



## **Standard Non-Federal Purchase Order Terms and Conditions**

### **1. ACCEPTANCE OF SUPPLIES**

- (a) The Authority shall accept or reject tendered supplies as promptly as practicable after delivery, unless otherwise provided in this Contract. The Authority's failure to inspect and/or accept or reject the supplies shall not relieve the Contractor from responsibility for, nor impose liability upon, the Authority for nonconforming supplies.
- (b) The Authority's acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud and otherwise willful misconduct or as otherwise provided in this Contract. In such instances, the Authority, in addition to any other rights and remedies it has under this Contract at law or in equity, shall have the right:
  - (1) To direct the Contractor, at no increase in Contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or, if so determined by the Contracting Officer, at the Contractor's facility, in accordance with a reasonable delivery schedule as may be agreed upon between the parties. The Contracting Officer may reduce the Contract price, if the Contractor fails to meet such delivery schedule; or
  - (2) Within a reasonable time after the Contractor's receipt of a Notice of Defects or Nonconformance, the Contracting Officer may reduce the Contract price, as is equitable under the circumstances, if he or she elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the costs of transportation.

### **2. AMERICANS WITH DISABILITIES ACT ACCESSIBILITY [FOR CONSTRUCTION OR RENOVATION, NEW REVENUE SERVICE VEHICLES OR MAJOR MODS THERETO]**

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

### **3. ASSIGNMENT**

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

### **4. THE AUTHORITY'S DELAY**

- (a) If the performance of all or any part of the Contract is delayed in a material manner or extent by an act or omission of the Authority that is not expressly or impliedly authorized by this Contract or by applicable provisions of law, the Contracting Officer shall make an adjustment (excluding profit) for any increase in the cost of performance of this Contract caused by such delay and shall modify the Contract, in writing. The Contracting Officer shall make an adjustment to the delivery or performance dates and any other Contractual provision, if such delay or interruption affected Contract compliance. The Contracting Officer shall make no adjustment under this Contract for any delay or interruption if performance was or could have been delayed by any other cause, including, without limitation: (i) the fault or negligence of the Contractor or any subcontractor; (ii) an act constituting a force majeure event pursuant to this Contract; or (iii) any other cause for which an adjustment is provided under any other clause of this Contract, at law or in equity.
- (b) An adjustment pursuant to paragraph (a) shall not be allowed:
  - (1) For any costs incurred more than twenty (20) days before the Contractor notifies the Contracting Officer, in writing, of the delay.
  - (2) Unless the claim, in a sum certain, is asserted in writing as soon as practicable after the termination of the delay. In no event, shall a Contractor assert a delay claim later than thirty (30) days after its termination. The delay claim shall be

accompanied by appropriate documentation, specifically supporting the nature and extent of the claimed impact upon the cost and/or time required for performance. In any instance where it is not possible for the Contractor to fully project such impact within the thirty (30) day period, it shall support the claim with such documentation as is then reasonably available along with a statement of the anticipated time frame when the Contractor expects to provide the additional materials. The Contracting Officer shall maintain the right throughout the process to request such additional materials as he or she shall reasonably require in consideration of the claim and shall be under no obligation to conclude his or her consideration of the claim prior to review of all relevant materials. Any adjustment to the Contract price pursuant this clause must be determined prior to final payment under this Contract.

## **5. AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR**

Funds are not guaranteed for performance under this Contract beyond the current fiscal year that ends on June 30<sup>th</sup>. The Authority's obligation for performance of this Contract beyond that date is contingent upon the availability of funds from which payment for Contract purposes can be made. The Authority will not be liable for any payment under this Contract, until funds are made available to the Contracting Officer and until the Contractor receives notice in writing. Any option that the Authority may exercise in whole or in part, in a subsequent fiscal year is subject to availability of funds in that fiscal year and will be governed by the terms of this clause.

## **6. BILLING AND PAYMENT**

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

WMATA-Accounts Payable PO Box 1910 Beltsville, MD 20704-1910

Note: This address is only for vendor invoices. Correspondence should not be sent to this address.

- (c) Invoices shall contain the vendor's name, a unique invoice number for each shipment or service, invoice date, payment terms, total invoice amount, "remit to" address, Purchase Order Number, freight terms, description of each item being invoiced, quantity, unit item cost, extended cost by item, total freight/handling costs, contact name and email address. Final invoices must clearly be marked "FINAL" and cite the amount of the Contract, amount previously paid, and the balance due.
- (d) The Authority shall remit payment, generally within thirty (30) days of its receipt of an invoice satisfying the requirements of paragraphs (c), at the prices stated in the Purchase Order for supplies or services accepted, less any applicable deductions.

## **7. CHANGE ORDERS**

- (a) The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, direct and implement change orders, within the general scope of this Contract, including but not limited to one or more of the following:
  - (1) Nature and/or extent of services to be performed or supplies to be furnished;
  - (2) Time of performance (i.e., hours of the day, days of the week, etc.); or
  - (3) Place of performance of the services or delivery of the supplies.
- (b) If, in the Contracting Officer's judgment, any such change causes an increase or decrease in the cost of, or the time required for, the performance of this Contract, whether or not directly changed by the order, he or she shall make an equitable adjustment to the Contract price, the delivery schedule, or both, and shall modify the Contract, in writing, accordingly. Any adjustment to the Contract price pursuant to this clause must be agreed upon or otherwise determined prior to final payment.
- (c) In no event shall the Contractor be entitled to payment for change orders, additional or extra supplies or services or other modifications to the Contract unless the Contracting Officer authorizes it, in writing.

## **8. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE**

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

**9. CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)**

- (a) The work will be conducted under the Contracting Officer's general direction. The Contracting Officer will delegate authority to the Contracting Officer's Technical Representative (COTR) to take the following actions:
- (1) Act as the principal point of contact with the Contractor. The COTR will submit a copy of each item of incoming correspondence and a copy of any enclosures to the Contract Administrator;
  - (2) Approve in writing, the Contractor's progress schedule and submittals when required;
  - (3) Inspect the work for compliance with this Contract;
  - (4) Review and approve invoices and payment estimates. The COTR will forward invoices and receipts to accounting. The COTR will bring any significant discrepancies in, or disputes concerning, the Contractor's invoices or payments to the Contracting Officer's attention. The COTR will make his or her recommendations regarding release of any retainage to the Contracting Officer in writing;
  - (5) Coordinate correspondence with the Contract Administrator, if its importance significantly impacts this Contract;
  - (6) Evaluate the Contractor's technical letters and proposals for the Contracting Officer;
  - (7) Advise the Contracting Officer of potential problems that may affect Contract performance;
  - (8) Advise WMATA's DBE Office, if there are DBE, SBE, or SBLPP issue(s) that may require investigation.
  - (9) Advise the Contracting Officer, a reasonable amount of time before the Contractual not-to-exceed amount will be exceeded, if the COTR has a good faith basis for determining that this is likely to occur;
  - (10) Prepare the Authority's estimate for proposed Contract modifications. Participate in negotiations for modifications;
  - (11) Approve, in writing, the Contractor's progress schedule when required.
  - (12) Receive from the Contractor, monthly, if applicable, DBE status reports and forward them to the WMATA's DBE Office;
  - (13) Receive from the Contractor, certified payroll reports and prepare a log sheet indicating the following: (1) name of the Contractor and subcontractor; (2) the Contract number; (3) the certified payroll number (number for the payroll for the project starting with the number 1); (4) the time frame of the payroll period (i.e. 1/21/11-2/3/11); (5) the statement of compliance date (first page of the report); and (6) the date that WMATA received the report.
  - (14) Maintain a comprehensive file/record of documents and correspondence concerning Contract activities and actions;

- (15) If this Contract is ready for closeout, the COTR shall provide the Contract Administrator with written notification after all supplies/services have been received that the Contract is ready for closeout. The COTR will return the file, containing all records, correspondence, etc., to the Contract Administrator;
  - (16) Execute Standard Form 1420, which contains a detailed performance evaluation of the Contractor. If, there are one (1) or more categories in which the Contractor is deemed unsatisfactory, these evaluations must be provided to it for comment;
  - (17) Provide the Contract Administrator with a written request (and requisition) to exercise option(s) (if any) a minimum of ninety (90) days prior to the time established in this Contract for exercise of the option; and
  - (18) The COTR may not further delegate his/her duties or responsibilities regardless of whether he or she will be absent. If, for whatever reason the COTR is unable or unwilling to fulfill his or her responsibilities under this Contract, only the Contracting Officer can designate a new COTR.
  - (19) The presence or absence of the COTR or his or her inspectors shall not relieve the Contractor from any requirements of this Contract.
- (b) The name, address and telephone number of COTR will be provided to the Contractor at award.

**10. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION**

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

- (a) Overtime requirements. No Contractor or subcontractor contracting for any part of the work that may involve the employment of laborers, mechanics, apprentices, trainees, watchmen, and guards shall require or permit any such employee in any workweek in which he or she is so employed to work in excess of forty (40) hours on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such employee receives compensation at a rate not less than one and one-half (1 1/2) times his or her basic rate of pay for all hours worked in excess of forty (40) hours in such work week.
- (b) Violation. Liability for Unpaid Wages-Liquidated damages. In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible therefore shall be liable to any affected employee for his or her unpaid wages. In addition, such Contractor and subcontractor shall be liable to the Authority for liquidated damages. Liquidated damages shall be computed with respect to each individual laborer, mechanic, apprentice, trainee, watchman or guard employed in violation of the provisions of paragraph (a), in the sum of \$10 for each calendar day on which such employee was employed on such work in excess of his or her standard work week of forty (40) hours without payment of the overtime wages required by paragraph (a).

- (c) Withholding for unpaid wages and liquidated damages. The Contracting Officer may withhold from the Contractor, such sums as the Contracting Officer determines to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).
- (d) Subcontracts. The Contractor shall insert this clause in all subcontracts at any tier.
- (e) Records. The Contractor shall maintain payroll records containing the information specified in 29 C.F.R. § 516.2(a). Such records shall be preserved for three (3) years from the completion of this Contract.

**11. CONTRACTOR PERSONNEL**

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

**12. CONVICT LABOR**

- (a) Except as provided in paragraph (b), the Contractor shall not employ, in the performance of this Contract, any person undergoing a sentence of imprisonment imposed by any court of the Federal Government, a state, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam or the U.S. Virgin Islands.
- (b) The Contractor is not prohibited from employing persons:
  - (1) On parole or probation to work at paid employment during the term of their sentence;
  - (2) Who have been pardoned or who have served their terms; or
  - (3) Confined for violation of the laws of the Federal Government, the states, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if:
    - (i) The worker is paid or is in an approved work or training program on a voluntary basis;

- (ii) Representatives of the local union's central bodies or similar labor union organizations have been consulted;
- (iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades where there is a surplus of available gainful labor in the locality, or impair existing contracts or services;
- (iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality where the work is being performed; and
- (v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

### **13. COVENANT AGAINST CONTINGENT FEES**

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

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

### **14. DISPUTES**

- (a) Any dispute or claim arising out of or relating to this Contract shall be decided by the Contracting Officer, who shall reduce his/her decision to writing and furnish a copy to the Contractor. A final decision by the Contracting Officer shall be conclusive and binding for the Authority.
- (b) The filing of a claim, lawsuit, arbitration or other legal proceeding, does not relieve the parties of their continuing obligations to proceed diligently with the performance of the Contract and in accordance with the Contracting Officer's Final Decision.
- (c) After exhausting all administrative remedies, each party agrees that any suit, action or other legal proceeding arising out of or relating to this Contract shall be brought only in the United States District Court for the District of Columbia, the United States District Court for the Eastern District of Virginia, Alexandria Division, or in the United States District Court for the District of Maryland, Greenbelt Division.
- (d) The parties may mutually agree and consent to final and binding Alternate Dispute Resolution (ADR), including the Armed Service Board of Contract Appeals, in lieu of judicial review in the United States District Courts as set forth in subsection (c) above.

**15. 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:
  - (1) Employee and supervisor training documentation;
  - (2) The name and location of the collection site(s), laboratory(ies), Medical Review Officer(s), Breath Alcohol Technician(s), Collector(s), and Substance Abuse Professional(s); and a description of their random selection drug and alcohol testing process.
- (e) The Contractor further agrees to submit quarterly management reports summarizing test results to the MCM and the Contracting Officer by the 15th of the month following the end of each quarter.
- (f) Contractors are required to flow this clause down to all of their safety sensitive subcontractors and agents.

**16. EMPLOYMENT RESTRICTION WARRANTY**

- (a) The Contractor warrants that it will not offer employment to, solicit or discuss the interest of prospective employment of, or otherwise engage in substantive employment related discussions or communications with, any present or former Board member of the Authority who has been involved, directly or indirectly, in any matter of financial interest to the Contractor until at least two (2) years after the Board member has ceased involvement in the matter. The post-employment restriction for employees is one (1) year from the date of their last employment with the Authority. The Contractor shall not knowingly engage in communications of the nature described above with any

immediate family member or member of the household of any Authority employee or Board member during the period when such employee or Board member is involved in any matter of financial interest to the Contractor.

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

**17. EXTENSIONS OF TIME/FORCE MAJEURE**

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

extension for each cause, but shall be entitled to only one (1) period of extension for the cumulative effects of the delay.

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

## **18. FALSE STATEMENTS, CLAIMS OR SUBMISSIONS**

- (a) The Contractor acknowledges its responsibility to undertake its obligations under this publicly funded contract with full integrity and, to take all reasonable steps to ensure that statements, claims and submissions made pursuant to the Contract are provided in good faith and with a reasonable belief as to their truthfulness, accuracy and completeness.
- (b) In the event that it is finally determined by a court of competent jurisdiction that any statement, claim, submission, or certification made by or on behalf of the Contractor pursuant to a material element of the Contract was knowingly false, fictitious or fraudulent, the Authority shall be entitled to recover from the Contractor an amount equal to not more than three (3) times the monetary value of the benefit derived or sought to be derived by the Contractor through its false statement, claim or submission. For purposes hereof, an element of the Contract shall be deemed material if it impacted or could reasonably have been intended to impact the disposition of any claim, dispute, proposed or implemented change order, proposed pricing or schedule adjustment of any nature, or other substantive issue directly affecting the rights of the parties under the Contract.
- (c) The Authority's only remedy prior to a final determination by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the

Offices of Inspectors General of any state or Federal agency providing funding under this Contract and/or appropriate Federal, state and/or local law enforcement authorities.

- (d) The rights of the Authority set forth in this clause are in addition to any Contractual, legal or equitable rights that may arise upon the Contractor's submission of a false claim or statement, including without limitation, the Authority's right to terminate the Contract for default once fraud is finally determined by a court of competent jurisdiction. The provisions of this clause shall not serve in any respect to limit, waive or modify any civil or criminal liability, of the Contractor or any of its officers, agents or employees that such conduct may precipitate.

**19. FEDERAL, STATE, AND LOCAL TAXES**

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

- (f) The Contractor shall promptly notify the Contracting Officer of matters that may result in either an increase or decrease in the Contract price under this clause and shall take action as the Contracting Officer directs. The Authority shall be entitled to a reduction in the Contract price reflecting such amount and a refund of monies paid related to such taxes, plus applicable interest.

**20. F.O.B. DELIVERY**

Unless otherwise specified, the Contractor shall furnish all supplies to be delivered under this Contract "F.O.B. Destination". As used herein, "F.O.B. Destination" means:

- (a) Free of expense to WMATA on board the carrier's conveyance, at a specified delivery point where WMATA's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and
- (b) Supplies shall be delivered to WMATA's warehouse unloading platform, or receiving dock, at the Contractor's expense. WMATA shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery of the supplies to the destination, unless such charges are caused by WMATA's acts or omissions, acting in its Contractual capacity. If the Contractor uses a rail carrier or freight forwarder for less than full carload shipments, the Contractor shall assure that the carrier will furnish tailgate delivery, if transfer to truck is required to complete delivery to WMATA.
- (c) The Contractor shall:
  - (1) Pack and mark the shipment to comply with Contract's specifications;
  - (2) In the absence of specifications, prepare the shipment in conformance with the carrier's requirements;
  - (3) Prepare and distribute commercial bills of lading;
  - (4) Deliver the shipment in good order and condition to the point of delivery specified in the Contract;
  - (5) Be responsible for any loss of and/or damage to the goods occurring before WMATA's receipt of the shipment at the delivery point specified in the Contract;
  - (6) Furnish a delivery schedule and designate the mode of delivering carrier; and
  - (7) Pay and bear all charges to the specified point of delivery.

**21. GARNISHMENT OF PAYMENTS**

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

**22. GOVERNMENT-WIDE DEBARMENT OR SUSPENSION**

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

**23. GRATUITIES**

- (a) In connection with performance of this Contract, or any changes or modifications relative thereto, the giving of or offering to give gratuities (in the form of entertainment, gifts or otherwise) by the Contractor, or any agent, representative or other person deemed to be acting on behalf of the Contractor, or any supplier or subcontractor furnishing material to or performing work under this Contractor, to any Board member, employee or agent of the Authority; with a view toward securing this Contract or securing favorable treatment regarding this Contract is expressly forbidden. The terms of this "Gratuities" clause shall be strictly construed and enforced in the event of violations hereof.
- (b) Reported instances of the giving or offering to give gratuities within the context of this "Gratuities" clause will be investigated by the Authority's Board of Directors or its duly authorized representative. A preliminary investigation will be made to determine whether there is probable cause to suspect that a violation of this clause exists. If such probable cause exists, the Board of Directors, or its duly authorized representative, shall formally notify WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any state or Federal agency providing funding under this Contract and/or appropriate Federal, state and/or local law enforcement authorities.
- (c) The rights and remedies of the Authority provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided under this Contract, at law or in equity.

**24. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA**

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

**25. INAPPLICABILITY OF CLAUSES REQUIRING UNAUTHORIZED OBLIGATIONS**

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

**26. INDEMNIFICATION**

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

- (d) Contractor understands and agrees that it is Contractor's responsibility to provide indemnification to the Authority pursuant to this Section. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the failure of Contractor's insurance to fully fund any indemnification shall not relieve the Contractor of any obligation assumed under this indemnification.

**27. INSPECTION OF SERVICES**

- (a) The Contractor shall provide and maintain an inspection system acceptable to the Authority covering the Services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Authority during Contract performance in the manner and in accordance with the time periods set forth in the "Audit and Inspection of Records" clause of this Contract.

The Authority has the right to inspect and test all services called for by this Contract, at all times and places reasonably practicable during the term of this Contract. The Authority shall perform inspection and tests in a manner that will not unduly delay the work.

- (b) If any of the services performed do not conform to Contract requirements, the Authority may require the Contractor to perform the services again in conformity with Contract requirements, without additional cost. When the defects in performance cannot reasonably be corrected by such further performance, the Authority may:
  - (1) Direct the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and/or
  - (2) Reduce the contract price to reflect the reduced value of the services performed.

**28. INSPECTION OF SUPPLIES**

- (a) The Contractor shall provide and maintain an inspection system acceptable to the Authority covering supplies under this Contract. The Contractor shall tender to the Authority for acceptance, only supplies that have been inspected in accordance with the inspection system that the Contractor finds to be in conformity with Contract requirements. As part of the system, the Contractor shall prepare records evidencing the nature and result of all inspections. These records shall be made available to the Authority during the Contract and thereafter, in accordance with the "Audit and Inspection of Records" clause of this Contract. The Authority may perform reviews and evaluations as reasonably necessary to ascertain compliance with this clause. These reviews and evaluations shall be conducted in a manner that will not unduly delay the Contract. Reviews, whether exercised or not, do not relieve the Contractor of its obligations under this Contract.
- (b) The Authority has the right to inspect and test all supplies under this Contract, to the extent practicable, at all places and times, including during manufacturing, and before acceptance. The Authority shall perform inspections and tests in a manner that will not unduly delay the Contract. The Authority assumes no contractual obligation to perform

any inspection and/or test nor shall the Authority's failure to perform any inspection or test relieve the Contractor of any obligation under this Contract.

- (c) If the Authority performs inspection(s) or test(s) on the Contractor's or subcontractor's premises, the Contractor shall furnish, and shall require subcontractors to furnish, without additional cost, all reasonable facilities and assistance for the safe and convenient performance of these inspections or tests.
- (d) When supplies are not ready at the time specified for inspection or testing, the Contracting Officer may charge the Contractor for any additional, associated cost. The Contracting Officer may also charge the Contractor for any additional cost of inspection or testing when prior rejection makes re-inspection or retesting necessary.

## **29. LAWS AND REGULATIONS**

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

## **30. MANDATORY DISCLOSURE**

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

- (a) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or
- (b) A violation of the civil False Claims Act (31 U.S.C. §§ 3729-3733).
  - (1) WMATA, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by the law and regulation, such information will not be released by the Government to the public pursuant to a Public Access to Records request, without prior notification to the Contractor. WMATA may transfer documents provided by the Contractor to any department or agency within the state, Federal or local government, if the information relates to matters within the organization's jurisdiction.
  - (2) If the violation relates to an order against a government-wide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor shall notify the OIG of the ordering agency and the OIG of the agency responsible for the basic contract.

**31. METRIC SYSTEM**

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

**32. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS**

The Contractor agrees to:

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

**33. NONDISCRIMINATION ASSURANCE**

- (a) Nondiscrimination Assurance: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000 (d), section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the American with Disabilities Act of 1990, 42 U.S.C. §12132, D.C. law and Federal transit law at 49 U.S.C. §5332, the Contractor, sub-recipient, or subcontractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, age, sexual preference, disability and/or gender identity. In addition, the Contractor, sub-recipient, or subcontractor agrees to comply with applicable Federal implementing regulations and other regulations that FTA may issue.
- (b) Equal Employment Opportunity. The following equal employment opportunity requirements apply to this Contract.
  - (1) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000(e), and Federal transit laws at 49 U.S.C. §5332, the Contractor agrees to comply with all applicable equal opportunity requirements of the U. S. Department of Labor (U.S. DOL) including, but not limited to "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, " 41 C.F.R. Part 60 et.

seq., [implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note], and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of this Contract. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements that FTA may issue.

- (2) Age. In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements that FTA may issue.
- (3) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the Contractor agrees that it will comply with the requirements of U. S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements that FTA may issue.
- (c) The Contractor also agrees to include all of these requirements in each subcontract financed, in whole or in part, with Federal assistance provided by FTA, modified only, if necessary, to identify the affected parties.
- (d) Failure by the contractor, sub-recipient, or subcontractor to carry out these requirements is a material breach of this Contract, that may result in the termination or such other remedy as the Authority deems appropriate.

#### **34. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT**

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

**35. NOTICE TO THE AUTHORITY OF LABOR DISPUTES**

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

**36. NOTICE OF BANKRUPTCY OR INSOLVENCY**

In the event the Contractor becomes insolvent or files or has filed against it a petition in bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of such to the Contracting Officer. This notification shall be furnished as soon as possible, but in no event more than ten (10) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all WMATA Contract numbers for all WMATA contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract.

**37. OFFICIALS NOT TO BENEFIT**

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

**38. ORDER OF PRECEDENCE**

- (a) Any inconsistency in the Purchase Order shall be resolved by giving precedence to the following order: (a) modifications; (b) WMATA terms and conditions; (c) the WMATA technical specifications or Scope/Statement of Work (SOW); (d) drawings, if any; (e) other documents, exhibits, and attachments generated by the Authority as part of the Purchase Order; (f) the technical proposal, if any, and other Contractor submissions generated as part of the Purchase Order. In the event of a conflict within or between provisions with the same title, the order of precedence dictates which provision prevails.
- (b) Notwithstanding paragraph (a), if this Purchase Order is funded, in whole or part, through funding provided by the Federal Government, all Purchase Order terms

mandated for inclusion by the Federal Government shall be deemed to supersede any other conflicting or inconsistent provisions of the Purchase Order.

**39. ORGANIZATIONAL CONFLICTS OF INTEREST**

- (a) An organizational conflict of interest (OCI) exists when the nature of the work to be performed under a proposed contract or a subcontract may, without some restriction on future activities result in an unfair competitive advantage to the Contractor or subcontractor; because of (1) unequal access to information, (2) biased ground rules or (3) impaired objectivity. An unequal access to information OCI may exist if in performing a contract, a contractor obtains access to non-public information that provides a competitive advantage to it in a later competition. A biased ground rules OCI may exist if the contractor has a role in setting rules for a source selection in which the contractor will compete. An impaired objectivity OCI may exist if, in performing a contract, a contractor is called upon to evaluate an offer from or performance by itself or an affiliated entity.
- (b) In the event that the Contractor believes that it or any of its potential subcontractors may have an OCI it shall notify the Contracting Officer, in writing, within five (5) work days after it becomes aware of the potential or actual OCI. The written notification shall identify the nature and circumstances of the perceived conflict and propose appropriate measures to eliminate or mitigate the OCI. The Contracting Officer will review the circumstances and the proposed mitigation plan and notify the Contractor stating whether: (1) no mitigation is required; (2) the conflict cannot be mitigated; or (3) the conflict can be mitigated and he or she accepts the proposed measures, or recommends other and/or additional measures.
- (c) The failure of the Contractor to identify such perceived conflicts may result in the contract award being rescinded or the Contract being terminated.
- (d) Should the Contractor identify or become aware of a conflict during the term of this Contract, including any extension thereof that it could not reasonably anticipate prior to award, it shall notify the Contracting Officer in accordance with paragraph (b) above, or request an exception to the restriction with supporting rationale. The Contracting Officer shall consider the Contractor's proposed measures to mitigate or eliminate the conflict, or the request for an exception.
- (e) If the proposed measures are not determined to be feasible or are otherwise not acceptable to the Contracting Officer, the Contracting Officer may terminate the Contract. If the Contracting Officer does not grant a request for an exception, and the Contract is not terminated for convenience, the Contractor shall be notified in writing and be given ten (10) days from the date of the written notification to take all necessary actions to comply with this clause.
- (f) If the proposed measures are determined to be acceptable to the Contracting Officer, he or she may grant a specific exception to this restriction, when in the Contracting Officer's judgment, the exception will not create a conflict between the Contractor's duties and obligations under this Contract and the duties and obligations imposed on the Contractor under another contractual or other relationship.
- (g) If the Contractor fails to comply with the terms of this clause, and no fraud is suspected, the Contracting Officer, may withhold payments due under this Contract until such time

as the Contractor is in compliance or, should the non-compliance remain uncorrected at the expiration of ten (10) days from written notice from the Contracting Officer as provided in subparagraph (d)(2), terminate the contract for default pursuant to this Contract.

- (h) If fraud is suspected, the Authority's only remedy prior to a final determination by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any state or Federal agency providing funding under this Contract and/or appropriate Federal, state and/or local law enforcement authorities.
- (i) The Contractor, in performing this Contract, shall avoid any conduct that might result in or give the appearance of creating for Board members or employees of the Authority in their relationship with the Contractor, any conflicts of interest or favoritism and/or the appearance thereof and shall avoid any conduct that might result in a Board member, or employee failing to adhere to the Standards of Conduct adopted by the Authority's Board of Directors.
- (j) Any determination by the Contracting Officer under this clause shall be final and shall be considered a question of fact within the meaning of the "Disputes" clause of this Contract.

#### **40. PRE-EMPLOYMENT CRIMINAL BACKGROUND CHECK REQUIREMENT**

Pursuant to Metro Policy Instruction 6.10/5, WMATA requires that all Contractor employees and candidates for employment undergo and pass criminal background screenings before being eligible to work on WMATA's property and facilities. Contractor employees and candidates who pass the background screenings are eligible to enter WMATA's property once WMATA issues them a Contractor's badge. Contractor employees and candidates who do not authorize background screenings or whose background screenings are unsatisfactory will not be granted Contractor's badges or access to WMATA's property. Background checks are valid for one (1) year from the date of issuance.

#### **41. PUBLIC COMMUNICATION**

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

#### **42. RIGHTS IN TECHNICAL DATA – UNLIMITED**

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

software” as used in this clause means commercial off-the-shelf (COTS) software, specially developed computer software, computer programs, computer data bases, data and documentation thereof.

- (b) The Authority or its designated representative, shall have the unlimited right to use, duplicate or disclose technical data, including computer software, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so:
  - (1) Any manuals, instructional materials prepared for installation, operation, maintenance or training purposes;
  - (2) Technical data pertaining to end items, components or processes that were prepared for the purpose of identifying sources, sizes, configurations, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data; e.g., specification control drawings, catalog sheets, outline drawings. Except for the computer software, it means data identifying sources, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulae, and flow charts of the software);
  - (3) Other technical data that was or is normally furnished without restriction by the Contractor or subcontractor;
  - (4) Other specifically described technical data that the parties have agreed will be furnished without restriction;
  - (5) All computer software regardless of whether it is technical data as defined in this clause including the source code, algorithms, processes, formulae, and flow charts, that the Contractor develops or materially modifies for the Authority or for which the Authority is required by Federal law to provide a royalty-free, irrevocable and nonexclusive license to the Federal Government.
- (c) The Authority shall have the right to use, duplicate, or disclose technical data other than as defined in paragraph (a), in whole or in part. Such technical data shall not, without the written permission of the party furnishing it be:
  - (1) Released or disclosed, in whole or in part, outside the Authority;
  - (2) Used, in whole or in part, by the Authority for manufacturing, or
  - (3) Used by a party other than the Authority except for: (i) emergency repair or overhaul, (ii) where the item or process concerned is not otherwise reasonably available to the Authority to enable timely performance of this Contract, or (iii) administration of this Contract or the inspection of any products produced under this Contract where the third party has a written contract with the Authority to perform these efforts. In all cases described in this clause, the release or disclosure outside of the Authority shall be subject to a nondisclosure agreement.
- (d) Technical data provided in accordance with this clause shall be identified by a legend that suitably recites the any limitations. This clause shall not impair the Authority's right to use similar or identical data acquired from other sources.
- (e) Where any item is purchased as a separate line item in this Contract, that purchase includes all integral parts of that item, including any computer software, source codes, algorithms, processes, formulae, and flow charts. The Authority has full rights to use,

duplicate or disclose any or all parts of the item, including computer software, in any manner and for any purpose whatsoever, and to permit others to do so. Should disclosure of the computer software be required only under this paragraph, then the Contracting Officer may waive the provisions of this paragraph, if he or she certifies, in writing, that the item is commercially available from multiple sources and will be fully compatible with existing Authority property.

- (f) Material covered by copyright:
  - (1) The Contractor hereby grants to the Authority, and to its Board members employees and agents acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license for the Authority's purposes to publish, translate, reproduce, deliver, perform, dispose of, all (i) technical data and (ii) computer software covered by subsection (b) (5) now or hereafter covered by copyright.
  - (2) No such copyrighted matter shall be included in (i) technical data or (ii) computer software covered by subsection (b)(5), without the written permission of the copyright owner.
  - (3) The Contractor shall report to the Authority, promptly and in reasonable written detail, each notice or claim of copyright infringement it receives regarding any technical data or computer software covered by subsection (b)(5) provided to the Authority.
- (g) Relation to patents: Nothing contained in this clause shall imply a license to the Authority under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Authority under any patent.
- (h) Any dispute under this clause shall be subject to the "Disputes" clause of this Contract.
- (i) The Contracting Officer may retain from payment up to ten percent (10%) of the Contract price until final acceptance of the technical data defined in this clause and as required to be furnished in the Price Schedule or the Contract Specification.

#### **43. SAFETY REQUIREMENTS**

- (a) The Contractor shall be responsible for ensuring compliance with the most stringent provisions of the applicable statutes and regulations of the District of Columbia, State of Maryland, Commonwealth of Virginia or political subdivision where the work is being performed, as well as the METRO Construction Safety and Environmental Manual (1984, as amended) issued by the Authority, and the U.S. Department of Labor OSHA standards pertaining to the safe performance of the work. In the absence of a specific construction industry standard, the Contractor is required to comply with either an established OSHA General Industry Standard, National Institute for Occupational Safety and Health (NIOSH) guidelines, American Conference of Governmental Industrial Hygienists (ACGIH) guidelines, American National Standards Institute (ANSI) guidelines, the WMATA System Safety Program Plan, the WMATA Construction Safety and Environmental Manual, or the Metrorail Safety Rules and Procedures Handbook. For contracts where work will be performed on, or will interface with the Metrorail System, the Contractor shall also comply with the publication entitled "Metrorail Safety Rules and Procedures Handbook." In the event of a conflict between these guidelines and applicable Federal, State or local health and safety laws, regulations or standards, the more stringent standard shall apply. Further, the

Contractor shall ensure that all methods of performing the work do not involve danger to the personnel working at the site, and the public and private property, whether or not these methods are cited or indicated in the Contract. The Contractor shall immediately provide to the Contracting Officer, a copy of all citations and/or warnings of safety violations received from any Federal, State or local jurisdiction or agency thereof, and/or all notifications of safety violations from insurance companies. The Contractor shall also provide to the Contracting Officer, copies of any and all subpoenas, complaints or other documents relating to any law suit alleging safety violations.

- (b) The Contractor shall employ and assign a full-time Safety Superintendent for Contracts involving “safety sensitive” functions.<sup>1</sup>The Safety Superintendent shall have a minimum of three (3) years of construction safety experience and hold an OSHA thirty (30) hour course card. He or she shall have the ability to develop and conduct safety training courses. He or she shall be familiar with industrial hygiene equipment and testing as required for the protection of all employees. The Safety Superintendent shall be employed exclusively for the purpose of supervising the safety of persons on or about the worksite and the property affected thereby. The Safety Superintendent shall also be responsible for providing first aid at the worksite and must have a current Red Cross First Aid Certificate. The Contractor shall notify the Contracting Officer a reasonable amount of time beforehand, any time that the Safety Superintendent will not be on site during work hours. If, at any time, the worksite is without the services of an approved Safety Superintendent for a period of three (3) calendar days or more, the work may be closed down at the Contracting Officer’s discretion. The Safety Superintendent must be acceptable to the Contracting Officer and his or her performance will be reviewed on a continuing basis. If the Safety Superintendent’s effectiveness is below standard, the Contractor shall provide immediate replacement at the Contracting Officer’s direction. Once employed, the Safety Superintendent shall not be changed without the Contracting Officer’s permission. The Safety Superintendent can be terminated at any time, at the Contracting Officer’s discretion.
- (c) The Contractor shall provide, at the site of the work, a first aid kit which shall be fully equipped to meet the needs of the anticipated work force.
- (d) The Contractor shall follow all appropriate RAIL Operational Rules, Operational Administrative Procedures (OAPs), Standard Operational Procedures (SOPs) and General and Special Orders while on the operational railroad and all Start-Up Rules and Manager’s Notices when in declared start-up areas.
- (e) The Contractor shall not purchase any products or materials known to contain asbestos, for the use or installation throughout WMATA.

#### **44. SEAT BELT USE POLICY**

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

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<sup>1</sup> 1 FTA regulations at 49 C.F.R. § 655.4 define “safety sensitive functions” as any of the following duties when performed by WMATA as a grant recipient, or any of its contractors: (a) Operating a revenue service vehicle, including when it is not in revenue service; (b) Operating a nonrevenue service vehicle, when required to be operated by the holder of a commercial driver’s license (CDL); (c) Controlling dispatch or movement of a revenue service vehicle; (d) Maintaining (including repairs, overhaul and rebuilding) a revenue

service vehicle or equipment used in revenue service vehicles; and (e) Carrying a firearm for security purposes. WMATA's definition of safety sensitive functions extends beyond FTA's requirements and includes (f) Employees and contractors who maintain escalators and elevators (including repairs, overhauls and rebuilding) and (g) Station managers.

**45. SENSITIVE SECURITY INFORMATION**

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

**46. SET-OFF**

The Authority has common law, equitable and statutory rights to set-off. These rights shall include, but are not limited to, the Authority's right to set-off any monies due to the Contractor under this Contract, by any amounts due and owing to the Authority with regard to, any Contract with the Authority, plus any amounts due and owing to the Authority for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The Authority shall exercise its set-off rights in accordance with normal practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the Authority, its representatives, or the Federal Government.

**47. SEVERABILITY**

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

**48. SMOKE-FREE WORKPLACE**

- (a) Definitions. Smoking is defined as the act of lighting, burning, inhaling, or exhaling smoldering tobacco or other material, such as a cigar, cigarette, and/pipe. A facility is defined as a physical Metro building or structure, either temporary or permanent, where an employee (or contractor personnel) performs any act in connection with job duties.
- (b) Policy. WMATA requires all of the Contractor's employees, subcontractors and agents (personnel) to adhere to WMATA's Smoke-Free Workplace Policy, which prohibits smoking, vaping, or any other use of tobacco or other material in any WMATA facility and/or within twenty-five (25) feet of any WMATA facility.
- (c) Vehicles. Smoking is also prohibited in all WMATA revenue and non-revenue vehicles, including but not limited to buses, trains and MetroAccess vehicles. Contractor personnel who violate WMATA's Smoke-Free Workplace Policy will be reported to their employer and the Contracting Officer's Technical Representative for appropriate action and may be subject to revocation of any WMATA-issued identification badges and/or removal from WMATA's property, vehicles or facilities.

**49. STOP WORK ORDERS**

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

**50. SURVIVAL**

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

**51. TERMINATION FOR CONVENIENCE**

- (a) The Authority may terminate this Contract in whole, or, in part, if the Contracting Officer determines that a termination is in the Authority's interest. The Contracting Officer shall terminate by delivering a “Notice of Termination” to the Contractor, specifying the extent of termination and the effective date.
- (b) Upon receipt of a Notice of Termination, except as otherwise directed by the Contracting Officer, the Contractor shall immediately:
  - (1) Stop work as specified in the Notice of Termination;
  - (2) Complete performance of the work not terminated;

- (3) Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the remaining portion of the Contract;
  - (4) Terminate all subcontracts to the extent that they relate to the work terminated;
  - (5) Assign to the Authority, as directed by the Contracting Officer, all of its right(s), title, and interest under the subcontracts terminated. The Authority shall have the right to settle or pay any termination costs arising out of the subcontracts and shall have no further liability to the Contractor for the work that was the subject of such subcontracts;
  - (6) With approval of the Contracting Officer, settle all outstanding liabilities and settlement costs arising from the termination of subcontracts;
  - (7) As directed by the Contracting Officer, transfer title and deliver to the Authority:
    - (i) Parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
    - (ii) The completed or partially completed plans, drawings, information and other property that would have been required to be furnished to the Authority, if the Contract had been completed.
  - (8) Take any action that may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Contract that is in the Contractor's possession and in which the Authority has or may acquire an interest;
  - (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (b)(7). The Contractor is not required to extend credit to any purchaser and may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce payments to be made by the Authority under this Contract, credited to the price or cost of the Work, or paid in any other manner that the Contracting Officer directs.
- (c) The cost principles and procedures of FAR Part 31 effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this clause, except that the Authority shall not be obligated to pay interest, however represented, on any claimed costs.

## **52. TERMINATION FOR DEFAULT**

- (a) The Contractor shall be in default if it breaches of any of its obligations under this Contract deemed material by the Contracting Officer. In addition to those instances specifically referred to in this Contract, the Contractor shall be in default in the following circumstances:
  - (1) It fails to begin, or abandons, the work of the Contract in accordance with Contractual requirements;

- (2) It fails to deliver the supplies or perform the services within the time specified in the Contract or any extension approved by the Contracting Officer;
  - (3) It fails to make progress in a manner deemed unreasonable by the Contracting Officer so as to endanger performance of the Contract; or
  - (4) In the view of the Contracting Officer, the Contractor is willfully violating this Contract or is not executing it reasonably and in good faith.
- (b) In the event of the Contractor's material breach pursuant to paragraph (a), the Contracting Officer is authorized to direct a written notice to the Contractor, specifying the nature of the breach and stating that, the Contractor has ten (10) days (or such additional time as the Contracting Officer authorizes, to cure the breach ("Notice to Cure"). If the Contractor fails to cure the breach in the time specified in the Notice to Cure, the Authority shall terminate the Contract, in whole or designated part, for default in accordance with the provisions of this Contract, by a written "Notice of Default" to the Contractor.
- (c) Upon receipt of a "Notice of Default," the Contractor shall immediately cease performance of the work so terminated. The Authority shall have the right to take any action necessary to complete the work, including performing the work itself, or contracting with another party to do so. In the event the work is completed directly by the Authority or by a third party, the Contractor shall be liable for the additional costs and expenses necessary to complete the work, including, without limitation, labor, material costs, plant costs, tooling expenses, equipment costs, and property costs. The Authority may deduct the costs and expenses so charged from any monies otherwise payable to the Contractor. Nothing contained herein shall be deemed to relieve the Contractor of its continuing obligation to perform any portion of the Contract that was not terminated.
- (d) The Authority may, in its sole discretion, waive a default by the Contractor, but such waiver shall not be deemed a waiver of any subsequent default.
- (e) Upon any termination for default, the Authority may require the Contractor to transfer title and deliver to the Authority, as directed by the Contracting Officer (1) any completed or partially completed Supplies, and (2) , components (including data and intellectual property) and contract rights that the Contractor has specifically produced or acquired for the terminated portion of this Contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Authority may have an interest.
- (f) Upon any termination for default, the Authority shall pay for supplies or services accepted in accordance with this Contract. The Authority may also compensate the Contractor for any actions it reasonably takes at the Contracting Officer's direction, for the protection and preservation of property. The Authority may withhold from these amounts, any sum that the Contracting Officer determines to be necessary to protect the Authority against loss because of outstanding or claimed liens, or pending or anticipated claims under the Contract.
- (g) Any dispute with respect to any issue arising under this clause shall be subject to adjudication in accordance with the "Disputes" clause of this Contract. In no event shall the Authority's issuance of a "Notice to Cure" pursuant to paragraph (b) be the basis of a dispute pursuant this Contract or otherwise. The pendency of any dispute shall

not constitute a basis for the delay of, or otherwise affect, the Authority's right to proceed in accordance with this clause, including without limitation, its right to complete the work, or the Contractor's obligation to complete any portion of the work that was not terminated.

- (h) The rights and remedies of the Authority in this clause are in addition to any other rights and remedies provided under this Contract, at law or in equity.

**53. TITLE AND RISK OF LOSS**

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

**54. WALSH-HEALEY PUBLIC CONTRACTS ACT**

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

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

**55. WARRANTY OF SUPPLIES**

- (a) All workmanship, parts and materials furnished for this Contract shall be unconditionally warranted against failures or defects for a period of one (1) year after the item supplied is accepted, or placed in service, by the Authority, whichever is earlier. The Contractor shall accept the Authority's records with respect to the date that the item was placed in service.

- (b) In the event that any work covered by this warranty clause fails during the warranty period, the Contractor shall repair or replace it within three (3) days, without cost or expense to the Authority.
- (c) Should the Contractor fail to repair or replace any part or do any work in accordance with the terms of this warranty, or if immediate replacement or work is necessary to maintain operations, the Authority may cause such replacement to be made, utilizing its own forces and/or those of third parties as the Authority deems appropriate, at the Contractor's expense.
- (d) Each piece of equipment, component or part thereof that the Contractor replaces, repairs, adjusts or services under the terms of this warranty during the warranty period shall be reported to the Contracting Officer on the Authority's forms. Each report shall indicate, in detail, all repairs, adjustments and servicing to each and every component, unit or part thereof.
- (e) Any warranty work shall be accomplished with minimum disruption to the Authority's operations and its maintenance and service facilities. The Authority shall at its sole discretion determine the availability of facilities for warranty work.
- (f) The Authority's rights set forth in this clause shall be in addition to those set forth elsewhere in this Contract or otherwise at law or in equity.

**56. WARRANTY OF SERVICES**

(a) Definitions.

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

- (b) Notwithstanding inspection and acceptance by WMATA or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Contracting Officer shall give written notice of any defect or nonconformance to the Contractor within thirty (30) days from the date of acceptance by WMATA. This notice shall state either --
  - (1) That the Contractor shall correct or re-perform any defective or nonconforming services; or
  - (2) That WMATA does not require correction or re-performance.
- (c) If the Contractor is required to correct or re-perform, it shall be at no cost to WMATA, and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the Contracting Officer may, by contract or otherwise, correct or replace the services with similar services and charge the Contractor with the cost, or make an equitable adjustment to the Contract price.
- (d) If WMATA does not require correction or re-performance, the Contracting Officer shall make an equitable adjustment to the Contract price.

**57. WHISTLEBLOWER PROTECTION (NON-FEDERAL)**

- (a) The Contractor and its subcontractors shall encourage their employees and independent contractors to report information, without fear of actual or threatened discrimination, retaliation or reprisal that they in good faith reasonably believe is evidence of gross mismanagement; gross misuse or waste of public resources or funds; fraud; violation of law; abuse of authority in connection with the conduct of WMATA's operations or contracts; or a substantial and specific danger to health, security or safety. The Contractor and its subcontractors shall notify their employees that they may make reports under this paragraph to:
- (1) WMATA's Office of Inspector General (OIG), in person, in writing, through the OIG Hotline (888-234-2374), via email at [wmata-oig-hotline@verizon.net](mailto:wmata-oig-hotline@verizon.net) or by any other reasonable means;
  - (2) WMATA's Metro Transit Police Department (MTPD), in person, by telephone (202-962-2121) or by any other reasonable means, or to the OIG, if the information constitutes a potential violation of criminal law;
  - (3) WMATA's Chief Safety Officer, in person, in writing, through the SAFE Hotline (202-249-7233) or email [safety@wmata.com](mailto:safety@wmata.com), or by any other reasonable means; or
  - (4) Any other official, office or agency within WMATA or outside WMATA that the employee or independent contractor reasonably believes has the authority to act on the matter.
- (b) The Contractor, its employees, independent contractors and subcontractors shall cooperate with any inquiry or review by an authorized official of WMATA, or by the Federal government or any other governmental entity with jurisdiction over WMATA, regarding a matter that would constitute a report under paragraph (a) or a violation of this or any whistleblower provision of this Contract, and with any enforcement or judicial proceeding arising from such inquiry or review.
- (c) The Contractor and its subcontractors shall not interfere with or deny the right of any employee or independent contractor of either the Contractor or any of its subcontractors to make a report under paragraph (a). The Contractor and its subcontractors shall not recommend, take or threaten to take any action having a negative or adverse impact on any employee or independent contractor of either the Contractor or any of its subcontractors because he or she:
- (1) Made or is perceived to have made a report under paragraph (a);
  - (2) Sought a remedy under applicable law after making a report under paragraph (a);
  - (3) Participated in or cooperated with an inquiry or review by an authorized official of WMATA, or by the Federal government or any other governmental entity with jurisdiction over WMATA, regarding a matter that would constitute a report under paragraph (a) or a violation of this or any whistleblower provision of this

Contract, or with an enforcement or judicial proceeding arising from such inquiry or review;

- (4) Refused to obey an order that would violate law; or
- (5) Refused To Work or authorize work when a hazardous safety or security condition presents an imminent danger of death or serious injury, there was no reasonable alternative to refusal, there was not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, notified the 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.

**58. WORKPLACE VIOLENCE/ZERO TOLERANCE**

Pursuant to Metro Policy/Instruction 7.8.3, all Metro Contractors must: (1) establish zero tolerance for acts of workplace violence for their employees and those of subcontractors at any tier, and (2) not retaliate against any of their employees or independent contractors for cooperating with investigations.