



**Washington Metropolitan Area Transit Authority**

# **FEDERAL TERMS And CONDITIONS**

## **1) 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: 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 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):
  - i) 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
  - ii) 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 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 article in all subcontracts that exceed \$150,000.

## **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 on this Contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection, however, do not apply to any Contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth below.

(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 sub-recipient for which work is performed on this Contract, the Contractor agrees to carry out the project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333 (b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth in WMATA's grant agreement. The Contractor agrees to perform transit operations in connection with this Contract in compliance with the conditions stated in that U.S. DOL letter.

(2) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas. If this Contract involves transit operations, financed, in whole or in part, with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

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

### **3) 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.

#### **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](mailto: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](mailto: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
  - 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 Contractor or subcontractor of the condition and of his or her intent not to perform or authorize work.
- d) The Contractor shall include, or shall cause to be included, the substance of this article, including this paragraph (d), in its subcontracts at all tiers.
- e) The Contractor and its subcontractors shall comply with the National Transit Systems Security Act (NTSSA) 6 U.S.C. §1142, which prohibits discharging, demoting, suspending, reprimanding or in any other way discriminating against an employee as a reprisal for the employee lawfully and in good faith:
- 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 article shall be interpreted in accordance with the NTSSA (6 U.S.C. §1142). If any provision is found to be in conflict with the NTSSA, the NTSSA shall govern.
  - i) The Contractor shall include, or shall cause to be included, this article, including this paragraph, in its subcontracts at all tiers.

## **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 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:
  - 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) The Contractor agrees to provide the Authority, the FTA Administrator, the U.S. Comptroller General or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 C.F.R. §633.17 to provide FTA Administrator or his or her authorized representatives including any Project Management Oversight (PMO) Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U. S. C. § 5302(a)(1), which is receiving Federal financial assistance through the programs described at 49 U. S. C. §§ 5307, 5309 or 5311.
- b) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c) The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract. In the event of litigation or settlement of claims arising from the performance of this Contract, the Contractor agrees to maintain such records until the Authority, the FTA Administrator, the U.S. Comptroller General, or any of their duly

authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. [See 49 C.F.R. § 18.39(i)(11)].

## **8) RIGHTS IN DATA AND COPYRIGHTS**

- a)** The term "subject data" used in this article means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists; specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to Contract administration.
- b)** The following restrictions apply to all subject data first produced in the performance of this contract:
  - 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 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, the following subject data for its purposes:
    - (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)(2) of this article, FTA may make available to any FTA recipient, sub-recipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the subject data derived under this Contract or a copy of the subject data first produced under this Contract. If this Contract is not completed for any reason whatsoever, all data developed under this Contract shall become subject data as defined in subsection (a) and shall be delivered as the Federal Government may direct.
- d)** Unless prohibited by state law, the Contractor agrees to indemnify, save, and hold harmless WMATA and the Federal Government, their officers, agents, and employees



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

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

## **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) The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract. In the event of litigation or settlement of claims arising from the performance of this Contract, the Contractor agrees to maintain such records until the Authority, the FTA Administrator, the U.S. Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. [See 49 C.F.R. § 18.39(i)(11)].

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

## **12) CHARTER BUS REQUIREMENTS**

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

## **13) SCHOOL BUS REQUIREMENTS**

- a) Pursuant to 69 U.S.C. §§ 5323(f) or (g) as amended by MAP-21, 23 U.S.C. § 133, 23 U.S.C. § 142, and 49 C.F.R. Part 605, recipients and sub-recipients of FTA assistance shall not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators, unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and sub-recipients shall not use federally funded equipment, vehicles, or facilities.
- b) **Violations.** If WMATA or any Contractor has operated school bus service in violation of FTA's school bus laws and regulations, FTA may: (1) Require WMATA or the Contractor

to take such remedial measures as FTA considers appropriate, or (2) Bar WMATA or the Contractor from receiving Federal transit funds.

#### **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. Part 665 and shall perform the following:
  - i) A manufacturer of a new bus model or a bus produced with a major change in components or configuration, shall provide copies of the final test report(s) to WMATA, prior to WMATA's final acceptance of the first vehicle.
  - 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 Office of Cargo Preference, Maritime Administration (MAR-590), 400 Seventh Street SW, 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) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401-7671. The Contractor agrees to report each violation to the Authority and understands and agrees

that the Authority will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

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

## **17) CLEAN WATER ACT**

- a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act, as amended, 33 U.S.C. §§1251-1377. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- 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) The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873,

as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

- b) Flow-down requirement. The Contractor also agrees to include these requirements in each subcontract financed, in whole or in part, with Federal assistance provided by FTA.

## **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 Agreement (Form FTA MA (22) dated October 1, 2015) between the Authority and FTA, as they may be amended or promulgated during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.
- b) Flow-down requirement. The Contractor agrees to include this Article in each subcontract financed in whole or in part with Federal Assistance provided by FTA. It is further agreed that the Article shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **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 and sub-recipients of Federal funds and their contractors are required to use U. S. Flag carriers for U. S. Government financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. If a foreign air carrier was used, the Contractor shall submit an appropriate certification or memorandum adequately explaining why service by a U. S. flag carrier was

not available or why it was necessary to use a foreign air carrier and shall provide a certificate of compliance with the Fly America requirements.

- b) Flow-down requirement. The Contractor agrees to include the requirements of this article in all subcontracts that may involve international air transportation.

## **22) PAYMENT DEDUCTIONS - NONCOMPLIANCE WITH DBE REQUIREMENTS**

- a) For Federally funded contracts that exceed \$150,000 and to which the Disadvantage Business Enterprise (DBE) Requirements (Appendix B) apply, the failure to perform in accordance with requirements of Appendix B may result in a partial or full suspension of payment, including progress payments, if applicable.
- b) If the Contractor is found to be in noncompliance with the DBE requirements of Appendix B, the progress of the work shall also be deemed to be unsatisfactory, and an amount equal to the DBE participation in the Contract shall be retained from payment (or progress payments, if any) made to the Contractor.
- c) If the contract value is over \$150,000, the prime contractor will be responsible for submitting a monthly report of the status of its DBE subcontractors as outlined in Appendix B to the Contracting Officer.
- 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 (23) October 1, 2016 or any revision thereto, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all DOT or FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any of the Authority's requests that would cause the Authority to be in violation of the FTA terms and conditions.
- b) Flow-down requirement. The Contractor agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## **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 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.

## **26) 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.

- i) 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.
- ii) 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.
- iii) 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 paragraph, 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 paragraph, "promptly" means to refer information without delay and without change.
- c) 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.
- d) 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 article, including this paragraph (d), in its subcontracts at all tiers.

## 27) LOBBYING

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

## **28) NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS**

- a) 23 U.S.C. § 517(d), as amended by MAP-21; FTA Circular 4220.1F Chapter IV d.(1).

## **29) 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.

## **30) BONDING FOR CONSTRUCTION PROJECTS EXCEEDING \$150,000**

- a) The Contractor agrees to comply with applicable bonding requirements as follows:
  - i) 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.
  - ii) 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.
  - iii) 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.

**iv) Performance and Payment Bonding Requirements (Construction).** The Contractor shall be required to obtain performance and payment bonds as follows:

**(1)** Performance bonds. The penal amount of performance bonds shall be one hundred percent (100%) of the original Contract price, unless WMATA determines that a lesser amount would be adequate for its protection.

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

**v) Payment bonds.** The penal amount of the payment bonds shall equal:

**(1)** Fifty percent (50%) of the Contract price, if it is not more than \$1,000,000.

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

**(3)** Two and one half million (\$2,500,000), if the Contract price is more than \$5,000,000.

**(4)** If the original Contract price is \$5,000,000 or less, WMATA may require additional protection, if the Contract price is increased.

### **31) 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:

**i)** 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).

**ii)** 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.

**(1)** Substantial progress payments will be made before the delivery of end items begins.

**iii)** 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:

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

### **32) 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.

### **33) 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.
- b) Facilities to be used in public transportation service must comply with 42 U.S.C. § 12101 et. seq.; DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38.