



Washington
Metropolitan
Area
Transit
Authority

Request For Proposal

Purchase Card Services

RFP No. CQ-11222/RK

Date: November 24, 2010

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

RFP: CQ-11222/RK

Date: November 24, 2010

SUBJECT: RFP No. CQ-11222/RK

Dear Sir/Madam:

The Washington Metropolitan Area Transit Authority (WMATA) requires the services of a qualified contractor to facilitate the purchase of low cost, commercially available equipment, supplies and services using the contractor issued purchase cards within the controls established by WMATA and the Contractor for the purchase of required items and services.

If you have any questions, technical, contractual, or administrative, please e-mail them to RKelly@wmata.com no later than close of business, December 1, 2010. WMATA will provide written answers, by e-mail to all those who obtain the RFP and provide their e-mail addresses.

Your proposal must be received with all required submittals as stated in the RFP, no later than **2:00PM, December 13, 2010**, at WMATA, Office of Procurement and Materials, 600 Fifth Street, NW, Room 3C-02, Washington, DC 20001-2651.

Sincerely,

Anoop Kumar,
Contracting Officer
Office of Procurement and Materials

Enclosure:

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

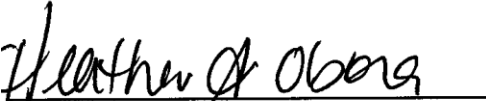
INTRODUCTORY INFORMATION
SOLICITATION CERTIFICATIONS PAGE

CQ-11222/RK
PURCHASE CARD SERVICES

APPROVED FOR RELEASE


Project Manager/Office Designee

11.24.10
11/24/10
Date


Contracting Officer

11.24.10
Date

END OF SECTION

TABLE OF CONTENTS

DIRECTIONS FOR SUBMITTING OFFER.....	1
NOTICE TO OFFERORS	2
NOTICE TO ALL VENDORS.....	3
SOLICITATION, OFFER AND AWARD	4
SOLICITATION INSTRUCTIONS.....	6
1. DEFINITIONS.....	6
2. PREPARATION OF OFFERS	6
3. EXPLANATION TO OFFERORS.....	6
4. PRIOR REPRESENTATIONS.....	6
5. PRE-PROPOSAL CONFERENCE	6
6. ACKNOWLEDGMENT OF AMENDMENTS.....	7
7. REVISIONS PRIOR TO DATE SET FOR RECEIPT OF PROPOSALS	7
8. SUBMISSION OF OFFERS.....	7
9. LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF OFFERS	7
10. CONTRACT AND BONDS	9
11. MINIMUM PROPOSAL ACCEPTANCE PERIOD	9
12. CONTRACT AWARD	9
13. NOTICE OF PROTEST POLICY	10
14. PRE AWARD INFORMATION	10
15. PROPOSAL FORMAT REQUIREMENTS.....	11
16. PROPOSAL FORMAT INSTRUCTIONS/REQUIREMENTS	11
17. RESTRICTION ON DISCLOSURE AND USE OF DATA:	12
18. AWARD;	12
19. BEST VALUE:	12
20. PROPOSAL EVALUATION CRITERIA;	13
21. RATINGS FOR PROPOSAL EVALUATION CRITERIA:.....	13
22. PRICE PROPOSAL EVALUATION	13
23. DEFINITIONS FOR TECHNICAL EVALUATION	14
24. TYPE OF CONTRACT.....	15
25. ENGLISH LANGUAGE AND UNITED STATES CURRENCY	15
26. FEDERAL/LOCAL/STATE SALES TAX.....	15
REPRESENTATIONS AND CERTIFICATIONS	16
REPRESENTATIONS	16
1. TYPE OF BUSINESS ORGANIZATION.....	16
2. AFFILIATION AND IDENTIFYING DATA	16
CERTIFICATIONS	16
3. COVENANT AGAINST GRATUITIES	16
4. CONTINGENT FEE.....	17
5. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION	17
6. NONDISCRIMINATION ASSURANCE.....	17
7. BUY AMERICA ACT CERTIFICATION.....	18
PRE-AWARD EVALUATION DATA.....	19

PART II, SECTION 1 - GENERAL PROVISIONS	23
1. DEFINITIONS	23
2. ACCOUNTING AND RECORD KEEPING	23
3. ASSIGNMENT	25
4. AUDIT AND RETENTION OF RECORDS	26
5. AUTHORITY DELAY OF WORK	27
6. CERTIFICATE OF CURRENT COST OR PRICING DATA	27
7. CHANGES	27
8. CIVIL RIGHTS	28
9. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION	29
10. CONVICT LABOR	30
11. CORRECTION OF DEFICIENCIES	30
12. COST OR PRICING DATA	32
13. COVENANT AGAINST CONTINGENT FEES	33
14. DEFAULT	33
15. DISPUTES	34
16. EMPLOYMENT RESTRICTION WARRANTY	35
17. EXTRAS (SUPPLIES)	36
18. FEDERAL, STATE, AND LOCAL TAXES	36
19. GRATUITIES	37
20. INSPECTION OF SERVICES	38
21. INSPECTION OF SUPPLIES	39
22. LIMITATION ON WITHHOLDING PAYMENTS	41
23. NEW MATERIAL (SUPPLY)	41
24. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (SUPPLY)	41
25. NOTICE TO THE AUTHORITY OF LABOR DISPUTES	41
26. OFFICIALS NOT TO BENEFIT	42
27. ORDER OF PRECEDENCE	42
28. ORGANIZATIONAL CONFLICT OF INTEREST	42
29. PATENT INDEMNITY	43
30. PAYMENTS	44
31. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS	44
32. PRICING OF ADJUSTMENTS	45
33. RESPONSIBILITY FOR INSPECTION	45
34. RETENTION OF DOCUMENTS	45
35. RIGHTS IN TECHNICAL DATA	45
36. ROYALTY INFORMATION	47
37. SEAT BELT USE POLICY	47
38. SENSITIVE SECURITY INFORMATION	47
39. STOP WORK ORDER	48
40. SUBCONTRACTOR COST AND PRICING DATA-PRICE ADJUSTMENTS	48
41. SUBCONTRACTOR PAYMENTS	49
42. TERMINATION FOR CONVENIENCE OF THE AUTHORITY	49
43. TITLE	53
44. VARIATION IN QUANTITY (SUPPLIES)	53
45. WALSH-HEALEY PUBLIC CONTRACTS ACT	53

PART II, SECTION 2 - SPECIAL PROVISIONS..... 55

1. **PERIOD OF PERFORMANCE**..... 56

2. **OPTION QUANTITIES**..... 56

3. **AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR** 56

4. **PRICING** 56

5. **PAYMENT TERMS** 56

6. **BILLING AND PAYMENT -** 56

7. **POINT OF CONTACT**..... 57

8. **F.O.B. DESTINATION** 57

9. **CONTRACTOR PERSONNEL**..... 58

10. **PRE-EMPLOYMENT CRIMINAL BACKGROUND CHECK REQUIREMENT**..... 58

11. **MOST FAVORED CUSTOMER** 58

12. **CONDITIONS AFFECTING THE WORK** 59

13. **INDEMNIFICATION:** 59

14. **GENERAL INSURANCE REQUIREMENTS**.....

15. **LAWS AND REGULATIONS**..... 61

16. **FEDERAL/LOCAL/STATE SALES TAX**..... 61

17. **CONTRACTING OFFICER’S TECHNICAL REPRESENTATIVE (COTR)**..... 62

18. **HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA** 64

19. **ORGANIZATIONAL CONFLICT OF INTEREST**.....

20. **RIGHTS IN TECHNICAL DATA - UNLIMITED** 65

21. **SITE VISIT/INSPECTION**..... 67

22. **GARNISHMENT OF PAYMENTS** 67

23. **GOVERNING LAW** 67

24. **SAFETY REQUIREMENTS** 67

25. **LIVING WAGE** 68

26. **METRIC SYSTEM** 69

27. **WHISTLEBLOWER**.....69

PART III - TECHNICAL SPECIFICATIONS..... **72**

DIRECTIONS FOR SUBMITTING OFFER

1. Read and comply with the Solicitation Instructions.
2. Envelopes containing Technical and Price proposals must be sealed and separately marked and addressed to:

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
600 5th Street, NW
Washington, DC 20001
Room 3C-02

Attn: R. Kelly/CA

ALL ENVELOPES OR PACKAGES MUST BE SEPARATELY MARKED WITH SOLICITATION NUMBER AS SPECIFIED HEREWITH.

PROPOSAL SHALL BE TIMELY MAILED OR HAND DELIVERED TO REACH WMATA BEFORE 2:00 P.M. (LOCAL TIME) DECEMBER 13, 2010.

NOTICE TO OFFERORS

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

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

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

Questions concerning this Request for Proposal may be directed to RKelly@wmata.com..

NOTICE TO ALL VENDORS

New Vendor Registration

All vendors and contractors who have *NOT* done business with the Washington Metropolitan Area Transit Authority (WMATA) must register in the WMATA Vendor Registration System. Registration is located at <http://www.wmata.com>

Forgot User Id/Password.

If you are a vendor or contractor and *HAVE* done business with WMATA in the past, please electronically request your company's User ID and Password at <http://www.wmata.com>

Attention to Disadvantaged Business Enterprise (DBE)/Small Business and Local Preference Program (SBLPP) companies:

Minority and women owned businesses who are interested in becoming a WMATA DBE should complete an online DBE application. Self certification is required for Small Business and Local Preference as a part of the Vendor Registration.

Registered Vendor Benefits:

- Visibility to WMATA contract administrators and/or purchasing agents during the procurement decision period;
- Visibility to other 17,500 registered vendors for possible business opportunities;
- Opportunity to update online, company information such as an e-mail address or contact person on-line;
- Sign up for electronic payment option; and
- Ability to electronically reset User Id and Password.

Any questions regarding registration may be addressed to Vendor Relations at (202) 962-1408 or procurement@wmata.com.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
 SUPPLY AND SERVICE CONTRACT RFP-CQ-11222/RK



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SOLICITATION, OFFER AND AWARD

CONTRACT NO. CQ-11222/RK	SOLICITATION NO. RFP CQ-11222/RK <input type="checkbox"/> ADVERTISED <input checked="" type="checkbox"/> NEGOTIATED	DATE ISSUED 11/24/2010	ADDRESS OFFER TO OFFICE OF PROCUREMENT Office of Procurement 600 Fifth Street NW Washington, DC 20001
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SOLICITATION

Sealed offer in original and TWO (2) copies for furnishing the supplies or services in the schedules will be received at Authority until 2:00 P.M. local time December 13, 2010.
 (Hour) (Date)

If this is an advertised solicitation, offers will be publicly opened at that time.

CAUTION – LATE OFFERS: See paragraph 6 of Solicitation Instructions.

All offers are subject to the following:

1. The Solicitation Instructions which are attached.
2. The General Provisions, which are attached.
3. The Schedule included herein and/or attached hereto.
4. Such other provisions, representations, certifications, and specifications, as are attached or incorporated herein by reference.

Bidder's Phone Number _____

Bidder's Fax Number _____

SCHEDULE

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	(See continuation of schedule on page 22)				\$

DUN & BRADSTREET ID NUMBER: _____

OFFEROR

Name and Address (Street, city, county, state, and zip code)	Name and Title of Person Authorized to Sign Offer (Print or Type)
<input type="checkbox"/> Check if remittance is different from above — enter such address in Schedule	Signature Offer Date

AWARD (To be completed by The Authority)

ACCEPTANCE AND AWARD ARE HEREBY MADE FOR THE FOLLOWING ITEM(S):

ITEM NO.	QUANTITY	UNIT	UNIT PRICE

The total amount of this award is \$ _____

 Name of Contracting Officer (Print of Type) WASHINGTON METROPOLITAN TRANSIT AUTHORITY AWARD DATE

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SOLICITATION, OFFER AND AWARD

CONTINUATION SHEET

THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF THE FOLLOWING AMENDMENTS

TO SOLICITATION **RFP- CQ-11222/RK**

Amendment Number _____ Dated _____

Amendment Number _____ Dated _____

Amendment Number _____ Dated _____

Amendment Number _____ Dated _____

Amendment Number _____ Dated _____

Amendment Number _____ Dated _____

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

Authorized Signature

Company Name

Date

SOLICITATION INSTRUCTIONS

1. DEFINITIONS

As used herein:

- a. The term "solicitation" means "Request for Proposal (RFP)" where the procurement is negotiated.
- b. The term "offer" means "proposal" where the procurement is negotiated.

2. PREPARATION OF OFFERS

- a. Offerors are expected to examine the Request for Proposals and all referenced documents carefully. Failure to do so will be at the risk of the Offeror.
- b. The offeror shall furnish the information required by the solicitation. The offeror shall sign the solicitation and print or type his/her/its name on the Schedule and each Continuation Sheet thereof on which an entry has been made. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent are to be accompanied by evidence of authority, unless such evidence has been previously furnished to the issuing office.
- c. Offers for supplies or services other than those specified will not be considered unless authorized by the solicitation.
- d. Offeror must state a definite time for delivery of supplies or for performance of services unless otherwise specified in the solicitation.
- e. Time, if stated as a number of days, will include Saturdays, Sundays and holidays.

3. EXPLANATION TO OFFERORS

Any explanation desired by an Offeror regarding the meaning or interpretation of the solicitation documents must be requested in writing and with sufficient time allowed for a reply to reach all Offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to an Offeror concerning a solicitation will be furnished promptly to all Offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if lack of such information would be prejudicial to other Offerors.

4. PRIOR REPRESENTATIONS

The Authority assumes no responsibility for any understanding or representations concerning this solicitation made by any of its officers or agents prior to the issuance of the solicitation, the specifications, or related documents.

5. PRE-PROPOSAL CONFERENCE

For the purpose of clarifying the terms, conditions, and requirements of this Request for Proposal, a pre-proposal conference will be held to respond to questions by interested offerors. **This pre-proposal conference will be held at 10:00 a.m. on December 2, 2010, in the Lobby Level**

Meeting Room of the WMATA Jackson Graham Building, 600 5th Street, NW, Washington, DC 20001. The purpose of this conference will be to answer questions regarding, or requests for clarifications of, the solicitation documents. It is requested that offerors submit their questions in writing whether in advance of the meeting or during the meeting. Questions from the floor, however, are permissible.

All questions concerning the terms, conditions, and requirements of this Request for Proposal must be received by the Contracting Officer in writing no later than ten (10) calendar days before the date for receipt of proposals.

6. ACKNOWLEDGMENT OF AMENDMENTS

Receipt of an amendment to a solicitation by an Offeror must be acknowledged (a) by signing and returning the amendment, (b) by identifying the amendment number and date on the Solicitation, Offer and Award Form, (c) and by expressly acknowledging the amendment on the designated form and including it as part of the proposal. Such amendment must be received prior to the hour and date specified in the solicitation. If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

7. REVISIONS PRIOR TO DATE SET FOR RECEIPT OF PROPOSALS

- a. The right is reserved by the Authority to revise or amend the Scope of Work, Description of Work, drawings, etc. prior to the date set for the opening of proposals. Such revisions and amendments, if any, will be announced by an amendment to the Request for Proposal. Copies of such amendments as may be issued will be furnished to all prospective bidders.
- b. If the revisions and amendments require material changes in quantities or price proposals, or both, the date set for the opening of proposals may be postponed by such number of days as in the opinion of the Authority that will enable offerors to revise their proposals. In such cases, the amendment will include an announcement of the new date for the opening of proposals.

8. SUBMISSION OF OFFERS

- a. Offers and modifications thereof shall be enclosed in sealed envelopes and addressed to the office specified in the solicitation. The Offeror shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the Offeror on the face of the envelope.
- b. Telegraphic or email offers will not be considered unless authorized by the solicitation; however, offers may be modified or withdrawn by written or telegraphic or email notice, provided such notice is received prior to the hour and date specified for receipt.
- c. Facsimile offers, modifications or withdrawals will not be considered unless authorized by the Authority.

9. LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF OFFERS

- a. Any offer received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it

- (1) Was sent by registered or certified U.S. mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been sent by registered mail by the 15th;
 - (2) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile and it is determined by the Authority that the late receipt was due solely to mishandling by the Authority after receipt;
 - (3) Was sent by U.S. Postal Service Express Mail Next Day Service Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of offers. The term "working days" excludes weekends and U.S. Federal holidays; or
 - (4) Is the only offer received.
- b. Any modification of an offer, except a modification resulting from the Contracting Officer's request for "revised final proposals" offer, is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.
 - c. A modification resulting from the Contracting Officer's request for "revised final proposals" received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Authority.
 - d. The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by registered or certified mail is the U.S. or Canadian Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, Offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.
 - e. The only acceptable evidence to establish the time of receipt by the Authority is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the Authority.
 - f. The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (d) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offeror or quoter should request the postal clerk to place a legible hand cancellation bulls-eye postmark on both the receipt and the envelope or wrapper.
 - g. Notwithstanding paragraph "a" above, a late modification of any otherwise successful offer that makes its terms more favorable to the Authority will be considered at any time it is received and may be accepted.

- h. Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision entitled "Facsimile Proposals". Proposals may be withdrawn in person by an Offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

10. CONTRACT AND BONDS

The proposer whose Technical and Price Proposal are accepted shall, within the time established in the contract documents, enter into a written contract with the Authority and furnish performance bonds if applicable, on standard Authority forms in the amounts indicated in the General Condition of the contract.

11 MINIMUM PROPOSAL ACCEPTANCE PERIOD

- a. "Acceptance period," as used in this provision, means the number of calendar days available to WMATA for awarding a contract from the date specified in this solicitation for receipt of proposals.
- b. This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.
- c. WMATA requires a minimum acceptance period of 90 calendar days from the latest revised proposal.

12. CONTRACT AWARD

If this solicitation is a Request for Proposals:

- a. The Authority will award a contract resulting from this solicitation to the responsible Offeror whose offer conforming to the solicitation will be most advantageous to the Authority cost or price and other factors, specified elsewhere in this solicitation, considered.
- b. The Authority may (1) reject the offer if such action is in the public interest, or (2) waive informalities and minor irregularities in offers received.
- c. The Authority may award a contract on the basis of the initial offer received, without discussions (other than discussions conducted for the purpose of minor clarifications). Therefore, the initial offer should contain the Offeror's best terms from a cost or price and technical standpoint. However, the Authority reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary.
- d. A written award or acceptance of offer mailed or otherwise furnished to the successful Offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Authority may accept an offer (or part of an offer, as provided in paragraph (d) above) whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the Authority.

- e. Neither financial data submitted with an offer, nor representations concerning facilities or financing will form a part of the resulting contract. However, if the resulting contract contains a clause providing for price reduction for defective cost or pricing data, the contract price will be subject to reduction if cost or pricing data furnished is incomplete, inaccurate, or not current.
- f. The Authority may determine that an offer is unacceptable if the prices proposed are materially unbalanced between line items or sub-line items. An offer is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the offer will result in the lowest overall cost to the Authority even though it may be the low evaluated offer, or it is so unbalanced as to be tantamount to allowing an advance payment.

13. NOTICE OF PROTEST POLICY

- a. WMATA policy and procedure for the administrative resolution of protests is set forth in Chapter 20 of the Authority's Procurement Procedures Manual (PPM). Chapter 20 contains strict rules for filing a timely protest, for responding to a notice that a protest has been filed, and other procedural matters. The Contracting Officer can furnish a copy of Chapter 20 upon request.
- b. FTA Circular 4220.1F, addresses Bid Protests. FTA will only review protests regarding the alleged failure of the grantee to have a written protest procedure or alleged failure to follow such procedures, and only when submitted by an interested party. The term "interested party" is defined in the Authority policy for handling protests.
- c. Alleged violation on other grounds must be submitted to the Contracting Officer who will decide the protest.
- d. The judicial authorities having jurisdiction over court actions concerning protest decisions are the United States District Courts for the Districts of Maryland, Virginia, and the District of Columbia, and the local courts in Maryland, Virginia, and the District of Columbia.

14. PRE AWARD INFORMATION

- a. The Contracting Officer may conduct a pre award survey to determine if the Offeror eligible for award is responsible both financially and technically and has the capability to perform the work of the Contract in accordance with the requirements of the Specifications and within the times specified.
- b. Accordingly, in order that an offer be fully considered, EACH OFFEROR SHALL FURNISH THE FOLLOWING INFORMATION WITH THE PROPOSAL:
 - (1) A completed and signed Pre Award Evaluation Data form (furnished with the solicitation), including, but not limited to, the following: A statement of the Offeror's experience record, the type of concerns for which the work was performed, a statement by the financial institutions with which the Offeror conducts business and a list of contracts, if any, on which failure to complete within the specified time resulted in the assessment of liquidated damages.
 - (2) Complete financial statements for the last two years, including Statement of Financial Position (Balance Sheet), Results of Operations (Income Statement),

Statement of Changes in Financial Position (Net Change in Resources) and
Statement of Current and Retained Earnings.

15. PROPOSAL FORMAT INSTRUCTIONS/REQUIREMENTS

The Offeror shall submit their proposal as follows:

a. Proposal Format

The original of Volumes I and 2 shall be unbound, all copies of Volumes 1 and 2, as well as Volume 3 will be separately bound and all copies shall have the RFP number, the Offeror's identity, volume number, and volume title printed on the cover page. Volumes shall be submitted in the following order:

- (1) Volume I – Cost/Price - One (1) original and 5 copies of the cost/price proposal
- (2) Volume II – Technical - One (1) original and 5 copies of the technical proposal (
- (3) Volume III – Contractual - One (1) original and 5 copies of the completed signed solicitation documents to include Representations, Certifications, Pre-Award Data, Certificate of Insurance and Amendments, if any.

b. Cost/Price Proposal. All information relating to cost or pricing data must be included in this volume. .

c. Technical Proposal. The technical proposal shall enable WMATA evaluating personnel to make a thorough evaluation and arrive at a sound determination as to whether or not the proposal will meet the specifications in accordance with the Authority's requirements. Technical proposals shall be specific, detailed, and complete and demonstrate that the Offeror has a thorough knowledge and understanding of the requirements. Offeror's shall avoid statements which paraphrase the specifications or attest that "standard procedures will be employed," are inadequate to demonstrate how it is proposed to comply with the requirements of the specifications, and this clause.

Submittal Requirements

1. Offeror will provide current customer references for customers similar or larger in scale to Metro's proposed purchase card program.
2. Offeror will provide documentation of experience regarding any purchase card program implementations with outcomes.
3. Offeror will provide documentation to prove their ability to integrate with PeopleSoft financials / ERP applications.
4. Offeror will provide resumes of all the dedicated staff who will be working with Metro including all customer service, implementation team, and management team assigned to the Metro account.
5. Offeror will provide a version of their online card management system that the Metro evaluation team can test for ease of use and effectiveness.

Contractual. Contractual documents shall contain a completed signed Solicitation, Offer and Award Form and include Representations, Certifications, Pre-Award Data, Certificate of Insurance and any amendments.

16. RESTRICTION ON DISCLOSURE AND USE OF DATA:

The Authority shall provide all reasonable precautions to insure that proprietary, technical and pricing information remains within the review process. Offerors shall attach to any proprietary data submitted with the solicitation the following legend:

- a. "This data furnished pursuant to this RFP shall not be disclosed outside the Authority, be duplicated, or used in whole or in part, for any purpose other than to evaluate the offer; provided that, if a contract is awarded on the basis of that offer, the Authority shall have the right to duplicate, use, and disclose this data, in any manner and for any purpose whatsoever.
- b. This information does not limit the Authority's right to use information contained in this data if it is or has been obtained by the Authority from another independent legitimate source.
- c. Except for the foregoing limitation, the Authority may duplicate, use, and disclose in any manner and for any purpose whatsoever and have others so do, all data furnished in response to this solicitation."

17. AWARD:

Authority will make one requirements contract award for all line items in the schedule of prices resulting from this solicitation.

18. BEST VALUE:

- a. Award Will Be Made To That Proposer:
 - (1) Whose offer is judged to be an integrated assessment of the evaluation criteria to be the most advantageous to the Authority based on technical merit and price ("best value"); and
 - (2) That the Authority deems responsible in accordance with WMATA Procurement Procedures Manual.
- b. Best Value Determination
 - (1) The technical merit of the proposal is significantly more important than the price, and price must be fair and reasonable.
 - (2) The Authority may select other than the lowest price proposal if it is determined by value analysis, or technical/cost trade offs, that the proposal become more technically equivalent, then price becomes more important.
- c. Offerors are advised that award may be made without discussion or any contact with the offerors concerning the offers received. Therefore, offers should be submitted initially on the most favorable terms that the offeror can submit to the Authority.

- d. Price proposals will be evaluated on reasonableness of cost and rebate by dollar volume of transactions and frequency of payments to the offeror.
- e. Affordability. The price proposals will be assessed for affordability. The Authority will not make an award for any proposal which proposes prices that would render the procurement infeasible.

19. PROPOSAL EVALUATION CRITERIA:

Proposals will be evaluated based on the following criteria: which are listed in descending order of importance:

- 1) Corporate experience and the Financial Institution's understanding of management's approach to maximize the benefits of the program
- 2) The Financial Institution's revenue proposal (rebate program).
- 3) The Financial Institution's personnel qualifications and customer service commitment to Metro's program
- 4) The Financial Institution's specific unique program features and their compatibility with the Metro organization
- 5) The Financial Institution's online card management system's ease of use and prolific report-generating capability

20. RATINGS FOR PROPOSAL EVALUATION CRITERIA:

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

Definition of Adjective Rankings:

Acceptable	Meets evaluation standards, weakness are correctable.
Marginal	Fails to meet evaluation standard; however any significant deficiencies are correctable. Lacks essential information to support a proposal.
Unacceptable	Fails to meet an acceptable evaluation standard and the deficiency is uncorrectable. Proposal would have to undergo a major revision to become acceptable. Demonstrated lack of understanding of WMATA's requirements or omissions of major areas.

A rating of "Acceptable" is required to be eligible for award consideration. Offeror is cautioned to be aware of this standard when preparing your Proposal.

21. PRICE PROPOSAL EVALUATION

- a. The Authority will evaluate price proposals for reasonableness, completeness, and realism as appropriate. Each Offeror's cost will be evaluated in terms of the following which are equal in importance:

- (1) The Financial Institution's revenue proposal (rebate program). Submittal of proposal for both the Base and the Options, if any, failure to do so will necessitate rejection of the proposal;
- (2) Any offer which is materially unbalanced may be rejected. An unbalanced offer is one which is based on prices that are significantly overstated for some items and understated for other items;
- (3) Price evaluation will be based on the base and option periods. Price proposals will be evaluated on reasonableness of cost and rebate by dollar volume of transactions and frequency of payments to the offeror. The Offeror will propose any rebate, discounted financing, share of processing fees or other revenue sharing programs available to the Metro. The Offeror must present this information in a concise yet fully explanatory format, showing examples of how rebates, discounts, etc. would be formulated. The Offeror is to provide detail on any other revenue sharing platforms (i.e. bonuses; growth incentives).

On a monthly frequency, the Offeror is to provide a rebate check, either by wire transfer or check made out to the WMATA, Office of the Treasurer. Spend volume rebates should be based on a minimum of \$10 million and show rebate basis points on an escalating scale.

At a minimum, the Offeror is to propose the rebate basis points or payment program relative to these two criteria; 1) frequency of payments (every 5 days, 10 days, 15 days, etc.) from Metro to the financial institution, and 2) spend volume activity.

22. DEFINITIONS FOR TECHNICAL EVALUATION

- | | |
|-----------------|---|
| Clarifications: | Communications with an Offeror for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal. Unlike discussions, clarifications do not give the Offeror an opportunity to revise or modify its proposal, except to the extent that correction of apparent clerical mistake results in revisions. |
| Discussions: | Oral or written communications including negotiations between the Authority and an Offeror (other than clarifications) that; involves information essential for determining the acceptability of the proposal or to cure identified defects in the proposal. |
| Deficiencies: | Defects in the proposal which preclude acceptance. Involves any part of the Offeror's proposal which would not satisfy the Authority's minimum requirements established in the solicitation. Included failures to meet specifications, submit information, or questionable technical or management approaches. Items disclosed during discussions, evaluated in two categories: material-basis for rejection because further discussions would be meaningless; curable –may be corrected by clarifications or discussions and brought into the competitive range. |
| Weakness: | Includes ambiguities, lack of complete descriptions, errors in interpretation, omissions of essential information, inadequate information, all of which are |

considered curable in discussions. An excessive number of clarifications may in itself constitute a weakness.

Strengths: Elements of the proposal that meet or exceed the minimum requirements of the solicitation and provide an identified benefit to the Authority.

23. TYPE OF CONTRACT

The Authority will award one contract. The contractor will be required to submit Monthly Invoices to WMATA's Contracting Officer Technical Representative for payment approval.

24. ENGLISH LANGUAGE AND UNITED STATES CURRENCY

As regards this solicitation and the resultant contract:

- a. All communications (oral, written, electronic and otherwise including but, not limited to software coding) shall be in the English language.
- b. All pricing shall be in United States dollars.

25. FEDERAL/LOCAL/STATE SALES TAX

- a. The Authority is exempt under this solicitation from all Federal, State and District of Columbia, municipal and local taxation.
- b. This provision supersedes any language pertaining to payment of taxes that may appear elsewhere in this solicitation.
- c. The Authority's tax exempt numbers are as follows: District of Columbia -- 5611-0082187-001; Maryland -- 30072210; Virginia -- 5280-0067.

REPRESENTATIONS AND CERTIFICATIONS
(NON-FEDERALLY FUNDED SUPPLY/SERVICE/CONSTRUCTION CONTRACTS)

REPRESENTATIONS

Instructions: Check or complete all applicable boxes or blocks on this form and submit it with your offer.

1. TYPE OF BUSINESS ORGANIZATION

By submission of this offer, the offeror represents that it operates as an individual, a partnership, a limited liability company, a joint venture, a nonprofit organization, or a corporation, incorporated under the laws of the State of _____.

2. AFFILIATION AND IDENTIFYING DATA

Each offeror shall complete (a), (b) if applicable, and (c) below, representing that:

(a) It is, is not, owned or controlled by a parent company. For this purpose, a parent company is defined as one which either owns or controls the activities and basic business policies of the offeror. To own another company means the parent company must own at least a majority, i.e., more than 50 percent, of the voting rights in that company. To control another company, such ownership is not required; if another company is able to formulate, determine or veto basic business policy decisions of the offeror, such other company is considered the parent of the offeror. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, contractual arrangements or otherwise.

(b) If the offeror is owned or controlled by a parent company, it shall insert in the space below the name and main office address of the parent company:

Name of Parent Company

Main Office Address (including ZIP Code)

(c) If the offeror has no parent company, it shall provide in the applicable space below its own Employer's Identification Number (E.I.N.), (i.e., number used on Federal Tax Returns or, if it has a parent company, the E.I. No. of its parent company).

Offeror E.I. Number: _____ or, Parent Company's E.I. Number: _____

(d) If a Data Universal Numbering Systems (DUNS), number has not been established for the address entered on the Solicitation, Offer, and Award Form, the Authority will arrange for the assignment of this number after award of a contract and will notify the Contractor accordingly.

CERTIFICATIONS

3. COVENANT AGAINST GRATUITIES

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

Neither it nor any of its employees, representatives or agents have offered or given gratuities (in the form of entertainment, gifts or otherwise) to any director, officer or employee of the Authority with the

view toward securing favorable treatment in the awarding, amending, or the making of any determination with respect to the performing of the contract.

4. CONTINGENT FEE

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

- (a) It [] has, [] has not, employed or retained any company or persons (other than a full-time, bona fide employee working solely for the offeror) to solicit or secure this contract, and
- (b) It [] has, [] has not, paid or agreed to pay any company or person (other than a full-time, bona fide employee working solely for the offeror) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this contract.

5. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

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

- (1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or with any other competitor, as to any matter relating to such prices;
- (2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not be knowingly disclosed by the offeror prior to the opening of bids (in the case of a sealed bid solicitation) or prior to award (in the case of a negotiated procurement), directly or indirectly, to any other offeror or to any competitor; and
- (3) No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.

(b) Each person signing this offer certifies that:

- (1) He or she is the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or
- (2) He or she is not the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein, but that he/she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated; and will not participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify.

6. NONDISCRIMINATION ASSURANCE

By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, in connection with this procurement that it will not discriminate on the basis of race, color, creed, national origin, sex, age in the performance of this contract. The offeror is required to insert the substance of this clause in all subcontracts and purchase orders. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Authority deems appropriate. The offeror further agrees by submitting this offer that it will include this certification, without modification, in all subcontracts and purchase orders.

7. BUY AMERICA ACT CERTIFICATION

The Buy America requirements apply to federally assisted construction contracts, and acquisition of goods or rolling stock contracts valued at more than \$100,000.

- (a) By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement it will comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7 Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11.
- (b) An offeror must submit to the Authority the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors. Mark the applicable certifications below:

(1) **Certification requirement for procurement of steel, iron, or manufactured products:**

- Certificate of Compliance with 49 U.S.C. 5323(j)(1)*
 The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.
- Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)*
 The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

(2) **Certification requirement for procurement of buses, other rolling stock and associated equipment:**

- Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C)*
 The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.
- Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)*
 The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

SIGNATURE BLOCK FOR ALL REPRESENTATIONS AND CERTIFICATIONS	
Name of Offeror: _____	
Name and Title of Authorized Representative: _____	
Print and Sign Name	
_____	_____
Title	Date

PRE-AWARD EVALUATION DATA

PROJECT DESCRIPTION: _____

1. Name of Firm _____

2. Address: _____

3. Individual Partnership Corporation Joint Venture

4. Date Organized _____.

State in which incorporated _____.

5. Names of Officers or Partners:

a. _____

b. _____

c. _____

d. _____

e. _____

f. _____

6. How long has your firm been in business under its present name?

7. Attach as SCHEDULE ONE a list of similar current contracts which demonstrates your technical proficiency, each with contract amount, name of contracting party, character or type of work and percentage of completion.

8. Attach as SCHEDULE TWO a list of similar contracts, each with contract amount, name of contracting party, and character or type of work for similar contracts completed in the last two years.

9. In the last two years have you ever been denied an award where you were low bidder/ Offeror?

If the answer is YES, attach as SCHEDULE THREE the full particulars regarding each occurrence.

10. Have you ever failed to complete, in the last two years, any contract on which you were the low bidder/Offeror?

If the answer is YES, attach as SCHEDULE FOUR, the full particulars regarding each occurrence.

11. Financial resources available as working capital for the Contract:

a. Cash on hand: \$ _____

b. Sources of credit: _____

12. Attach as SCHEDULE FIVE financial statements and letters from banks regarding credit as required by the Pre-Award Information article.
13. What percentage of work (contract amount) do you intend performing with your own personnel? %.
14. Attach as SCHEDULE SIX a list of all principal subcontractors and the percentage and character of work (contract amount) which each will perform. Principal items of work shall include, but not be limited to, those items listed in the Pre-Award Information article of the Request for Proposal/Invitation for Bid.
15. If the Contractor or subcontractor is a joint venture, submit PRE-AWARD EVALUATION DATA forms for each member of the joint venture.

The above information is confidential and will not be divulged to any unauthorized personnel.

The undersigned certifies to the accuracy of all information.

COMPANY: _____

SIGNATURE: _____

NAME: _____

TITLE: _____

DATE: _____

PART II – GENERAL / SPECIAL PROVISIONS

PART II – SECTION 1 - GENERAL PROVISIONS

PART II, SECTION 1 - GENERAL PROVISIONS

1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meanings set forth below:

- (a) "Authority" means the Washington Metropolitan Area Transit Authority created effective February 20, 1967, by Interstate Compact by and between Maryland, Virginia and the District of Columbia, pursuant to Public Law 89-774, approved November 6, 1966.
- (b) "Contracting Officer" means the person executing this Contract on behalf of the Authority and his or her successor. The term includes, except as otherwise provided in this Contract, the authorized representative of a Contracting Officer acting within the limits of his authority.
- (c) "Subcontract" means, except as otherwise provided in this Contract, a contract or contractual action entered into by a prime contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services under a prime contract. Subcontracts include purchase orders under this Contract, as well as changes and modifications to purchase orders.
- (d) Wherever in the scope of the work the words directed, ordered, designated, prescribed or words of like import are used, it shall be understood that the direction, requirement, order, designation or prescription of the Contracting Officer is intended and similarly the words approved, acceptable, satisfactory or words of like import shall mean approved by, or acceptable to, or satisfactory to the Contracting Officer, unless otherwise expressly stated.
- (e) "Contractor" means the party (i.e., individual person or legal entity) that enters into a contract with the Authority to provide supplies or perform services to fulfill Authority requirements. With respect to subcontracting, "prime contractor" means "contractor."
- (f) "Services" means the performance of work by an individual person or legal entity under Contract with the Authority. Examples of services: maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment; routine recurring maintenance of real property; housekeeping; advisory and assistance; operation of authority-owned equipment, facilities, and systems; communication services; Architect-Engineering services; and transportation and related services.
- (g) "FTA" means the U.S. Department of Transportation, Federal Transit Administration.

2. ACCOUNTING AND RECORD KEEPING

- (a) Applicability. This clause shall become effective for and shall apply to any adjustment in the price of this Contract initiated by the Contractor or the Authority. However, where the original amount of this Contract is less than \$1,000,000, paragraph (c) of this clause does not apply unless the adjustment is expected to exceed \$50,000.
- (b) Forward Priced Adjustments. Unless expressly waived in writing in advance by the Contracting Officer, the Contractor shall furnish to the Contracting Officer a cost proposal in advance of performance of any work for which a price adjustment is requested under this Contract. The Contractor shall originate such records as are necessary to substantiate all

elements of the pricing proposal, current to the date of agreement on the pricing adjustment. Such records supporting the costs of each pricing adjustment request shall be specifically segregated and identified in the Contractor's accounting system as being applicable to the pricing adjustment request.

- (c) Post Pricing Adjustments. In addition to the records required to be originated under paragraph (b) above, in the event pricing of an adjustment under this Contract is not agreed upon between the Contractor and the Contracting Officer prior to the commencement of work for which the pricing adjustment is requested, the Contractor and any subcontractor engaged in work for which the pricing adjustment is requested, shall maintain accounts and original cost records specifically segregated and identified by job order or other appropriate accounting procedures approved by the Contracting Officer of all incurred segregable costs related to the work for which the pricing adjustment is requested. The Contractor shall maintain accounts and records which segregate and account for the costs of all work associated with that part of the project for which the pricing adjustment is requested and shall allocate the costs so accumulated between: (1) work required under the base Contract; (2) work requested to be reimbursed under the pricing adjustment; and (3) other claim, including but not limited to, changes, differing site conditions, and the like. The accounts and records so established shall accumulate such costs under logical costs groups, such as material, labor, equipment, subcontracts, field overhead and the like. The Contractor shall record these costs on a form approved by the Contracting Officer.
- (d) Availability. The accounts, records and costs information required to be originated under b. and c. above together with all other accounts, records and costs information related to this Contract, shall be maintained and made available by the Contractor and subcontractor(s):
- (1) At the office of the Contractor or subcontractor(s) at all reasonable times for inspection, audit, reproduction or such other purposes as may be required by the Contracting Officer or by anyone authorized access to the records by the Contracting Officer or pursuant to any other provisions of this Contract; and
 - (2) Until the expiration of three years from the date of final payment under this Contract or such lesser time as is specified in Subpart 4.7 of the Federal Acquisition Regulations and for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by paragraphs (i) and (ii) below:
 - (i) If the Contract is completely or partially terminated, for a period of three (3) years from either the date of any resulting final settlement or the date of final payment whichever is the greater period; and
 - (ii) If a pricing adjustment is involved in any appeal under the Disputes clause Article of this Contract or in any litigation related to this Contract, for a period of one (1) year following the final disposition of the appeal or litigation.
- (e) Access to Records. When asserting a claim involving a potential price adjustment under any provisions of this Contract, the Contractor shall grant the Authority access to review and ascertain the validity of the accounting records being maintained for segregation of costs, including base cost records, and to audit such costs as are deemed appropriate by the Contracting Officer. No payment shall be made to the Contractor on its claim until such records are made available and access is permitted.

- (f) Limitation on Pricing Adjustment. In the event the Contractor or any subcontractor fails to originate or to maintain, or to make available any accounts or records required under this or any other clause of the Contract, the Contracting Officer may, at the Contracting Officer's discretion, determine the reasonableness of the direct cost of the work for which records are not available, and add a single mark-up for indirect expenses not to exceed ten percent (10%) of the direct costs based on:
- (1) An audit of any existing books and records of the Contractor or subcontractor; or
 - (2) An Authority estimate adopted by the Contracting Officer; or
 - (3) A combination of (1) and (2);

The Contractor and subcontractors shall not be allowed any profit on the work which such records are not available.

- (g) Flow-down clause. The Contractor shall insert a clause containing all the provisions of this clause in all subcontracts issued under this Contract, modified as necessary, for proper identification of the contracting parties and the Contracting Officer under this Contract.

3. ASSIGNMENT

- (a) Except as otherwise provided in this provision, the Contractor shall not transfer any of its rights and obligations under this Contract to third parties without the prior 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 of the transfer shall be within the discretion of the Contracting Officer after review of the facts and circumstances surrounding each request. At the discretion of the Contracting Officer, the Contracting Officer may conduct an evaluation of the successor party's capability to perform the Contract in the same manner and to the same extent the Contracting Officer 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 such a successor in interest, it may terminate this Contract for the convenience of the Authority.
- (b) For claims for monies due, or to become due the Contractor from the Authority under this Contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any institution, upon written notice of such assignment to the Authority. Any such assignment or reassignment shall cover all amounts payable under this Contract and not already paid and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. It is the Authority's intent to recognize assignments only to bona fide lending institutions; therefore, assignment to any private corporation, business or individual which does not qualify as such is specifically prohibited.
- (c) Any attempt to transfer by assignment not authorized by this provision shall constitute a breach of the Contract and the Authority may for such cause, terminate the Contract with the DEFAULT provision of these General Provisions, and the Contractor shall be liable to the Authority under the DEFAULT provision.

4. AUDIT AND RETENTION OF RECORDS

- (a) As used in this clause, “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) Authorized persons. The Contracting Officer and his representatives, including representatives of the Authority’s governing jurisdictions and any other federal, state, or local entity providing funding for this Contract and the Comptroller General of the United States, shall have access and inspection rights described in this clause.
- (c) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor’s plants, or parts of them, engaged in performing this contract.
- (d) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor’s records, including computations and projections, related to: (1) the proposal for the contract, subcontract, or modification; (2) the discussions conducted on the proposal(s), including those related to negotiating; (3) pricing of the contract, subcontract or modification; or (4) performance of the contract, subcontract or modification.
- (e) Reports. If the Contractor is required to furnish cost, funding or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating the effectiveness of the Contractor’s policies and procedures to produce data compatible with the objectives of these reports; and the data reported.
- (f) Availability. The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence described above, for examination, audit or reproduction, until three (3) years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition–
 - (1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until three (3) years after any resulting final termination settlement; and
 - (2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation or claims are fully resolved.
- (g) Subcontracts. The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this Contract that exceed the simplified acquisition threshold (currently \$100,000) and –

- (1) That is cost reimbursable, incentive, time-and-material, labor-hour, or price redeterminable type or any combination of these;
- (2) For which cost or pricing data are required; or
- (3) That requires the contractor to submit reports as discussed in paragraph (e) of this clause.

5. AUTHORITY DELAY OF WORK

- (a) If the performance of all or any part of the work is delayed or interrupted (1) by an act of the Contracting Officer in the administration of this Contract, which act is not expressly or impliedly authorized by this Contract, or (2) by a failure of the Contracting Officer to act within the time specified, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this Contract caused by such delay or interruption and the contract modified in writing accordingly. Adjustment shall be made also in the delivery or performance dates and any other contractual provision affected by such delay or interruption. However, no adjustment shall be made under this clause for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or for which an adjustment is provided or excluded under any other provision of this Contract.
- (b) A claim under this clause shall not be allowed:
 - (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved; and
 - (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the Contract.

6. CERTIFICATE OF CURRENT COST OR PRICING DATA

The Contractor shall provide a Certificate of Current Cost or Pricing Data as required in Subpart 15.406 of the Federal Acquisition Regulations (48 CFR 15.406) in support of any negotiated contract modification, for which the aggregate of the increase and decreases in cost are expected to exceed \$100,000. The Contractor may be requested, at the discretion of the Contracting Officer, to provide cost or pricing data and an attendant certificate of current cost or pricing data, for modifications on which cost are \$100,000 or less.

7. CHANGES

- (a) The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this Contract, in any one or more of the following:
 - (1) Description of services to be performed;
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.); or
 - (3) Place of performance of the services.

- (b) If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Contract, whether changed or not changed by the order, the Contracting Officer shall make an equitable adjustment in the Contract price, the delivery schedule, or both, and shall modify the Contract.
- (c) The Contractor must assert its right to an adjustment under this clause article within 30 days from the date of receipt of the written order. Any such adjustment to the contract price must be agreed upon, prior to final payment of the contract price.
- (d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (f) Notwithstanding any other provision of this Contract, the Contractor shall promptly notify the Contracting Officer of matters which will result in either an increase or decrease in the Contract price and shall take action with respect thereto as directed by the Contracting Officer.

8. CIVIL RIGHTS

- (a) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d, 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, and Federal transit law at 49 U.S.C. §5332, the contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing regulations that the Federal Transit Administration (FTA) may issue.
- (b) Equal Employment Opportunity. The following equal employment opportunity requirements apply to this contract.
 - (1) Race, Color, Creed, National Origin or Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, 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) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor" 41 C.F.R. Parts 60 et seq., (which implement 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. 2000e note), and with any applicable Federal statutes, executive orders, regulations and Federal policies that may in the future affect construction activities undertaken in the course of the 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 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 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 FTA may issue.
- (c) The Contractor also agrees to include 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.

9. 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 contract work which may require or involve the employment of laborers, mechanics, apprentices, trainees, watchmen, and guards shall require or permit any laborer, mechanic, apprentice, trainee, watchman, or guard in any workweek in which he is employed on such work to work in excess of 40 hours in such work week on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer, mechanic, apprentice, trainee, watchman, or guard receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 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 unpaid wages. In addition, such Contractor and subcontractor shall be liable to the Authority for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, apprentice, trainee, watchman or guard employed in violation of the provision of paragraph (a) in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of his standard work week of 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 Authority Contractor, from any monies payable on account of work performed by the Contractor or subcontractor, such sums as may be administratively determined 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 paragraphs (a) through (d) of this clause in all subcontracts and shall require their inclusion in all subcontracts of any tier.
- (e) Records. The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three (3) years from the completion of this Contract.

10. CONVICT LABOR

- (a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of 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 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 local union 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 in which 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 in which 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.

11. CORRECTION OF DEFICIENCIES

- (a) Definitions, as used in this provision:
 - (1) "Deficiency" means any condition or characteristics in any supplies (which term shall include related technical data) or services furnished hereunder, which is not in compliance with the requirements of this Contract.
 - (2) "Correction" means any and all actions necessary to eliminate any and all deficiencies.

- (3) "Supplies" mean the end item(s) furnished by the Contractor and related services required under this Contract.
- (b) General:
- (1) The rights and remedies of the Authority provided in this provision:
 - (i) Shall not be affected in any way by any other provision(s) under this Contract concerning the conclusiveness of inspection and acceptance; and
 - (ii) Are in addition to and do not limit any rights afforded to the Authority by any other provision article of this Contract.
 - (2) This provision shall apply only to those deficiencies discovered by either the Authority or the Contractor within one year after acceptance.
 - (3) The Contractor shall not be responsible under this provision for the correction of deficiencies in Authority furnished property, except for deficiencies in installation, unless the Contractor performs or is obligated to perform any modifications or other work on such property. In that event, the Contractor shall be responsible for correction of deficiencies to the extent of such modifications or other work.
 - (4) The Contractor shall not be responsible under this provision article for the correction of deficiencies caused by the Authority.
- (c) Deficiencies in accepted supplies or services:
- (1) Notice to Contractor - Recommendation for Correction. If the Contracting Officer determines that a deficiency exists in any of the supplies or services accepted by the Authority under this Contract, the Contracting Officer shall promptly notify the Contractor of the deficiency, in writing, within 30 days. Upon timely notification of the existence of such a deficiency, or if the Contractor independently discovers a deficiency in accepted supplies or services, the Contractor shall promptly submit to the Contracting Officer its recommendation for corrective actions, together with supporting information in sufficient detail for the Contracting Officer to determine what corrective action, if any, shall be undertaken.
 - (2) Direction to Contractor concerning correction of deficiencies. Within 30 days after receipt of the Contractor's recommendations for corrective action and adequate supporting information, the Contracting Officer, at his sole discretion, shall give the Contractor written notice not to correct any deficiency, or to correct or partially correct any deficiency within a reasonable time and at a specified location.
 - (3) Correction of deficiencies by Contractor. The Contractor shall promptly comply with any timely written direction by the Contracting Officer to correct or partially correct a deficiency, at no additional cost to the Authority. The Contractor shall also prepare and furnish to the Authority data and reports applicable to any correction required under this provision (including revision and updating of all other affected data called for under this Contract) at no additional cost to the Authority.
 - (4) Proposal for correction. In the event of timely notice of a decision not to correct or only to partially correct, the Contractor shall promptly submit a technical and cost proposal for compensation to the Authority for the diminished value received. If the

Contract has not been completed, this may be accomplished as a scope and price modification to the Contract.

- (d) Deficiencies in supplies or services not yet accepted. If the Contractor becomes aware at any time before acceptance by the Authority (whether before or after tender to the Authority) that a deficiency exists in any supplies or services, it shall promptly correct the deficiency. If in the Contractor's judgment such correction is not feasible or in the Authority's best interest, it shall promptly notify the Contracting Officer, in writing, of the deficiency, the reasons for its recommendation not to correct the deficiency, and provide a detailed technical and cost proposal for recommended alternatives.
- (e) No extension in time for performance - No increase in Contract price. In no event shall the Authority be responsible for extension or delays in the schedule deliveries or periods of performance under this Contract as a result of the Contractor's obligations to correct deficiencies, nor shall there be any adjustment of the delivery schedule or period of performance as a result of such correction of deficiencies, except as may be agreed to by the Authority in a contract modification with adequate consideration. This provision shall not be construed as obligating the Authority to increase the Contract price of this Contract.
- (f) Transportation charges. If the agreed upon correction requires the Authority to ship supplies or other items to the Contractor, the Contractor shall be liable for determining the method of shipment and bearing the cost and risk of loss for such supplies or other items while in transit, and until they are redelivered to the Authority. For the purpose of this provision, the terms "supplies" and "shipment" include both tangible and intangible (e.g., electronic) items and methods.
- (g) Failure to correct. If the Contractor fails or refuses to comply with any term of this provision, or fails to exercise its professional judgment in good faith regarding the identification or correction of any deficiency, the Contracting Officer may proceed in accordance with the Termination for Default provision of this contract. In such event, the Contractor shall be liable for all costs incurred by the Authority in connection with the Termination for Default provision, including but not by way of limitation, the employment of consultants or other contractors to identify the deficiency, to make recommendations regarding methods of correcting the deficiency, the actual correction of the deficiency, and risk of the continued use of the defective supplies, methods of achieving the end purpose of the supplies or other items until the deficiency is corrected, and the estimated cost thereof.
- (h) Correction of deficient replacements and re-performances. The corrected or replaced supplies and any services re-performed pursuant to this provision shall also be subject to all the provisions of the clause to the same extent as supplies or services initially accepted.
- (i) Disassembly/reassembly expense. The Contractor shall be liable for the reasonable cost of any disassembly, reassembly, repair or replacement of Authority property required to implement the correction(s) required in accordance with this provision.

12. COST OR PRICING DATA

- (a) As part of its pricing proposal for any modification to this Contract requiring a price adjustment involving an aggregate increase or decrease in excess of \$100,000 to the Contract price, the Contractor shall submit to the Contracting Officer, either actually or by specific identification in writing, cost or pricing data under the conditions described in this paragraph and certify that, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete and current as of the date of the proposal. The

Contractor, at the discretion of the Contracting Officer, may be required to submit cost or pricing data for price adjustments less than \$100,000.

- (b) The submittal of certified cost or pricing data shall not be required if the price adjustment is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The Contractor agrees that the terms adequate price competition and established catalog or market prices of commercial items sold in substantial quantities to the general public shall be determined by the Contracting Officer in accordance with the guidelines as set forth in Subpart 15.4 of the Federal Acquisition Regulations (48 CFR 15.4).
- (c) Cost or pricing data consists of all facts existing up to the time of agreement on price which prudent buyers and sellers would reasonably expect to have a significant effect on the price negotiations for the modification. The definition of cost or pricing data embraces more than historical accounting data; it also includes where applicable, such factors as subcontractor, supplier and vendor quotations, non-recurring costs, changes in construction methods or contract performance, unit cost trends such as those associated with labor efficiency and any management decisions which could reasonably be expected to have a significant bearing on costs under the proposed modification and the Contract work. Cost or pricing data consists of all facts which can reasonably be expected to contribute to sound estimates of future costs as well as to the validity of costs already incurred. Cost or pricing data, being factual, is that type of information which can be verified. Because the certificate pertains to cost or pricing data, it does not make representations as to the accuracy of the Contractor's judgment on the estimated portion of future costs or projections. The certificate does, however, apply to the data upon which the Contractor's judgment is based.

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 or understanding 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 annul this Contract without liability or in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

14. DEFAULT

- (a) (1) The Authority may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this Contract in whole or part if the Contractor fails to:
 - (i) Deliver the supplies or to perform the services within the time specified in the contract, herein or any extension thereof;
 - (ii) Make progress, so as to endanger performance of the contract; or
 - (iii) Perform any of the other provisions of this contract.
- (2) The Authority's right to terminate this contract under paragraphs (a)(1)(ii) and (a)(1)(iii) above, may be exercised if the contractor does not cure such failures within 10 days (or more if authorized by the Contracting Officer) after receipt of notice from the Contracting Officer specifying the failure.

- (b) If the Authority terminates this Contract in whole or in part, it may procure, under the terms and in the manner as the Contracting Officer considers appropriate, supplies or services similar to those terminated in this contract, and the Contractor will be liable to the Authority for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- (c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy; (2) acts of the Government in its sovereign capacity or the Authority in its contractual capacity; (3) fires; (4) floods; (5) epidemics; (6) quarantine restrictions; (7) strikes; (8) freight embargoes; and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.
- (d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.
- (e) If this Contract is terminated 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 supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information (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 has an interest.
- (f) The Authority shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for items identified in paragraph (e) above that were delivered and accepted by the Authority and for the protection and preservation of property. Failure to agree shall be a dispute under the DISPUTES clause of this Contract. The Authority may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Authority against loss because of outstanding liens or claims of former lien holders.
- (g) If, after termination, it is determined that the Contractor was not in default or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued for the convenience of the Authority.
- (h) The rights and remedies of the Authority in this clause are in addition to any other rights and remedies provided by law or under this Contract.

15. DISPUTES

- (a) Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under or related to this Contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within thirty (30) calendar days from the date of receipt

of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written notice of appeal addressed to the Authority Board of Directors. Such notice would indicate that an appeal is intended and should reference the decision and contract number. The decision of the Board of Directors or its duly authorized representative for the determination of such appeals shall be final and conclusive unless in proceedings initiated by either party for review of such decision in a court of competent jurisdiction, the court determines the decision to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or is not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor, or the Authority, as the case may be, shall be afforded an opportunity to be heard and offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Contracting Officer's decision. The Armed Services Board of Contract Appeals is the authorized representative of the Board of Directors for final decisions on an appeal.

- (b) This DISPUTES clause does not preclude consideration of question of law in connection with decisions provided for in Section a. above. Nothing in the Contract, however, shall be construed as making final the decisions of the Board of Directors or its representative on a question of law.

16. EMPLOYMENT RESTRICTION WARRANTY

- (a) The Contractor warrants that it will not offer employment to any officer or employee of the Washington Metropolitan Area Transit Authority (Authority) who has been involved, directly or indirectly, in any matter of financial interest to the Contractor until at least one (1) year after the officer or employee has ceased involvement in or responsibility for the matter.
- (b) The Contractor further warrants that it will not employ any Authority officer or employee who has had direct responsibility for any matter of financial interest to the Contractor within the year prior to the retirement or termination of the officer or employee until at least one (1) full year after such officer or employee has left the employment of the Authority.
- (c) The one (1) year requirement described in this provision may be waived at the discretion of the Contracting Officer if the Authority employee or former employee has been subject to a Reduction in Force; in such case, the Contracting Officer will provide the Contractor with a letter to that effect.
- (d) If a waiver is granted, or if a former employee of the Authority is eventually hired, the Contractor shall be responsible for ensuring that the former employee is not directly involved in negotiating or otherwise dealing with Authority on any particular matter over which such employee had responsibility during his or her period of employment at Authority.
- (e) Should the Contractor fail to comply with paragraphs (a), (b) or (d) above, the Contracting Officer shall have the right to withhold payment under this Contract in an amount not to exceed 2% of the total Contract amount as liquidated damages to the Authority, such withholding to be in addition to any other withholding under this Contract. Further, the Contracting Officer shall consider such violation in evaluating the Contractor's responsibility in connection with award of any future Authority Contract.

17. EXTRAS (SUPPLIES)

Except as otherwise provided in this Contract, no payment for extras shall be made unless such extras and the prices therefore have been authorized in writing in advance by the Contracting Officer.

18. FEDERAL, STATE, AND LOCAL TAXES

- (a) Except as may be otherwise provided in this Contract, the Contract price includes all applicable Federal, State and Local taxes and duties.
- (b) Nevertheless, 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 which 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 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 his obtaining a refund or drawback of, any such Federal excise tax or duty which would otherwise have been payable on such transactions or property or which 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 his fault or negligence or his failure to follow instructions of the Contracting Officer, 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) above.
- (e) As used in paragraph (b) above, the term "Contract date" means the date the contract was executed by the Authority. As to additional supplies or services procured by modification to this Contract, the term "Contract date" means the effective date of such modification.
- (f) Unless a reasonable basis to sustain an exemption does not exist, the Authority upon the request of the Contractor shall, without further liability, furnish evidence appropriate to establish exemption from any relevant Federal, State or Local tax; provided that evidence appropriate to establish exemption from any Federal excise tax or duty which may give rise to either an increase or decrease in the Contract price, will be furnished only at the discretion of the Authority.
- (g) The Contractor shall promptly notify the Contracting Officer of matters which will result in either an increase or decrease in the Contract price and shall take action with respect thereto as directed by the Contracting Officer.

19. GRATUITIES

- (a) In connection with performance of work required under 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, or any agent, representative or other person deemed to be acting on behalf of such supplier or subcontractor, to any Director, Officer or employee of the Authority; or to any Director, Officer, employee or agent of any of the Authority's agents, consultants, representatives or other persons deemed to be acting for or on behalf of the Authority with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract is expressly forbidden. The terms of this GRATUITIES clause shall be strictly construed and enforced in the event of violations hereto.
- (b) Reported instances of the giving or offering to give gratuities within the context of this GRATUITIES clause will be investigated by the 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 has been committed. If such probable cause is found to exist, the Board of Directors, or its duly authorized representative, shall formally notify the suspected donor corporation or individual in writing of the particulars of the event; and provide such donor the opportunity to be heard on the matter. The aims of the investigations and hearing shall be to ensure due process and to preserve the best interests and rights of all parties by the full and fair disclosure of all relevant and material information. Accordingly, the Board of Directors, or its duly authorized representative, shall require production of all pertinent documents and records, and sworn testimony from witnesses. During the pendency of any investigation or hearing treating with a violation of this GRATUITIES clause, the Board of Directors, or its duly authorized representative may exercise its power granted by the Washington Metropolitan Area Transit Authority Compact, Public Law 774, 80 Stat. 1324, Article V, General Powers, Subparagraph (k), by issuing subpoenas to compel the attendance of necessary witnesses, and to compel production of papers, records, accounts, ledgers and documents. The subpoenas shall be enforceable by order of an appropriate United States District Court. If, after notice and hearing, or notice of the opportunity to be heard, the Board of Directors, or its duly authorized representative, finds that a violation of this GRATUITIES clause has been committed, the Authority shall have the right to:
- (1) Require that the individual(s) giving or offering the gratuity be removed from further participation on any Authority projects, (be terminated);
 - (2) Deny the Contractor any G & A (general and administrative) mark-ups for all changes and/or modifications found to be tainted by the giving of or offering to give gratuities;
 - (3) Preclude the Contractor from bidding on, receiving or participating as joint venturer, subcontractor or otherwise in any Authority project for a period of five (5) years;
 - (4) Have complete access to all the Contractor's financial books, records and accounts for the purpose of performing a comprehensive audit of the entire project.
 - (5) In the event of repeated violations of this GRATUITIES clause or of gross or extreme conduct indicative of a corrupt intent to gain special advantage, by written

notice to the Contractor, terminate the right of the Contractor to proceed under the Contract.

- (c) The existence of the facts upon which the Board of Directors, or its duly authorized representative, makes findings in connection with investigations and hearings in consonance herewith, shall be an issue and may be reviewed in any competent court.
- (d) In the event this Contract is terminated as provided in paragraph (b)(5) of this clause, the Authority shall be entitled:
 - (1) To pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor; and
 - (2) As a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in any amount (as determined by the Board or its duly authorized representative) which shall be not less than three (3) nor more than ten (10) times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.
- (e) 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 by law or under this Contract.

20. INSPECTION OF SERVICES

- (a) "Services" as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.
- (b) 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 and for as long afterwards as the Contract requires.
- (c) The Authority has the right to inspect and test all services called for by this contract, to the extent practicable at all times and places during the term of the contract. The Authority shall perform inspection and tests in a manner that will not unduly delay the work.
- (d) If the Authority performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at non-increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) 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, for no additional fee. When the defects in performance cannot be corrected by re-performance, the Authority may:
 - (1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; or
 - (2) Reduce the contract price to reflect the reduced value of the services performed.
- (g) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Authority may:

- (1) By contract or otherwise, perform the services and charge to the contractor any cost incurred by the Authority that is directly related to the performance of the service; or
- (2) Terminate the contract for default.

21. INSPECTION OF SUPPLIES

- (a) "Supplies," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products and lots of supplies.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Authority covering supplies under this contract and shall tender to the Authority for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the Authority during contract performance and for as long afterwards as the contract requires. The Authority may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under the contract.
- (c) The Authority has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The Authority shall perform inspections and tests in a manner that will not unduly delay the work. The Authority assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.
- (d) If the Authority performs inspection or test(s) on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties. The Authority, except as otherwise provided in the contract, shall bear the expense of Authority inspections or tests made at other than the Contractor's or subcontractor's premises; provided, that in case of rejection, the Authority shall not be liable for any reduction in the value of inspection or test samples.
- (e) When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor the additional cost of inspection or test. The Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes re-inspection or retest necessary.
- (f) The Authority has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. The Authority may reject nonconforming supplies with or without disposition instructions.
- (g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected

or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

- (h) If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Authority may either: (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Contractor; or (2) terminate the contract for default. Unless the Contractor replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.
- (i)
 - (1) If this contract provides for the performance of Authority quality assurance at source, and if requested by the Authority, the Contractor shall furnish advance notification of the time: (i) when Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract; and (ii) when the supplies will be ready for Authority inspection.
 - (2) The Authority's request shall specify the period and method of the advance notification and the Authority representative to whom it shall be furnished. Requests shall not require more than two (2) workdays of advance notification if the Authority representative is in residence in the Contractor's plant, nor more than seven (7) workdays in other instances.
- (j) The Authority shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. Authority failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability on the Authority, for nonconforming supplies.
- (k) Inspections and tests by the Authority does not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.
- (l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the Authority, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor:
 - (1) At no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or
 - (2) Within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in paragraphs (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Authority shall have the right by

contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned the Authority thereby.

22. LIMITATION ON WITHHOLDING PAYMENTS

If more than one (1) clause or schedule provision of this Contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts so withheld at any one (1) time shall not exceed the greatest amount which may be withheld under any one such clause or schedule provision at that time; provided, that this limitation shall not apply to:

- (a) Withholdings pursuant to any clause relating to wages or hours of employees;
- (b) Withholdings not specifically provided for by this Contract;
- (c) The recovery of overpayment; and
- (d) Any other withholding for which the Contracting Officer determines that this limitation is inappropriate.

23. NEW MATERIAL (SUPPLY)

Unless this Contract specifies otherwise, the Contractor represents that the supplies and components to be provided under this Contract are new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety). If at any time during the performance of this Contract, the Contractor believes that furnishing supplies or components which are not new is in the Authority's best interest, the Contractor shall notify the Contracting Officer immediately in writing. The Contractor's notice shall include the reasons for the request, along with a proposal for any consideration to the Authority if the Contracting Officer authorize to the use of such supplies or components.

24. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (SUPPLY)

- (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 the performance of this Contract of which the Contractor has knowledge.
- (b) In the event of any claim or suit against the Authority on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Authority, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Authority except where the Contractor has agreed to indemnify the Authority.
- (c) This clause shall be included in all subcontracts.

25. NOTICE TO THE AUTHORITY OF LABOR DISPUTES

- (a) Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

- (b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract hereunder as to which a labor dispute may delay the timely performance of this Contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify his next higher tier subcontractor, or the Contractor, as the case may be, of all relevant information with respect to such dispute.

26. OFFICIALS NOT TO BENEFIT

- (a) No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Contract, or to any benefit that may arise there from; but this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.
- (b) No member, officer or employee of the Public Body or of a local public body during his tenure or one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.
- (c) Enforcement of this clause shall be consistent with 18 U.S.C. §431.

27. ORDER OF PRECEDENCE

Any inconsistency in this solicitation or Contract shall be resolved by giving precedence in the following order: (a) Contract Amendments/Modifications; (b) Solicitation Offer and Award Forms; (c) Representations and Certifications; (d) Price Proposal as Negotiated; (e) General Provisions; (f) WMATA Standard Specifications and Technical Specifications of the Contract, whether incorporated by reference or otherwise; (g) other documents, exhibits, and attachments; and (h) drawings, if any. In the event of a conflict within, between or among all the above listed order of precedent, the more stringent requirement shall apply.

28. ORGANIZATIONAL CONFLICT OF INTEREST

- (a) An organizational conflict of interest exists when the nature of the work to be performed under a proposed contract or subcontract may, without some restriction on future activities (1) result in an unfair competitive advantage to the contractor or subcontractor; or (2) impair the contractor's objectivity in performing the contracted work. Most typically this would arise when a contractor prepares a design or specification for work that is to be procured competitively. It may also arise when a contractor or one of its affiliates would have an economic interest in the outcome of a contract or project. Conflicts of interest may be either real or apparent.
- (b) In the event that an Offeror believes that it or any of its potential subcontractors may have an organizational conflict of interest, it shall notify the Contracting Officer, in writing, within five (5) work days after it becomes aware of the potential or actual organizational conflict of interest. The written notification shall identify the nature and circumstances of the perceived conflict and propose appropriate measures to eliminate or mitigate the situation. The Contracting Officer will review the circumstances and the proposed mitigation and notify the Offeror accordingly, determining that: (1) no mitigation is required; (2) the conflict cannot be mitigated; or (3) the conflict can be mitigated and accepts the proposed measures, or recommends additional measures.

- (c) The failure of an Offeror to identify such perceived conflicts may result in: (1) the Offeror being disqualified from the competition; or (2) any contract award being rescinded or terminated for default.
- (d) Should a successful Offeror identify or become aware of a conflict after award, including any extension of the contract, which it could not reasonably have anticipated 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.
 - (1) If the proposed measures are not determined feasible nor acceptable to the Contracting Officer, the Contracting Officer may terminate the contract in accordance with the TERMINATION FOR CONVENIENCE OF THE AUTHORITY provisions of the contract; or
 - (2) If the request for an exception is not granted by the Contracting Officer, 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 action to comply with the requirements of this clause.
 - (3) If the proposed measures are determined acceptable to the Contracting Officer, the Contracting Officer 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 the contractual or other relationship for which an exception is requested.
- (e) If the Contractor fails to comply with the terms of this clause, the Contracting Officer, may withhold payments due under the 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 §(d)(2) of this clause, terminate the contract for default pursuant to the Default clause of this contract.
- (f) The Contractor, in performing this Contract, shall avoid any conduct which might result in or give the appearance of creating for Directors, Officers, 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 which might result in a Director, Officer, or employee failing to adhere to the Standards of Conduct adopted by the Authority's Board of Directors.
- (g) 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.

29. PATENT INDEMNITY

The Contractor shall indemnify the Authority and its officers, agents and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property ("hereinafter referred to as "construction work") under this Contract. This indemnity shall not apply unless the Contractor is informed as soon as practicable by the Authority of the suite or action alleging such infringement,

and is given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to:

- (1) An infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner or performance of the Contract not normally used by the Contractor;
- (2) An infringement resulting from addition to, or change in, such supplies or components furnished or construction work performed that was made subsequent to delivery or performance by the Contractor; or
- (3) A claimed infringement which is unreasonably settled without the consent of the Contractor, unless required by final decree of court of competent jurisdiction.

30. PAYMENTS

The Authority shall pay the Contractor, normally within 30 days of receipt of a properly prepared invoice or voucher, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract.

31. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS

- (a) This clause shall become operative only with respect to any modification of this Contract which involves aggregate increases and/or decreases in costs plus applicable profits in excess of \$100,000 unless the modification is priced on the basis of adequate competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The right to price reduction under this clause is limited to defects in data relating to such modification.
- (b) If any price, including profit, or fee, negotiated in connection with any modification for price adjustment under this Contract, was increased by any significant amount because of (b)(1) or (3) of this clause, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.
 - (1) The Contractor or a subcontractor furnished cost or pricing data that were which was not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data;
 - (2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as of the date certified in the Contractor's Certificate of Current Cost or Pricing Data; or
 - (3) Any reduction in the Contract price due to defective subcontract data of a prospective subcontractor, when the subcontract was not subsequently awarded to such subcontractor, shall be limited to the amount (plus applicable overhead and profit markup) by which the actual subcontract, or the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor, provided that the actual subcontract price was not affected by defective cost or pricing data.

- (c) If the Contractor includes a clause an article similar to this clause in any subcontract, such subcontract clause shall be solely between the Contractor and the subcontractor and not binding on the Authority.

32. PRICING OF ADJUSTMENTS

- (a) When costs are a factor in any determination of a Contract price adjustment pursuant to the CHANGES AND CHANGED CONDITIONS clause or any other provision of this Contract, such costs shall be in accordance with the Subpart 31.1 of the Federal Acquisition Regulations (48 CFR 31.1).
- (b) Notwithstanding any interpretation of the aforementioned contract cost principles and procedures to the contrary, the Authority will not be liable for interest, however represented, on or as a part of any claim, request, proposal or adjustment, including equitable adjustments, whether said claim, request, proposal or adjustment, including equitable adjustments, arises under the Contract or otherwise.
- (c) Where general and administrative expense is recoverable as part of any pricing adjustment under this contract, the adjustment shall be based on the relationship between the Contractors' total general and administrative expenses allowable under FAR cost principles for all construction-type operations, during the fiscal or calendar year covering the actual performance period of the work included in this pricing adjustment, and the Contractor's total cost input (excluding General and Administrative costs) for construction-type operations during the same period, expressed as a percentage, applied to the direct and overhead contract costs included in the pricing adjustment.

33. RESPONSIBILITY FOR INSPECTION

Notwithstanding the requirements for any Authority inspection and test contained in Specifications applicable to this Contract, except where specialized inspections or tests are specified for performance solely by the Authority, the Contractor shall perform or have performed the inspections and tests required to substantiate that the supplies and services provided under the Contract conform to the Drawings, Specifications and Contract requirements.

34. RETENTION OF DOCUMENTS

Except where this Contract specifically requires otherwise, the Contractor shall retain for a period of three (3) years from final payment, all research and supporting documentation, work papers and other documents, whether written or electronic, used in the performance of services for this Contract.

35. RIGHTS IN TECHNICAL DATA

- (a) The Authority shall have the right to use, duplicate, or disclose technical data, which includes computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or 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 which were prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data; e.g., specification control drawings,

- catalog sheets, outline drawing; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software);
- (3) Other technical data which has been, or is normally furnished without restriction by the Contractor or subcontractor; or
 - (4) Other specifically described technical data which the parties have agreed will be furnished without restriction.
- (b) The Authority shall have the right to use, duplicate, or disclose technical data other than that defined in paragraph (a) in whole or in part, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be
- (1) Released or disclosed in whole or in part outside the Authority;
 - (2) Used in whole or in part by the Authority for manufacture; or
 - (3) Used by a party other than the Authority except for emergency repair or overhaul work only, by or for the Authority where the item or process concerned is not otherwise reasonably available to enable timely performance of the work; provided, that the release or disclosure thereof outside the Authority shall be made subject to a prohibition against further use, release or disclosure.
- (c) Technical data provided in accordance with the provisions of paragraph (b) shall be identified by a legend which suitably recites the aforesaid limitation. Nothing herein shall impair the right of the Authority to use similar or identical data acquired from other sources.
- (d) The term technical data as used in this clause means technical writing, computer software, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether or not copyrighted, which are specified to be delivered pursuant to this Contract. The term does not include financial reports, cost analyses, and other information incidental to Contract administration. Computer software as used in this clause means computer programs, computer data bases, and documentation thereof.
- (e) Material covered by copyright:
- (1) The Contractor agrees to and does hereby grant to the Authority, and to its officers, agents and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Authority purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all technical data now or hereafter covered by copyright.
 - (2) No such copyrighted matter shall be included in technical data furnished hereunder without the written permission of the copyright owner for the Authority to use such copyrighted matter in the manner above described.
 - (3) The Contractor shall report to the Authority (or higher-tier contractor) promptly and in reasonable written detail each notice or claim of copyright infringement received by the Contractor with respect to any technical data delivered hereunder.

- (f) 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.
- (g) Any dispute under this clause article shall be subject to the Disputes clause of this contract.
- (h) Notwithstanding any other payment provision in this contract, the Contracting Officer may retain from payment up to 10 percent of the contract price until final delivery and acceptance of the technical data defined in this clause and as required to be furnished by the bid schedule or the contract specification.

36. ROYALTY INFORMATION

- (a) When the response to this solicitation contains costs or charges for royalties totaling more than \$250, the following information shall be furnished with the offer, proposal, or quotation on each separate item of royalty or license fee:
 - (1) Name and address of licensor;
 - (2) Date of license agreement;
 - (3) Patent numbers, patent application serial numbers or other basis on which the royalty is payable;
 - (4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
 - (5) Percentage or dollar rate of royalty per unit;
 - (6) Unit price or Contract item;
 - (7) Number of units; and
 - (8) Total dollar amount of royalties.
- (b) In addition, if specifically requested by the Contracting Officer prior to execution of the Contract, a copy of the current license agreement and identification of applicable claims of specific patents shall be furnished.

37. 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.

38. SENSITIVE SECURITY INFORMATION

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

39. STOP WORK ORDER

- (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 called for by this Contract for a period of 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 issued under this clause. Upon receipt of the order, 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 order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either:
 - (1) Cancel the stop work order; or
 - (2) Terminate the work covered by such order as provided in the DEFAULT or TERMINATION FOR CONVENIENCE OF THE AUTHORITY clauses of this Contract.
- (b) If a stop work order issued under this clause is cancelled or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment shall be made in the delivery schedule or Contract price, or both, and the Contract modified in writing accordingly, if:
 - (1) The stop work order 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 asserts a claim for such adjustment within 30 days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify such action, he may receive and act upon any such claim submitted at any time before final payment under this Contract.
- (c) If a stop work order is not cancelled and the work covered by the order is terminated for the convenience of the Authority, the Contracting Officer shall allow reasonable costs resulting from the stop work order shall be allowed in arriving at the termination settlement.
- (d) If a stop work order is not cancelled and the work covering by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

40. SUBCONTRACTOR COST AND PRICING DATA-PRICE ADJUSTMENTS

- (a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this Contract which involves a price adjustment in excess of \$100,000. The requirements of this clause shall be limited to such price adjustments.
- (b) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances:
 - (1) Prior to award of any cost-reimbursement type, incentive, or price re-determinable subcontract;

- (2) Prior to the award of any subcontract the price of which is expected to exceed \$100,000; and
 - (3) Prior to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed \$100,000; except in the case of (b)(2) or (3) where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.
- (c) The Contractor shall require subcontractors to certify that to the best of their knowledge and belief, the cost and pricing data submitted under paragraph (b) of this clause, is accurate, complete, and current as of the date of execution, which date shall be as close as possible to the date of agreement on the negotiated price of the Contract modification.
- (d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract which exceeds \$100,000.

41. SUBCONTRACTOR PAYMENTS

- (a) The Contractor shall, under this contract, establish procedures to ensure timely payment of amounts due pursuant to the terms of its subcontracts. The Contractor shall pay each subcontractor for satisfactory performance of its contract, or any billable portion thereof, no later than ten (10) days from the date of the Contractor's receipt of payment from the Authority for work by that subcontractor. The Contractor shall also release, within ten (10) days of satisfactory completion of all work required by the subcontractor, any retention withheld from the subcontractor.
- (b) The Contractor shall certify on each payment request to the Authority that payment has been or will be made to all subcontractors in accordance with paragraph (a) above for previous payments by the Authority to the Contractor. The Contractor shall notify the Contracting Officer or other delegated Authority representative with each payment request, of any situation in which scheduled subcontractor payments have not been made.
- (c) If a subcontractor alleges that the Contractor has failed to comply with this provision, the Contractor agrees to support any Authority investigation, and, if deemed appropriate by the Authority, to consent to remedial measures to ensure subcontractor payment that is due.
- (d) The Contractor agrees that the Authority may provide appropriate information to interested subcontractors who want to determine the status of Authority payments to the Contractor.
- (c) Nothing in this provision is intended to create a contractual obligation between the Authority and any subcontractor or to alter or affect traditional concepts of privity of contract between all parties.

42. TERMINATION FOR CONVENIENCE OF THE AUTHORITY

- (a) The Authority may terminate performance of work under this Contract in whole, or from time to time, in part, if the Contracting Officer determines that a termination is in the Authority's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

- (b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delays in determining or adjusting any amounts due under the clause:
- (1) Stop work as specified in the Notice of Termination;
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract;
 - (3) Terminate all subcontracts to the extent that they relate to the work terminated;
 - (4) Assign to the Authority, as directed by the Contracting Officer, all right(s), title, and interest of the Contractor under the subcontracts terminated, in which case the Authority shall have the right to settle or pay any termination settlement proposal arising out of those terminations;
 - (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for all the purposes of this clause;
 - (6) As directed by the Contracting Officer, transfer title and deliver to the Authority:
 - (i) The fabricated or un-fabricated 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, if the Contract had been completed, would be required to be furnished to the Authority.
 - (7) Complete performance of the work not terminated;
 - (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 possession of the Contractor 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)(6) of this clause; provided, however, that the Contractor (a) is not required to extend credit to any purchaser and (b) 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 directed by the Contracting Officer.
- (c) The Contractor shall submit complete termination inventory schedules not later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within the 120-day period.

- (d) After expiration of the plant clearance period (as defined in Subpart 49.001 of the Federal Acquisition Regulation), the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Authority to remove those items or enter into an agreement for their storage. Within 15 days thereafter, the Authority will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted upon after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the contractor because of the termination and shall pay the amount determined.
- (f) Subject to paragraph (e) this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in paragraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payment previously made and (2) the contract of price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause does not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:
 - (1) The contract price for completed supplies or services accepted by the Authority (or sold or acquired under paragraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.
 - (2) The total of:
 - (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to items compensated or to be paid for under paragraph (g)(1) of this clause;
 - (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not excluded in subsection (g)(2)(i) of this clause; and

- (iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer pursuant to Section 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the Contracting Officer shall allow no profit under this subsection (g)(2)(iii) and reduce the settlement to reflect the indicated rate of loss.
- (3) The reasonable costs of settlement of the work terminated, including:
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (h) Except for normal spoilage, and except to the extent that the Authority expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Authority or to a buyer.
- (i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
- (j) The Contractor shall have the right of appeal, under the DISPUTES clause, from any determination made by the Contracting Officer under paragraph (e), (g) or (1) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (1) respectively, and failed to request a time extension, there is no right of appeal.
- (k) In arriving at the amount due the Contractor under this clause, there shall be deducted:
 - (1) All un-liquidated advances or other payments to the Contractor under the terminated portion of the Contract;
 - (2) Any claim which the Authority has against the Contractor under this contract; and
 - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things procured by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Authority.
- (l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the Contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

- (m) (1) The Authority may, under such terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the Contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the contractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Authority upon demand, together with interest computed at the rate established by the Secretary of Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of circumstances.
- (n) Unless otherwise provided in this Contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for three (3) years after final settlement. This includes all books and other evidence bearing on the costs and expenses of the Contractor under this Contract. The Contractor shall make these records and documents available to the Authority, its governing jurisdictions and any other federal, state, or local entities providing funding for this Contract, and to the Comptroller General of the United States, or the agents or representatives of any of them, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproduction may be maintained instead of original records and documents. This requirement shall be passed through to all subcontractors whose compensation is included in the termination settlement.

43. TITLE

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 formal acceptance, regardless of when or where the Authority takes physical possession. The risk of loss remains with the Contractor until the transfer of title.

44. VARIATION IN QUANTITY (SUPPLIES)

No variation in the quantity of any item called for by this Contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this Contract.

45. WALSH-HEALEY PUBLIC CONTRACTS ACT

If this Contract is for the manufacture or furnishing of materials, supplies, or equipment in an amount which exceeds or 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 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the 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 regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped worker may be employed at less than the prescribed minimum wage (see 41 CFR 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).

PART II, SECTION 2 - SPECIAL PROVISIONS

PART II, SECTION 2 - SPECIAL PROVISIONS

1. PERIOD OF PERFORMANCE

The period of performance is a two year base period with three one year options..

2. OPTION QUANTITIES

- a. The Authority has the unilateral right to extend the contract by exercising the option or options (as applicable) subject to all terms and conditions herein.
- b. The Authority may exercise the option(s) (if any) by written notice to the Contractor prior to commencement of the option period; provided, that the Authority shall give the contractor a preliminary notice of its intent to extend at least 30 days before the contract expires. The preliminary notice does not commit the Authority to an extension.

3. AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR – NOT APPLICABLE

Funds are not presently available for performance under this contract beyond the fiscal year which ends June 30, 2011. 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. No legal liability on the part of the Authority for any payment may arise for performance under this contract until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing, by the Contracting Officer. Any option exercised by the Authority which will be performed in whole or in part in a subsequent fiscal year is subject to availability of funds in the subsequent fiscal year is subject to availability of funds in the subsequent fiscal year and will be governed by the terms of this Article.

4. PRICING

Prices on the Bid Schedule Sheets submitted must include all associated costs, including but not limited to, travel, markups, overhead, and profit.

5. PAYMENT TERMS

- a. Discounts for prompt payment will be considered in the evaluation of offers. Any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the Offeror.
- b. Partial payments are authorized upon receipt of supplies or services, acceptance by the COTR, and a properly executed invoice.

6. BILLING AND PAYMENT -

- a. Payment will be made after receipt of a properly completed invoice. Mail original and one copy of all invoices to Office of Accounting, WMATA, 6th Floor, 600 Fifth Street, NW, Washington DC 20001. Also mail one copy of each invoice to the Contracting Officer's Technical Representative (COTR).

- b. Invoices shall contain the following information: date, contract and order number (if any), item numbers, description of supplies or services, sizes, quantities, unit prices, and extended totals. Final invoices must clearly be marked "FINAL" and cite the amount of the contract, amount previously paid, and the balance due.

7. POINT OF CONTACT

All inquiries are to be directed to:

Washington Metropolitan Area Transit Authority
Attn: R. Kelly
e-mail: RKelly@wmata.com.

8. F.O.B. DESTINATION

- a. The term "f.o.b. destination," as used in this clause, means:
 - 1. Free of expense to WMATA on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and
 - 2. Supplies shall be delivered to the destination consignee's warehouse unloading platform, or receiving dock, at the expense of the Contractor. WMATA shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of WMATA acting in its contractual capacity. If the Contractor uses rail carrier or freight forwarder for less than carload shipments, the Contractor shall assure that the carrier will furnish tailgate delivery if transfer to truck is required to complete delivery to consignee.

- b. The Contractor shall:
 - 1. Pack and mark the shipment to comply with contract specification;
 - 2. In the absence of specifications, prepare the shipment in conformance with carrier requirements;
 - 3. Prepare and distribute commercial bills of lading;
 - 4. Deliver the shipment in good order and condition to the point of delivery specified in the contract;
 - 5. Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;
 - 6. Furnish a delivery schedule and designate the mode of delivering carrier; and
 - 7. Pay and bear all charges to the specified point of delivery.

9. CONTRACTOR PERSONNEL

- a. The Contractor shall replace employees who the Authority judges to be incompetent, careless, unsuitable or otherwise objectionable, or whose continued use is deemed contrary to the best interests of the program. The reason for replacement will be discussed between the Contractor and the Authority before a replacement request is issued. Upon receipt of a written request from the Authority, the Contractor shall proceed with the replacement unless the Contractor is able to demonstrate that the Authority's request is unreasonable. The replacement request will include the desired replacement date and the reason for the request. The Contractor shall effect the replacement in a manner that does not impact quality, cost or schedule.
- b. Contractor personnel required to work on WMATA property must obtain a WMATA vendors badge and successfully complete the mandatory safety training which must be renewed yearly. To obtain a vendors badge a signed waiver to perform a background check will be required.

10. PRE-EMPLOYMENT CRIMINAL BACKGROUND CHECK REQUIREMENT

Criminal background checks of all contractor employees working at a WMATA facility on this contract will be required. Eligibility for access to WMATA property will be based on WMATA's pre-employment Criminal Background Check criteria. WMATA will provide the contractor employees with background check consent forms that the contractor employees must complete and sign. The forms will require the contractor employees to appear in person, provide their full legal names, including middle initials if applicable, as well as their Social Security numbers, in addition to other information that will be necessary to conduct the background checks. The operating hours are Monday through Friday from 7:30AM - 3:30PM except holidays. Upon receipt of the completed, signed forms, WMATA will conduct background checks including criminal court searches and Social Security Number verifications of the contractor employees. If there is derogatory information that would disqualify a contractor employee from receiving a badge to access WMATA property, the Contractor and its contractor employee will be notified that the background check failed. The completed forms are secured in a locked file cabinet and are destroyed one year after the expiration date on the contractor employee's badge. These background checks are expected to take one (1) business day for processing, so the contractor employee must allow sufficient time for completion. The background check is free of charge.

Background checks are conducted to promote a safe work environment and to protect our company's most important assets: the people we serve and the people with whom we serve. This enables WMATA management in making prudent decisions and maintaining a high quality workforce. Contractor employees who successfully complete the background checks are eligible to enter WMATA property once they are issued a contractor badge. On the other hand, contractor employees who do not authorize background checks or whose background checks are unsatisfactory will not be granted contractor badges or access to WMATA property. The records generated by these background checks that contain private information will not be disclosed unless disclosure is required under the PARP/Privacy Policies.

11. MOST FAVORED CUSTOMER

The Contractor shall voluntarily provide the Authority with the benefits of any more favorable terms it has, or negotiates, with any organization or facility whose circumstances and operations are substantially the same as those of the Authority.

12. CONDITIONS AFFECTING THE WORK

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and extent of the work, and the general and local conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve the Contractor from responsibility for successfully performing work without additional expense to the Authority. The Authority assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations are expressly stated in the Contract.

13. INDEMNIFICATION:

1. Contractor shall, and Contractor shall contractually require its subcontractors, if any, to indemnify, defend and hold harmless WMATA, its directors, officers, 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 WMATA, occurring in connection with, or in any way arising out of the use, occupancy and performance of the work and/or any acts in connection with activities to be performed under this contract, unless the loss or damage is due to the sole negligence of WMATA. Nothing in the preceding sentence shall be deemed to relieve Contractor from ultimate liability for any obligation of Contractor under this Contract.
2. Contractor shall, and Contractor shall contractually require its subcontractors, if any, to indemnify, defend and hold harmless WMATA 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.
3. If any action or proceeding relating to the indemnification required is brought against WMATA, then upon written notice from WMATA to the Contractor, the Contractor shall, at the Contractor's expense, resist or defend such action or proceeding by counsel approved by WMATA 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. WMATA reserves the right to use its own counsel under this indemnity at Contractor's sole cost and expense.
4. Contractor understands and agrees that it is Contractor's responsibility to provide indemnification to WMATA 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.

14. INSURANCE - GENERAL PROVISIONS

Contractor shall procure, at its sole cost and expense, and shall maintain in force at all times during the term of this Contract, including the Warranty Period if applicable, the insurance outlined in the section below. All insurance companies must have an A.M. Best rating of "A-/VII" or better and be approved by WMATA. All required insurance policies must

1. Be written in accordance with the requirements as applicable;
2. Be endorsed to include a provision that the policy shall not be canceled, materially changed, or nonrenewed without at least thirty (30) days prior written notice to WMATA's Office of Insurance;
3. State or be endorsed to provide that the coverage afforded under Contractor's policies shall apply on a primary basis and not on an excess or contributing basis with any policies that may be available to WMATA, and
4. Have self-insurance retentions or policy deductibles no greater than \$100,000, unless approved in writing by WMATA, whose approval shall not be unreasonably withheld.

The insurance limits required herein may be met through Contractor's primary and umbrella/excess policies. Policies must be written on an occurrence basis; a claims made basis is not acceptable, except for Professional Liability.

Contractor shall require each subcontractor, at all tiers, to provide evidence of insurance coverage specified herein and such evidence of coverage shall be provided to WMATA, or Contractor may, at its option, provide the coverage for any or all subcontractors, provided the evidence of insurance submitted by Contractor to WMATA so stipulates.

Contractor shall furnish evidence of all required insurance prior to the start of any work on WMATA property. Certificates of insurance (COI) and all applicable endorsements may be submitted to WMATA in lieu of copies of insurance policies; if Railroad Protective Liability insurance and/or Builder's Risk insurance is required, the entire insurance policy must be sent to WMATA. However, WMATA reserves the right to request copies of policies of any required insurance as denoted below. If requested by WMATA, the Contractor shall deliver to WMATA within thirty (30) days of the request, a copy of such policies, certified by the insurance carrier as being true and complete.

COIs shall 1) disclose any deductible, sublimit, self-insured retention, aggregate limit or any exclusions to the policy that materially change the coverage; 2) show WMATA as an additional insured for Commercial General Liability and Automobile Liability; 3) reference the contract number, and 4) expressly reference the inclusion of all required endorsements. All endorsements must include policy numbers.

At least two (2) weeks prior to the expiration of the policies, Contractor shall provide renewal COIs and all applicable endorsements to WMATA, with terms and limits no less favorable than the expiring insurance policies.

Evidence of insurance coverage – insurance certificates and endorsements (and the complete Railroad Protective Liability policy, if applicable) – stating the work to be performed shall be submitted to WMATA at least ten (10) business days prior to commencement of operations and from time to time at WMATA's request. Contractor shall not be allowed to proceed until the evidence of insurance has been received and approved in writing by WMATA. All evidence of insurance shall be sent to:

Washington Metropolitan Area Transit Authority
Office of Procurement, File Room 3C-04

600 5th Street, NW
Washington, DC 20001

With a copy to:

Washington Metropolitan Area Transit Authority
Office of Insurance, Room 8F
600 5th Street, NW
Washington, DC 20001

Required Insurance

1 Commercial General Liability Insurance with minimum limits of \$5,000,000 per occurrence/aggregate, written on an occurrence form. If the required minimum limits can only be met when applying an umbrella/excess liability policy, the umbrella/excess liability policy must follow form of the underlying policy and be extended to “drop down” to become primary in the event the primary limits are reduced or aggregate limits are exhausted. The coverage shall include:

- Contractual liability
- Personal and advertising injury liability
- Products and completed operations liability
- Independent contractors liability
- XCU coverage (explosion, collapse, and underground hazards)
- Additional Insured Endorsement naming WMATA

2 Workers’ Compensation Insurance meeting the statutory requirements of the jurisdiction where the work will be performed, including Employer’s Liability coverage with minimum limits of \$1,000,000 each accident or disease.

3 Crime Insurance with minimum limits of \$5,000,000 per claim. The policy must include:

1. Employee dishonesty coverage;
2. Theft insurance coverage, inside and outside; and
3. Client Property Endorsement.

15. LAWS AND REGULATIONS

Each Offeror shall be responsible to fully inform themselves of the requirements for and to comply with any applicable State of Maryland, Commonwealth of Virginia, District of Columbia, Federal and jurisdictional laws and regulations governing the service to be provided under the contract. Further, each contractor shall be responsible to obtain, at its own cost and expense, any and all licenses/permits required to transact business in any political jurisdictions to be serviced.

16. FEDERAL/LOCAL/STATE SALES TAX

- a. Pursuant to Article XVI., Paragraph 78., of the Washington Area Metropolitan Transit Authority Compact, as adopted by the State of Maryland, the District of Columbia, and the Commonwealth of Virginia, with the authorization and consent of the Congress of the United States, the Authority has been accorded exemption from taxes as follows:

“the Authority and the Board shall not be required to pay taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession or supervision, or upon its activities in the operation and maintenance of any transit facility or upon any revenues therefrom, and the property and income derived therefrom shall be exempted from all Federal, State, District of Columbia, municipal, and local taxation. This exemption shall include without limitation, all motor vehicle license fees, sales taxes and motor fuel taxes.”

- b. It has been the practice of the District of Columbia to apply the Authority’s tax exempt status to certain purchases of materials required under Authority construction contracts and acquired by Contractor for physical incorporation into the project work. This has not been the practice in either Maryland or Virginia. The Authority does not represent or warrant that the District of Columbia practice applies to this project or, if it does, that it will continue in effect during the term of this project. It is the responsibility of the Contractor to determine its liability for any and all taxes applicable to this project. Assessment or payment of taxes by the Contractor, including taxes resulting from changes in existing laws or the application thereof or of new or additional taxes, shall not constitute the basis for an increase in the Contract price, except as otherwise allowed under Section 00779, FEDERAL, STATE AND LOCAL TAX.
- c. By submission of its proposal, the proposer certifies that none of the taxes as to which the Authority is exempt are included in its proposal price(s) or the final Contract Price. In the event that the Authority learns that any taxes to which the Authority is exempt are included in the final Contract Price, 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.

17. CONTRACTING OFFICER’S TECHNICAL REPRESENTATIVE (COTR)

- a. The work will be conducted under the general direction of the Contracting Officer. Authority will be delegated to the Contracting Officer's Technical Representative (COTR) to take the following actions;
 - (1) Act as the principal point of contact with the contractor. Submit a copy of each item of incoming correspondence and a copy of any enclosures shall also be submitted to the Contract Administrator;
 - (2) Approve in writing the contractor’s progress schedule and submittals when required;
 - (3) Inspect the work for compliance with the contract;
 - (4) Review and approve invoices and payment estimates. Forward invoices and receipts to accounting. Bring to the attention of the Contracting Officer any significant discrepancies in, or disputes concerning, contractor invoices of payments. In those cases requiring release of final retained percentages of payment, the COTR will make his recommendations in writing to the Contracting Officer;

- (5) Coordinate correspondence with the Contract Administrator if its importance significantly impacts the contractual terms and obligations;
 - (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 the Contracting Officer whenever the COTR has reason to believe that the contractual not-to-exceed amount will be exceeded;
 - (9) Prepare the Authority estimate for Proposed Contract Modifications. Participate in negotiations of modifications;
 - (10) Approve, in writing, the contractor's progress schedule when required.
 - (11) Receive from the contractor, monthly, if applicable, DBE status reports and forward them to the Office of Civil Rights (CIVR);
 - (12) Maintain a comprehensive file record of documents and correspondence concerning contract activities and actions;
 - (13) Provide the Contract Administrator with a written notification after all supplies/services have been received with a statement that the COTR is not aware of any open issues that would preclude closeout of the contract and that the contract is ready for closeout. Return the file, containing all records, correspondence, etc., to the Contract Administrator;
 - (14) Execute Standard Form 1420, which contains a detailed performance evaluation of the contractor. Note that if, there is one or more categories in which the contractor is deemed unsatisfactory, these evaluations must be provided to the contractor for comment; and
 - (15) Provide the Contract Administrator with a written request (and requisition) to exercise option(s) (if any) a minimum of 90 days prior to the time established in the contract for exercise of the option.
- b. There are certain actions which are reserved for only the Contracting Officer. They are:
- (1) Approval of contract modification proposals and/or other unilateral actions.
 - (2) Issuance of written orders to stop and/or resume work under Article 10, "Stop Work Orders", of the General Provisions.
 - (3) Negotiation with the Contractor for adjustment of contract price and/or time.
 - (4) The COTR is not authorized to render final decision under the DISPUTES article of the General Provisions.
 - (5) The COTR is not authorized to issue Termination Notices pursuant to the terms of this contract.

- c. The presence or absence of the COTR or his inspectors shall not relieve the Contractor from any requirements of the contract.

18. 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 material 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 which involve exposure to hazardous materials or items containing these materials.
- b. "Hazardous material," as used in this clause, is as defined in Federal Standard No. 313B, in effect on the date of this contract.
- c. Neither the requirements of this clause nor any act or failure to act by the Authority shall relieve the Contractor of any responsibility or liability for the safety of Authority, Contractor, or subcontractor 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 obtaining of licenses and permits) in connection with hazardous material.
- e. The Authority's rights in data furnished under this contract with respect to hazardous material 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 to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous material (ii) obtain medical treatment for those affected by the material; 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 clause of this contract providing for rights in data.
 - (3) That the Authority is not precluded from using similar or identical data acquired from other sources.
 - (4) That 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 clause applies -

"This is furnished under Authority Contract No. and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of This legend shall be marked on any reproduction of this data."
(End of legend)
 - (5) That the Contractor shall not place the legend or any other restrictive legend on any data which (i) the Contractor or any subcontractor previously delivered to the Authority without limitations or (ii) should be delivered without

limitations under the conditions specified in the clause Rights in Technical Data.

- 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 material.

19. ORGANIZATIONAL CONFLICT OF INTEREST

Unless specifically exempted from the conditions of this provision by the Contracting Officer, any Authority contractor, subcontractor, subsidiary, or other entity which is legally related and which develops or drafts specifications, requirements, statements of work, invitation for bids, will be excluded from competing for the directly ensuing procurement.

20. RIGHTS IN TECHNICAL DATA - UNLIMITED

[This article, when used, supersedes General Provision Article No. 24, "Rights in Technical Data"].

- a. The Authority or any third party designated by the Authority to assist it in the administration of this contract or the inspection or verification of the product produced under this contract, shall have the right to use, duplicate or disclose technical data, which includes computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or 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 which were prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data; e.g., specification control drawings, catalog sheets, outline drawing; except for the computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software);
 3. Other technical data which has been, or is normally furnished without restriction by the Contractor or subcontractor;
 4. Other specifically described technical data which the parties have agreed will be furnished without restriction;
 5. All computer software regardless of whether it is technical data as defined in this Article 25, including the source code, algorithm, process, formulae, and flow charts, which is developed or materially modified by the Contractor for the Authority or for which the Authority is required by federal law or regulation to provide a royalty-free, irrevocable and nonexclusive license to the federal government.
- b. The Authority shall have the right to use, duplicate, or disclose technical data other than that defined in paragraph a. in whole or in part, with the express limitation that

such technical data shall not, without the written permission of the party furnishing such technical data, be

1. Released or disclosed in whole or in part outside the Authority,
 2. Used in whole or in part by the Authority for manufacture, 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 the work, or (iii) administration of this contract or the inspection or verification of the product 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 subsection, the release or disclosure outside of the Authority shall be subject to a written prohibition against further use, release or disclosure by the party receiving the technical data.
- c. Technical data provided in accordance with the provisions of paragraph b. shall be identified by a legend which suitably recites the aforesaid limitation. Nothing herein shall impair the right of the Authority to use similar or identical data acquired from other sources.
- d. Where any item is purchased as a separate line item in the contract, that purchase includes all integral parts of that item, including any computer software, source codes, algorithms, processes, formulae, and flow charts. As such, the Authority has full rights to use, duplicate or disclose any or all parts of the item, including computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or 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 certifies in writing that the item is commercially available from multiple sources and the product from any of those sources will be fully compatible with existing Authority property.
- e. The term technical data as used in this article means technical writing, computer software, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether or not copyrighted, which are specified to be delivered pursuant to this Contract. The term does not include financial reports, cost analyses, and other information incidental to Contract administration. Computer software as used in this article means computer programs, computer data bases, and documentation thereof.
- f. Material covered by copyright:
- (1) The Contractor agrees to and does hereby grant to the Authority, and to its officers, agents and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Authority purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all (i) technical data and (ii) computer software covered by Article 25.a.(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 Article 25.a.(5) furnished hereunder without

the written permission of the copyright owner for the Authority to use such copyrighted matter in the manner above described.

- (3) The Contractor shall report to the Authority (or higher-tier contractor) promptly and in reasonable written detail each notice or claim of copyright infringement received by the Contractor with respect to any (i) technical data or (ii) computer software covered by Article 25.a.(5) provided to the Authority.
- g. Relation to patents: Nothing contained in this article shall imply a license to the Authority under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Authority under any patent.
- h. Any dispute under this article shall be subject to the Disputes article of this contract.
- i. Notwithstanding any other payment provision in this contract, the Contracting Officer may retain from payment up to 10 percent of the contract price until final delivery and acceptance of the technical data defined in this article and as required to be furnished by the bid schedule or the contract specification.

21. SITE VISIT/INSPECTION

Offeror must provide and maintain sufficient facilities that will allow them to adequately perform contract functions as specified herewith. WMATA may make site visits prior to contract award to examine the contractor's facilities. Facilities(s) must demonstrate that Offeror has the capability to perform the work described in the Scope of Services.

22. GARNISHMENT OF PAYMENTS

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

23. GOVERNING LAW

This contract shall be deemed to be an agreement under and shall be governed by the law of the District of Columbia, exclusive of its conflict of law principles, and the common law of the U.S. Federal contracts including precedents of the Federal Boards of Contract Appeals.

24. 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 in which the work is being performed, as well as the METRO Construction Safety Methods Manual (1984 et. seq.) issued by the Authority, and the Department of Labor OSHA standards pertaining to the safe performance of the work. In the absence of a specific Construction Industry Standard, the Contractor would be 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 Methods Manual, or the Metrorail Safety Rules and Procedures Handbook. For contracts in which work is performed on, or interfaces with the Metrorail System, the Contractor shall also comply with the publication titled Metrorail Safety Rules and Procedures Handbook. Further, the Contractor shall ensure that all methods of performing the work do not involve danger to the personnel employed thereon, the public and private property, whether or not these methods are cited or indicated in the Contract documents. Should charges of violation of any of the above be issued to the Contractor in the course of the work, a copy of each charge shall be immediately forwarded to the Authority Representative.

- b. The contractor shall employ and assign full time to the work a Safety Superintendent. The Safety Superintendent shall have specialized training and experience in construction safety supervision and have a working knowledge of all OSHA regulations. He shall have the ability to develop and conduct safety training courses. He 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 work and the property affected thereby. The Safety Superintendent shall also be responsible for providing first aid at the site and must have a current Red Cross First Aid Certificate. If, at any time, the work site is without the services of an approved Safety Superintendent for a period of 15 calendar days or more, the work may be closed down at the discretion of the Contracting Officer. The Safety Superintendent must be acceptable to the Contracting Officer and his performance will be reviewed by the Contracting Officer 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 permission of the Contracting Officer.
- 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, OAPs, SOPs and General and Special Orders while on the operational railroad and all Start-Up Rules and Manager's Notices when in a declared start-up area.

25. LIVING WAGE

This contract is subject to the Authority's Living Wage Policy and implementing regulations. The Living Wage provision is required in all contracts for services (including construction) awarded in an amount that exceeds \$100,000 in a 12-month period.

- a. The Authority Living Wage Rate is \$12.81 per hour, and may be reduced by the contractor's per-employee cost for health insurance.
- b. The Contractor shall:
 - (1) Pay, at a minimum, the Authority Living Wage Rate, effective during the time the work is performed, to all employees who perform work under this contract, except as otherwise provided in paragraph (d) below;
 - (2) Include the Living Wage clause in all subcontractors that exceed \$15,000 in a 12-month period awarded under this contract;

- (3) Maintain payroll records, in accordance with the retention and examination of records requirements in the General Provisions, and shall include a similar provision in affected subcontracts that requires the subcontractor to maintain its payroll records for the same length of time; and
 - (4) Submit records with each monthly invoice supporting payment of the Living Wage Rate.
- c. The Contractor shall not split or subdivide a contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor to avoid compliance with the Living Wage provisions.
- d. Exemptions to the Living Wage provisions include:
- (1) Contracts and agreements with higher negotiated wage rates,
 - (2) Contracts that are subject to higher wage rates required by federal law or collective bargaining agreements (e.g., Davis Bacon);
 - (3) Contracts or agreements for regulated utilities;
 - (4) Emergency services to prevent or respond to a disaster or imminent threat to public health and safety; and
 - (5) Contractors who employ fewer than ten (10) employees.
- e. The Authority may adjust the Living Wage rate effective in January of each year. The adjustment will reflect the average Living Wage Rate among Metro's Compact Jurisdictions with Living Wage provisions. If after contract award the Living Wage Rate increases, the Contractor is entitled to an equitable adjustment to the rate in the amount of the increase for employees who are affected by the escalated wage.
- f. Failure to comply with the Authority's Living Wage provisions shall result in the Authority's right to exercise available contract remedies, including contract termination or debarment from future contracts.

26. METRIC SYSTEM

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

27. WHISTLE BLOWER PROVISION:

The Contractor and all sub-contractors are prohibited from discharging, demoting or otherwise discriminating against an employee as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, information that the employee reasonably believes is evidence of reports of fraud, waste, gross mismanagement, abuse of authority, violations of law and threats to health, safety and security.

(a) Under the National Transit Systems Security Act (NTSSA), 6 U.S.C. §1142, employees of Metro contractors or subcontractors may file a complaint of discrimination with the U.S. Department of Labor, for lawfully and in good faith:

- (1) reporting a hazardous safety or security condition;
- (2) refusing to work when a hazardous safety or security condition presents an imminent danger of death or serious injury; there is no reasonable alternative to refusal; there is not sufficient time to eliminate the danger in absence of refusal; and the individual, where possible, has notified the Metro contractor or subcontractor of the condition and of the intent to not perform work;
- (3) refusing to authorize the use of any safety or security related equipment, track or structures, if the individual is responsible for their inspection or repair and reasonably believes they are in a hazardous safety or security condition; there is no reasonable alternative to refusal; there is not sufficient time to eliminate the danger in absence of refusal; and the individual, where possible, has notified the Metro contractor or subcontractor of the condition and of the intent not to authorize use of hazardous equipment or infrastructure unless corrected;
- (4) providing information for or directly assisting in an investigation of conduct that the individual reasonably believes to be in violation of Federal law regarding safety, security or fraud, waste or abuse of funds intended for safety or security;
- (5) refusing to violate or assist in violation of Federal safety or security law;
- (6) cooperating with a safety or security investigation by the U.S. Secretary of Transportation, U.S. Secretary of Homeland Security or the National Transportation Safety Board;
- (7) furnishing information to law enforcement agencies relating to an accident or incident resulting in damage to property, injury or death; or
- (8) filing a complaint under the NTSSA or testifying regarding such complaint.

(b) Under the American Recovery and Reinvestment Act (ARRA), Public Law 111-5, § 1553, employees of Metro contractors or subcontractors may file a complaint of discrimination with the Inspector General of the appropriate federal agency for reporting to supervisors and other authorized individuals and agencies evidence that the individual reasonably believes demonstrates:

- (1) gross mismanagement of an ARRA project;
- (2) gross waste of ARRA funds;

- (3) a substantial and specific danger to public health and safety related to an ARRA project;
- (4) violation of law relating to ARRA funds or an ARRA project; or
- (5) abuse of authority related to the implementation of ARRA funds.

(c) The Contractor shall be required to post a notice of the rights and remedies provided to employees under Section 1553 of the American Recovery and Reinvestment Act of 2009. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Covered Funds. The notice must substantially comply with the sample notice which may be downloaded at: <http://www.recovery.gov/sites/default/files/Whistleblower + Poster.pdf>.

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PART III - TECHNICAL SPECIFICATIONS

**SPECIFICATIONS AND SCOPE OF SERVICES
FOR
PURCHASE CARD SERVICES**

1. BACKGROUND

The Washington Metropolitan Area Transit Authority (WMATA) operates the second largest rail transit system and the sixth largest bus network in the United States. "America's Transit System" is an interstate compact agency and instrumentality of the District of Columbia, State of Maryland and Commonwealth of Virginia, established to provide comprehensive mass transit service to the Washington metropolitan area. To support the operations of WMATA, the Office of Procurement and Materials (PRMT), Department of Finance Services, has developed a Purchase Card Program to augment the procurement function.

The Purchase Card Program facilitates the purchase of low cost, commercially available equipment, supplies and services by delegating authority to various department employees to use the card within the controls and policies of the program and WMATA. Currently there are over 260 Cardholders with over 30,000 annual transactions averaging around \$500 per transaction. The program is dynamic and continually seeking process improvement and expansion.

2. CONTRACTOR RESPONSIBILITIES:

a. Issuance: WMATA's Purchase Card Administrator(s) (PCA) or designee shall determine to whom cards will be issued. The Offeror will not issue any card without the written approval of the PCA. For a new implementation, WMATA will provide a list of names and appropriate data for the mass issuance of cards. Otherwise, the WMATA PCA will use an online secure application process sent directly to the Offeror. All maintenance of the cards will be PCA driven either online or through the customer service representative of the Offeror. Cards will be mailed directly to the PCA for issuance to the employee.

b. List of Cardholder Accounts: The Offeror shall not sell, offer, provide or otherwise distribute WMATA's list of Cardholders. This information is to remain confidential between the financial institution and WMATA.

c. Card Design: Most Metro purchase cards will have at a minimum, the following information on the card:

- 1) The phrase "For Official Use Only" shall be prominently printed on the face of the card.
- 2) The phrase "Tax Exempt" along with the tax exempt numbers of the compact jurisdictions (State of Maryland, Federal, District of Columbia and Commonwealth of Virginia) will be printed on the face of the card.

- 3) A toll-free customer service number for Cardholders to determine information on declined transactions.
- 4) The WMATA logo will be embossed on the face of the card.
- 5) The Expiration Date and Valid From Date (when it was issued)
- 6) Types of cards to be proposed:
 - a) **Purchase Card:** These cards would have the Cardholders First and Last Name; their four digit Department Code; and the words: Purchase Card Only on the front of the card.
 - b) **Travel Card:** These cards would have Travel Card Only embossed on the front of the card, along with the Department Name and four-digit department code
 - c) **One Card:** These cards would have the Cardholder First and Last Name; their four-digit Department Code; and the words: WMATA One Card on the front of the card.
 - d) **Ghost Card (Supplier Card):** These virtual cards, actually account numbers only, would be assigned to a specific supplier and used as a payment mechanism for contracted items.
 - e) **One Card Technology Solution:** Offeror should present a simple approach to a “one card does all’ solution with enhanced reporting capabilities specific to each distinctive use.
- d. **Controls:** All of the WMATA cards will have embedded electronic controls that serve to protect the best interests of WMATA. The following are the minimum controls embedded in the cards, but the Offeror’s proposal should not be limited to these requirements.
 - 1) A single-transaction limit which can be changed individually by either the Purchase Card Administrator or the financial institution.
 - 2) A monthly-spend limit which can be changed individually by either the Purchase Card Administrator or the financial institution.
 - 3) A restriction so that the card cannot be used for cash advances or any ATM transaction.
 - 4) A restriction to the types of services and products which vendors can provide using the card. That would amount to a Merchant Category Code (MCC) restriction profile, which could be managed by either the Purchase Card Administrator or the financial institution.
- e. **Training:** The Offeror will focus on training first the Purchase Card Administrators and subsequently the Cardholder community on the full and effective use of the program. This training would be in three forms: a customized online version; a customized PowerPoint version and a customized hardcopy document for both PCAs and program participants.
 - 1) **Implementation Training:** The Offeror shall provide a plan that encompasses the number of days from contract award to the beginning of training, specifies the customized content of the training piece, identifies the Contractor’s training personnel, and produces the customized hard copy documents that can be used for hard copy reference.

- 2) **PCA Training:** The Offeror shall provide adequate training to the Purchase Card Administrators within two weeks of the award of the contract and at the discretion of the PCAs. Adequate training is such that upon completion, the PCAs have a thorough working knowledge of the operation and capabilities of the card management system, for the Purchase Card, the Travel Card, One Card and Commercial Card. This entails all aspects of the system from card creation/maintenance through providing ad hoc reports.
- 3) **PCA/ACCT Training:** This training for ghost card processing (the no-plastic, electronic accounts payable system specific to authorized vendors) will involve both the PCAs and the staff from Accounting (ACCT). Adequate training is such that upon completion, the PCAs and ACCT staff have a thorough working knowledge of the operation and best practice processes to enable payments with ghost cards as well as normal procurement cards. This training includes production of all possible ad hoc reports.
- 4) **All-Encompassing Training:** The Offeror shall provide customized and formalized training for any systems offered in the contract.

f. **Customer Support:** WMATA will require the Offeror's dedicated customer support in the management and maintenance of all the different programs. Among the basic levels of support for Metro will be the following:

- 1) Twenty-four (24) hours, seven days a week toll-free assistance from customer service personnel familiar with the WMATA account.
- 2) Ability of customer support to change Metro MCC profiles when a PCA calls from a remote location, especially during the time frame mentioned.
- 3) Ability of the Offeror's help-desk personnel to assist in maintenance matters or report generation, requiring Offeror's full working knowledge of all report generating tools.
- 4) Knowledge by customer support of the proper WMATA protocol when WMATA Cardholders call for action on declined transactions or other circumstances regarding the effective use of their card.
- 5) In the event where a PCA cannot perform the function of card maintenance and requires the help of customer support, the request must be performed within three (3) hours of the time of request.
- 6) Offeror must provide a structured program to work in collaboration with the card platform provider on the recruitment of suppliers to Level III reporting to the WMATA. WMATA requires Level III reporting of line item detail for strategic planning and more effective operations.
- 7) Offeror must provide a clear program as to the effective use of a ghost card in terms of coordination and implementation with the suppliers selected for the ghost card payment option.

g. **Financial Institution's Management Team Support:** The Offeror will conduct quarterly reviews of the program, giving updates on spend activity, effectiveness of use of implemented programs, and progress on anticipated rebate payments.

1) The Offeror's Management Team will be named and dedicated to the Metro account and available for requested meetings within reasonable time frames (within seven business days).

2) The Offeror's Management Team will be responsible for providing a report requested by a PCA which may not be within the standard list of reports available from the Offeror's online card management system. Requested reports will be provided within seven maximum business days.

h. Fraud, Disputes and Account Liability: The Offeror shall propose detailed methods and protocol for handling questions regarding fraudulent and disputed charges on a statement. The Offeror shall provide to the Cardholder and the PCA a formal document containing an explanation of the status/outcome of the dispute.

WMATA will not be liable for any fraudulent or disputed charges incurred on any card or payment mechanism. If the Offeror proposes liability to the Metro, each level of liability should be clearly listed (e.g. individual Cardholder's liability and amount; Metro as an entity's liability and amount) showing caps and limits to any liability.

The Offeror will present whatever time frames are required for dispute reporting and resolution. In other words, how much time can elapse before WMATA can report fraudulent or disputed activity and resolution by the financial institution can be brought to bear against said activity.

The Offeror will provide a best practice solution to the effective monitoring and detection of fraudulent activity.

i. Lost or Stolen Cards: It is the responsibility of WMATA to report to the financial institution immediately of any lost or stolen cards. The Offeror must propose the most effective means of mitigating risk of fraud or abuse through lost or stolen cards, create a means of documentation, and replace the card (within 72 hours of the report). All replacement cards must be sent directly to the Metro PCA. No card should ever be sent directly to the cardholder.

j. Business Cycle: The Offeror shall provide sets of dates applicable to various proposed business cycles for billing purposes. WMATA's current billing cycle runs from the 28th thru the 27th of the next month.

k. Late charges: There will be no late charges for payments outside of the normal payment cycle.

l. Billing: The Master Invoice for the month should be provided electronically within 48 hours of the close of the billing cycle. This billing will be a summary of the transactions for that billing cycle, sorted by type of card, and listing the debits, credits, and payments, fraudulent or disputed charges. The Offeror shall provide a sample document (a hard copy of the electronic version requested). The sample bill shall be based on a faux customer with different types of cards for review as part of the Offeror's proposal.

Billing for the ghost card must reference a purchase order number or contract number with the particular supplier(s). The Offeror should provide their best practice approach to ghost card billing.

m. Transaction Reconciliation

WMATA uses PeopleSoft financials as the financial management system, including accounts payable. Offeror should have the capability of providing daily transaction feeds into PeopleSoft, in addition to the monthly summary statement, for all transactions including ghost card purchases, through automated processes that can be fed directly into PeopleSoft. Transaction details should include any and all level III data.

It is envisioned that transaction reconciliation for all point-of-sale transactions will be done in PeopleSoft or a WMATA custom application. Offeror should also have the ability to provide an on-line application for transaction reconciliation that uses WMATA's account codes and distributions.

All ghost card transactions will need to be sent through a separate automated data feed for both daily transactions and monthly summary statement.

n. Data Reporting: WMATA requires the ability to create, generate and run data reports, in addition to Offeror-provided reports. These reports can be either scheduled or run as an ad hoc report. As referred to in section f. and g., Metro expects full support from either the Offeror's help desk or the Offeror's Management Team in the successful creation of data reports. Metro values data mining capabilities not only as an effective means of fraud detection but also for determination of the most effective use of resources.

o. Implementation Plan/Schedule: The Offeror must submit a plan/schedule which spells out the tasks and time frames in project management fashion for the effective transition to whatever programs will be implemented. There must be a formal project management schedule.

p. Innovative Programs and Program Enhancement: The Offeror shall offer programs that optimize efficiencies and revenue potential. Currently, WMATA only uses a purchase card, but the intentions of this program is to utilize available programs which will increase efficiencies and optimize revenue.

q. Audit Tools: The Offeror shall provide an online dedicated program whereby the PCAs can monitor effectively any attempts at fraud or abuse. This tool should be structured for automated notification of possible fraud based on the specific policies and procedures of the Purchase Card Program.

r. Deliverables: At a minimum, the Offeror must provide the following:

- i. an online card management system
- ii. training for PCAs and end users on their card management system and when deemed necessary by the PCAs
- iii. cards provided per Metro specifications and delivered within a week from the point of order
- iv. monthly activity reports that are generated by the financial institution which represent current and accurate data as to Metro's activity and progress with the contract

- v. an online auditing tool which is customized in conjunction with Purchase Card Program policies and procedures
- vi a monthly rebate check
- vii. ability to transmit data electronically for daily transactions and monthly statements
- viii. provide level III data in transaction files sent to WMATA

s. Payment Schedule: The Offeror will propose any rebate, discounted financing, share of processing fees or other revenue sharing programs available to the WMATA. The Offeror must present this information in a concise yet fully explanatory format, showing examples of how rebates, discounts, etc. would be formulated. The Offeror is to provide detail on any other revenue sharing platforms (i.e. bonuses; growth incentives).

On a monthly frequency, the Offeror is to provide a rebate check, either by wire transfer or check made out to the WMATA, Office of the Treasurer. Spend volume rebates should be based on a minimum of \$10 million and show rebate basis points on an escalating scale.

At a minimum, the Offeror is to propose the rebate basis points or payment program relative to these two criteria; 1) frequency of payments (every 5 days, 10 days, 15 days, etc.) from Metro to the financial institution, and 2) spend volume activity.

t. Value added services

Offeror should outline any value added services that they can provide to Metro and their benefits to enhance the purchase card / ghost card program, including any one-stop portals for end-to-end reconciliation