



Washington Metropolitan Area Transit Authority

FEDERAL TERMS And CONDITIONS

1) **AUDIT, AVAILABILITY, AND INSPECTION OF RECORDS**

- a) **Authorized persons.** Pursuant to 2 C.F.R. § 200.337, 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 clause.
- 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 the Contractor's records related to any proposal for the Contract, subcontract, or modification; any clarifications or discussions conducted on the proposal; pricing of the Contract, subcontract, or modification; or performance of the Contract, subcontract, or modification.
- d) **Availability.** The Contractor and any subcontractor(s) under this Contract shall maintain and make available the accounts, records and cost information required to be originated under this Contract, together with all other accounts, records and cost information related to this Contract.
 - i) At their offices at all reasonable times for inspection, audit, reproduction or such other purposes as the Contracting Officer or anyone he or she authorizes may require or pursuant to any other provision of this Contract. In conducting such audit, WMATA shall comply with U.S. Department of Transportation's regulations, "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards." 2. C.F.R. Part 200, particularly 2 C.F.R. §§ 200.318-200.326 "Procurement Standards."
 - ii) The Contractor agrees to comply and require all subcontractors at all tiers to comply with the record retention requirements in 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts, data, statistics, sub-agreements, leases, subcontracts, arrangements, or other third-party agreements of any type and supporting materials related to those records for not less than three 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 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 years from the date of final payment or one year following the final disposition of the dispute or litigation.

- e) **Subcontracts.** The Contractor shall insert this clause in all subcontracts that exceed \$250,000.

2) **TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS**

- a) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

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

- (1) **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities.** If this Contract involves transit operations financed, in whole or in part, with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body for which work is performed on this Contract, the Contractor agrees to carry out the project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333 (b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth in WMATA's grant agreement. The Contractor agrees to perform transit operations in connection with this Contract in compliance with the conditions stated in that U.S. DOL letter.

- ii) The Contractor also agrees to include any applicable requirements in each subcontract, at any tier involving transit operations financed in whole or in part with Federal assistance provided by FTA.

3) COPELAND ANTI-KICKBACK ACT

- a) Pursuant to 2 C.F.R. Pt. 200, Appendix II (D), the Contractor agrees to comply with the Copeland "Anti-Kickback Act 40 U.S.C. § 3145 as supplemented by U.S. Department of Labor regulations 29 C.F.R. part 3 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.

4) WHISTLEBLOWER PROTECTION -- FEDERAL

- a) The Contractor and its subcontractors shall encourage their employees and independent contractors to report information without fear of actual or threatened discrimination, retaliation or reprisal that they in good faith reasonably believe is evidence of gross mismanagement; gross misuse or waste of public resources or funds; fraud; violation of law; abuse of authority in connection with the conduct of WMATA operations or contracts; or a substantial and specific danger to health, security or safety. The Contractor and its subcontractors shall notify their employees that they may make reports under this paragraph to:
 - i) WMATA's Office of Inspector General (OIG), in person, in writing, through the OIG Hotline (888-234-2374) or email wmata-oig-hotline@verizon.net or by any other reasonable means;
 - ii) 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;
 - iii) 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
 - iv) 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:
 - i) Made or is perceived to have made a report under paragraph (a);
 - ii) Sought a remedy under applicable law after making a report under paragraph(a);
 - iii) 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;
 - iv) Refused to obey an order that would violate law; or
 - v) Refused to work or authorize work when a hazardous safety or security condition presents an imminent danger of death or serious injury, there was no reasonable alternative to refusal, there was not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, notified the Contactor or subcontractor of the condition and of 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.
- e) The Contractor and its subcontractors shall comply with the National Transit Systems Security Act (NTSSA) 6 U.S.C. §1142, which prohibits discharging, demoting, suspending, reprimanding or in any other way discriminating against an employee as a reprisal for the employee lawfully and in good faith:
 - i) Reporting a hazardous safety or security condition;
 - ii) Refusing to work when a hazardous safety or security condition presents an imminent danger of death or serious injury, there is no reasonable alternative to refusal, there is not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, has notified the Contractor or subcontractor of the condition and of his or her intent to not perform work;
 - iii) Refusing to authorize the use of any safety or security related equipment, track or structures, if the individual is responsible for their inspection or

repair and reasonably believes they are in a hazardous safety or security condition, there is no reasonable alternative to refusal, there is not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, has notified the Contractor or subcontractor of the condition and of his or her intent not to authorize use of hazardous equipment or infrastructure unless corrected;

- iv) Providing information for or directly assisting in an investigation of conduct that the individual reasonably believes to be in violation of Federal law regarding safety, security or fraud, waste or abuse of funds intended for safety or security;
 - v) Refusing to violate or assist in violation of Federal public transportation safety or security law;
 - vi) Cooperating with a safety or security investigation by the U.S. Secretary of Transportation, U.S. Secretary of Homeland Security or the National Transportation Safety Board;
 - vii) Furnishing information to law enforcement agencies relating to an accident or incident resulting in damage to property, injury or death; or
 - viii) Filing a complaint under the NTSSA (6 U.S.C. §1142) or testifying regarding such complaint.
- f) The Contractor shall notify the Authority of any instance, related to this Contract, of a report under subparagraph (e)(1) or refusal under subparagraphs (e)(2), (3) or (5).
- g) The enforcement, filing and investigation of complaints, and remedies under this clause shall be governed by the NTSSA (6 U.S.C. §1142), applicable Federal regulations and Federal law.
- h) This clause shall be interpreted in accordance with the NTSSA (6 U.S.C. §1142). If any provision is found to be in conflict with the NTSSA, the NTSSA shall govern.
- i) The Contractor shall include, or shall cause to be included, this clause, including this paragraph, in its subcontracts at all tiers.

5) DRUG AND ALCOHOL TESTING (FOR SAFETY SENSITIVE FUNCTIONS ONLY)

- a) Contractors who perform safety sensitive functions shall be subject to compliance with a drug and alcohol testing program according to Federal guidelines published in FTA's regulations. The Contractor agrees to 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:
 - i) Employee and supervisor training documentation;
 - ii) 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.
- f) Contractors are required to flow this clause down to all of their safety sensitive subcontractors and agents.

6) **ALL NECESSARY FEDERAL PROVISIONS DEEMED INCLUDED**

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

7) **ACCESS TO THIRD PARTY CONTRACT RECORDS**

- a) Pursuant to 2 C.F.R. §200.337, the Contractor agrees to provide the Authority, the FTA Administrator, the U.S. Comptroller General or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The right also includes timely and reasonable access to WMATA's personnel for the purpose of interview and discussion related to such topics. The Contractor also agrees, pursuant to 49 C.F.R. §633.17 to provide FTA Administrator or his or her authorized representatives including any Project Management Oversight (PMO) Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U. S. C. § 5302(a)(1), which is receiving Federal financial assistance through the programs described at 49 U. S. C. §§ 5307, 5309 or 5311.

- b) The Contractor agrees to permit FTA and its contractors to access any sites of contract performance under this Contract as may be reasonably require. The Contractor also agrees to allow the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c) The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract in accordance with 2 C.F.R. § 200.333. In the event of litigation or settlement of claims arising from the performance of this Contract, the Contractor agrees to maintain such records until the Authority, the FTA Administrator, the U.S. Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

8) RIGHTS IN DATA AND COPYRIGHTS

- a) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists; specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to Contract administration.
- b) The following restrictions apply to all subject data first produced in the performance of this contract:
 - i) Except for its or WMATA's own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of the U.S. Government, until such time as the Government may have either released or approved the release of such data to the public. This restriction on publication, does not apply to agreements with academic institutions;
 - ii) In accordance with 41 U.S.C. § 2302, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, the following subject data for its purposes:
 - (1) Any subject data developed under this contract whether or not a copyright has been obtained; and
 - (2) Any rights of copyright to which the Contractor purchases ownership with Federal assistance.
- c) When the Federal Transit Administration (FTA) provides financial assistance for a planning, research, development, or a demonstration project, it is FTA's general

intention to increase mass transportation knowledge, rather than limit the benefits to participants in the project. Therefore, unless FTA determines otherwise, the Contractor agrees that, in addition to the rights set forth in subsection (b)(II) of this clause, FTA may make available to any FTA recipient, third party contractor, or third-party subcontractor, either FTA's license in the copyright to the subject data derived under this Contract or a copy of the subject data first produced under this Contract. If this Contract is not completed for any reason whatsoever, all data developed under this Contract shall become subject data as defined in subsection (a) and shall be delivered as the Federal Government may direct.

- d) Unless prohibited by state law, the Contractor agrees to indemnify, save, and hold harmless WMATA and the Federal Government, their officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from the Contractor's willful or intentional violation of proprietary rights, copyrights, or the right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Contract. The Contractor shall not be required to indemnify WMATA and the Federal Government for any such liability arising out of the wrongful acts of their employees or agents.
- e) Nothing contained in this clause shall imply a license to WMATA or the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to WMATA or the Federal Government under any patent.
- f) The requirements of paragraphs (b) and (c), do not apply to material furnished by the Authority to the Contractor and incorporated in the work carried out under the contract provided that the Contractor identifies the incorporated material at the time of delivery of the work.
- g) Any dispute arising under this clause shall be subject to the "Disputes" clause of this Contract.
- h) Notwithstanding any other payment provision in this Contract, the Contracting Officer may retain from payments due and owing the Contractor up to 10 percent (10 %) of the contract price until final delivery and acceptance of the subject data defined in this clause and as required to be furnished by the Price Schedule or the Contract's specifications.

9) PATENT RIGHTS

- a) Depending on the nature of the project, the Federal Government may acquire patent rights when the Contractor produces a patented or patentable invention, improvement or discovery. The Federal Government's rights arise when the patent or patentable information is conceived, or first reduced to practice. When a patent is issued or patentable information becomes available, the Contractor will report the same to the Authority, to enable it to notify FTA and provide a detailed report satisfactory to FTA.
- b) Unless the Federal Government determines otherwise in writing, regardless of the status of any contractor, WMATA will transmit the Federal Government's patent

rights to FTA as specified in 35 U.S.C. § 200, et. seq. and the Department of Commerce's regulations "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements," 37 C.F.R. Part 401.

10) BUY AMERICA ACT

- a) Pursuant to 2 C.F.R. § 200.322 WMATA, to the greatest extent practicable consistent with law must provide a preference for the purchase, acquisition, or use of goods, products or construction materials produced in the United States, including, but not limited to iron, aluminum, steel cement, and other manufactured products.
- b) The Buy America Act requirements apply to the following types of contracts: construction contracts, the acquisition of goods or rolling stock valued at more than \$150,000.00.
- c) The Contractor agrees to comply with 49 U.S.C. § 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7 and include microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11. Rolling stock must be assembled in the United States and have a seventy percent (70%) domestic content.
- d) Contractor is responsible for flowing down these requirements to subcontractors at every tier. The dollar threshold only applies to the prime contract. All subcontracts thereunder are subject to the Buy America Act requirements. First tier contractors are responsible for ensuring that lower tier contractors and subcontractors are in compliance.
- e) An Offeror must submit to WMATA the appropriate Buy America Act certification with all offers on FTA funded contracts, except those subject to a general waiver. Bids in response to IFBs that are not accompanied by the appropriate Buy America Act certification must be rejected as nonresponsive. Proposals in response to RFPs that are not accompanied by the appropriate Buy America Act certification may be rejected as unacceptable. This requirement does not apply to lower tier subcontractors.

11) PRE-AWARD AND POST DELIVERY AUDIT REQUIREMENTS

- a) The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulations at 49 C.F.R. Part 663 and to submit the following certifications:
 - i) Buy America Act Requirements. The Contractor shall submit a complete declaration certifying either compliance or noncompliance with the Buy America Act. If the Offeror certifies compliance with the Buy America Act, it shall participate and cooperate in any pre-award survey and post-delivery

audits performed pursuant to 49 C.F.R, part 663 and related FTA guidance. The Contractor will submit documentation that lists 1) component and subcomponent parts of the rolling stock to be purchased as identified by manufacturer of the parts, their country of origin and cost; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

- ii) Solicitation Specification Requirements. The Contractor shall submit evidence that it will be capable of meeting the proposed specifications, including, but not limited to FTA's 70% domestic content requirement.
- iii) Federal Motor Vehicle Safety Standards (FMVSS). The Contractor shall submit 1) The manufacturer's FMVSS self-certification sticker including information that the vehicle complies with the relevant FMVSS or 2) The manufacturer's certified statement that the contracted vehicles will not be subject to FMVSS regulations.

12) CHARTER BUS REQUIREMENTS

- a) Contractor shall comply with 49 U.S.C. §§ 5323(d) and (r) and 49 C.F.R. Part 604, which state that recipients of FTA assistance are prohibited from providing charter service for transportation projects that use Federally funded equipment or facilities, if there is at least one private charter operator willing and able to provide the service, except as permitted by federal transit laws, specifically 49 U.S.C. § 5323(d); FTA regulations, "Charter Service" 49 C.F.R. § 604.9, the terms and conditions of which are incorporated herein by reference; any other Federal charter services regulations or Federal guidance, except as FTA determines in writing. Any charter service provided under one of the exceptions must be "incidental," i.e. it must not interfere with or detract from the provision of mass transportation.
- b) The Contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:
 - i) Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
 - ii) Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
 - iii) Any other appropriate remedy that may apply.
- c) The Contractor must include the substance of this clause in each subcontract that may involve operating public transit services.

13) SCHOOL BUS REQUIREMENTS

- a) Pursuant to 49 U.S.C. §§ 5323(f) as amended by MAP-21, 23 U.S.C. § 133, 23 U.S.C. § 142, and 49 C.F.R. Part 604, recipients of FTA assistance shall not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators, unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients shall not use federally funded equipment, vehicles, or facilities.
- b) Violations. If WMATA or any Contractor has operated school bus service in violation of FTA's school bus laws and regulations, FTA may: (1) Require WMATA or the Contractor to take such remedial measures as FTA considers appropriate, or (2) Bar WMATA or the Contractor from receiving Federal transit funds. When operating exclusive school bus service under an allowable exemption, the Contractor may not use Federally funded equipment, vehicles, or facilities.

14) BUS TESTING

- a) Contractor shall comply with 49 U.S.C. § 5323(c), applicable amendments of MAP-21, and FTA's implementing regulations at 49 C.F.R. § 665.11 and shall perform the following:
 - i) The bus testing requirements only pertain to a manufacturer of a new bus model or a bus produced with a major change in components or configuration, to be acquired or leased with FTA funding. The Contractor shall provide copies of the final test report(s) to WMATA, prior to WMATA's final acceptance of the first vehicle.
 - ii) A manufacturer who releases a report under paragraph (a) above shall provide notice to the operator of the testing facility that the report is available to the public.
 - iii) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold must have the identical configuration and major components as the vehicle in the test report, which must be provided to WMATA prior to its final acceptance of the first vehicle. If configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

15) CARGO PREFERENCE

- a) The Contractor agrees:
 - i) To utilize privately owned United States flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this Contract if, such vessels are available at fair and reasonable rates for United States flag commercial vessels;

- ii) To furnish within twenty (20) working days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) above to WMATA (through the Contractor in the case of a subcontractor's bills-of-lading) and to the Division of National Cargo, Office of Market Development, U.S. Maritime Administration, 620/Mail Stop 2, 1200 New Jersey Ave. S.E. Washington, DC 20590;
- iii) To include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean liner.

16) CLEAN AIR ACT

- a) Pursuant to 2 C.F.R. Part 200, App.II (G), for contracts in excess of \$150,000, the Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401-7671. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.
- b) The Contractor will comply with U.S. EPA Regulations "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; "Control of Emissions from New and In-Use Highway Vehicles and Engines," 40 C.F.R. Part 86; "Fuel Economy and Greenhouse Gas Exhaust Emissions of Motor Vehicles," 40 C.F.R. Part 600, as well as any applicable State Implementation Plans (SIP), and EPA regulations "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or Federal Transit Laws" 40 C.F.R. Part 93, along with other applicable Federal regulations.
- c) Flow-down requirement. The Contractor also agrees to include this clause in each subcontract exceeding \$150,000 financed, in whole or in part, with Federal assistance provided by FTA.

17) CLEAN WATER ACT

- a) Pursuant to 2 C.F.R. Part 200, App.II (G), for contracts in excess of \$150,000, the contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act, as amended, 33 U.S.C. §§1251-1387, as amended. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- b) The Contractor will protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§300 (f)-(j).
- c) The Contractor will comply with the notice of violating facility provisions in section

508 of the Clean Water Act, as amended, 33 U.S.C. § 1368.

- d) The Contractor will facilitate compliance with Executive Order 11738, "Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants or Loans," 42 U.S.C. § 7606 note.
- e) Flow-down requirement. The Contractor also agrees to include this clause in each subcontract exceeding \$150,000 financed, in whole or in part, with Federal assistance provided by FTA.

18) RECOVERED MATERIALS/ RECYCLED PRODUCTS

- a) Pursuant to 2 C.F.R. §200.323, the Contractor agrees to comply with all the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), (42 U.S.C. § 6962), including, but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery, and establishes an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- b) Flow-down requirement. The Contractor also agrees to include these requirements in each subcontract financed, in whole or in part, with Federal assistance provided by FTA.

19) ENERGY CONSERVATION

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

20) CHANGES TO FEDERAL REQUIREMENTS

- a) Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement [Form FTA MA (29) dated February 7, 2022] or latest version between the Authority and FTA, as they may be amended or promulgated during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

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

21) FLY AMERICA REQUIREMENTS

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

22) PAYMENT DEDUCTIONS - NONCOMPLIANCE WITH DBE REQUIREMENTS

- a) For Federally funded contracts that exceed \$250,000 and to which the Disadvantaged Business Enterprise (DBE) Requirements (Appendix B) apply, the failure to perform in accordance with requirements of Appendix B may result in a partial or full suspension of payment, including progress payments, if applicable.
- b) If the Contractor is found to be in noncompliance with the DBE requirements of Appendix B, the progress of the work shall also be deemed to be unsatisfactory, and an amount equal to the DBE participation in the Contract shall be retained from payment (or progress payments, if any) made to the Contractor.
- c) If the contract value is over \$250,000, the prime contractor will be responsible for submitting a monthly report of the status of its DBE subcontractors as outlined in Appendix B to the Contracting Officer.
- d) If the Contractor fails to submit the required monthly DBE reports, the Contracting Officer may suspend payment (or progress payments) until such time as the monthly reports are submitted and accepted by the Authority.

23) INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

- a) The preceding provisions include, in part, certain standard terms and conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in other Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F and FTA Master Agreement (29)) dated February 7, 2022 or any revision thereto, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all DOT or FTA mandated terms

shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any of the Authority's requests that would cause the Authority to be in violation of the FTA's terms and conditions.

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

24) NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

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

25) 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 to a 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 its provisions.

26) LOBBYING

- a) A Contractor who applies for an award exceeding \$100,000 must file a certification stating that it agrees that it will not use Federal funds to influence any officer or employee of a Federal agency, member of Congress or an employee of a member of Congress or an officer or employee of Congress on matters that involve this Contract or the underlying grant or agreement, including any award, extension or modification.
- b) Contractor agrees that it will comply with 31 U.S.C. § 1352, as amended, U.S. DOT regulations "New Restrictions on Lobbying" 49 C.F.R, Part 20, to the extent consistent with 31 U.S.C. § 1352, as amended and other applicable Federal laws, regulations and guidance prohibiting the use of Federal funds for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature unless an exception exists in current Federal law.
- c) Flow-down requirement. The Contractor agrees to include these requirements in all subcontracts at all tiers under this Contract.

27) NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS

The Contractor agrees to:

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

28) CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS

- a) The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:
 - i) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552 (a). Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in

termination of the underlying contract.

- ii) The Contractor also agrees to include these requirements in each subcontract involving the administration of any system of records on behalf of the Federal government financed, in whole or in part, with Federal assistance provided by FTA.

29) BONDING FOR CONSTRUCTION PROJECTS EXCEEDING \$250,000

- a) The Contractor agrees to comply with applicable bonding requirements in FTA Circular 4220.1F for construction or facility improvement contracts exceeding the simplified acquisition threshold
- b) **Proposal Security.** A proposal bond must be issued by a fully qualified surety company acceptable to WMATA and listed as a company currently authorized under 31 C.F.R. Part 223 as possessing a Certificate of Authority as described thereunder. The bid guarantee from each bidder will equal 5% of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check or other negotiable instrument accompanying a Bid as assurance that the bidder will, upon acceptance of the bid execute such contractual documents as may be required within the specified time.
 - i) **Rights Reserved.** In submitting its offer, it is understood and agreed by offeror that the right is reserved by WMATA to reject any and all offers, or part of any offer. It is also understood and agreed that if the offeror refuses or is unable to enter into this Contract, or refuses or is unable to furnish adequate and acceptable performance bonds and labor and material payments bonds, or refuses or is unable to furnish adequate and acceptable insurance, it shall forfeit its security to the extent of WMATA's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefore.
 - ii) It is further understood and agreed that to the extent that the defaulting offeror's proposal bond, certified check, cashier's check, treasurer's check, and/or official bank check (excluding any income generated thereby that was retained by WMATA) shall prove inadequate to fully compensate WMATA for the damages occasioned by default, then the offeror agrees to indemnify WMATA and pay over to WMATA the difference between the proposal security and WMATA's total damages, so as to make WMATA whole.
- c) **Performance and Payment Bonding Requirements (Construction).** The Contractor shall be required to obtain performance and payment bonds as follows:
 - i) **Performance bonds.** The penal amount of performance bonds shall be one hundred percent (100%) of the original Contract price, unless WMATA determines that a lesser amount would be adequate for its protection. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
 - ii) WMATA may require additional performance bond protection when the

Contract price is increased. The increase in protection shall generally equal one hundred percent (100%) of the increase in Contract price. WMATA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

- d) Payment Bonds. A payment bond may be required when a performance bond is required. Payment bonds adequate to protect the Authority and FTA's interests are as follows: (1) Fifty percent of the contract price if the construction contract price is not more than \$1,000,000; (2) Forty percent of the contract price if the contract price is more than \$1,000,000 and not more than \$5,000,000; or (3) When the contract price is more than \$5,000,000, the payment bond shall be \$2,500,000. When the contract price is increased, the Authority may require an addition to the payment bond in an amount adequate to protect suppliers of labor and material.

30) SEISMIC SAFETY

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

31) AMERICANS WITH DISABILITIES ACT ACCESSIBILITY

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.

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.

32) CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES AND LABOR SURPLUS AREA FIRMS

- a) WMATA will take all necessary affirmative steps, in accordance with 2 C.F.R. § 200.321 to assure that minority business, women's business enterprises and labor surplus area firms are used when possible.
- b) Affirmative steps must include:
 - i) Placing qualified small and minority businesses and women's business

enterprises on solicitation lists;

- ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- v) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(i) through (v) of this section.

33) PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

- a) Pursuant to 2 C.F.R. § 200.216. (a) WMATA is prohibited from obligating or expending federal grant funds to (1) procure or obtain; (2) Extend or renew a contract to procure or obtain, or (3) Enter into a contract or extend or renew an existing contract to procure or obtain equipment, services or systems that use covered telecommunications equipment or services as a substantial or essential component of any system or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities.)
 - i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- b) In implementing the prohibition under Public Law 115–232, section 889,

subsection (f), paragraph (1), the head of the Department of Transportation shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

34) TELECOMMUNICATION COSTS AND VIDEO SURVEILLANCE COSTS

Pursuant to 2 C.F.R. § 200.471:

- a) Costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, cloud servers are allowable, except in the following circumstances:
- b) Obtaining or expending covered telecommunications and video surveillance services or equipment or services as described in 2 C.F.R. § 200.216 to:
 - i) Procure or obtain, extend or renew a contract to procure or obtain
 - ii) Enter into a contract (or extend or renew a contract) to procure or
 - iii) Obtain the equipment, services or systems.

35) TITLE TO EQUIPMENT ACQUIRED UNDER A FEDERAL AWARD

- a) Pursuant to 2 C.F.R. §200.313, Title to equipment acquired under a federal award will vest in WMATA upon acquisition. Such title is conditional and vests subject to the following conditions:
 - i) Using the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.
 - ii) Not encumbering the property without approval of the FTA.
 - iii) Using and disposing of the property in accordance with paragraphs (b), (c), and (e) of 2 CFR §200.313.
 - iv) Management requirements-WMATA must manage the property in accordance with 2 C.F.R. § 200.313.

36) NOTICE TO FTA AND U.S. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE, OR OTHER LEGAL MATTERS

- a) FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying underlying contract or agreement, and any amendments thereto

including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.

- b)** Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, vendors (including prime contractors and subcontractors) must promptly notify the WMATA Contract Administrator. All Vendors (including prime contractors and subcontractors) must include a similar notification requirement and equivalent provision in its subcontracts at every tier, for any contract or agreement that is a “covered transaction” in accordance with 2 C.F.R. §§ 180.220 and 1200.220.
- c)** The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- d)** Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying underlying agreement, and any amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- e)** Additional Notice to U.S. DOT Inspector General. Vendors (including prime contractors and subcontractors) must promptly notify the WMATA Contract Administrator of potential fraud, waste, or abuse occurring on a project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et. seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the project is subject to this agreement or another agreement between WMATA and FTA, or an agreement involving a principal, officer, employee, agent, or third-party participant of WMATA. It also applies to subcontractors at any tier. Knowledge, as used in this clause includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Vendor (including prime contractors and subcontractors). In this clause, “promptly” means to refer information without delay and without change.
- f)** Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the underlying agreement.
- g)** Enforcement. WMATA must pursue its legal rights and remedies available under any third-party agreement or any federal, state, or local law or regulation. Vendors (including prime contractors and subcontractors) shall include, or shall cause to be included, the substance of this clause, including this paragraph (d), in its subcontracts at all tiers.