Authority" or "Metro", the transit system (rail and bus) serving the District of Columbia, including parts of Virginia and Maryland.

5. **BIDDER/PROPOSAL REQUIREMENTS (WITH THE BID/PROPOSAL):**

The bidder/proposer shall submit its SBLPP certification documentation with its bid/proposal. Any bidder/proposer who fails to complete and return this information with its bid/proposal shall be deemed to be not responsive and may be ineligible for contract award.

SUMMARY OF SUBMITTALS

Bidder/Proposal Requirements (Apparent Successful Bidder/Offeror)

All SBLPPs must submit a copy of their current SBLPP certification letter issued by WMATA's DBE Office at the same time of your bid/proposal submittal.

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 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.

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.

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

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; 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.

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.