



REQUEST FOR PROPOSALS

Washington
Metropolitan
Area
Transit
Authority

RFP NO. CQ11242/KB

January 17, 2011

Safety Engineering Services

PROPOSAL DUE DATE: January 27, 2011

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
(WMATA)**

DATE: January 17, 2011

SUBJECT: RFP CQ11242/KB
Safety Engineering Services

The Washington Metropolitan Area Transit Authority (WMATA) requests proposals for a Basic Ordering Agreement to provide Safety Engineering Services required by the Department of System Safety & Environmental Management in its effort to strengthen and establish a safety culture that is well defined, sustainable and documented through its processes, policies, and documentation.

Proposals must be received as stated in RFP CQ11242 no later than **10:00 A.M. on January 27, 2011 via e-mail or delivered at 600 Fifth Street N.W. Room 301-H, Washington, D.C. 20001.**

Proposers must note that WMATA intends to award this contract in early February, 2011, and we expect the winning proposer must start work immediately. **This is a mandatory requirement.**

WMATA looks forward to receiving your submittal and appreciates your participation in this RFP for the procurement of Consultant Services. Please direct all questions concerning contractual matters to the Contract Manager, Kunj Behari at (202) 962-1516 or kbehari@wmata.com.

Sincerely,

Kevin A. Green

Kevin. A. Green
Contracting Officer

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, signed, and submitted as specified below:

- Solicitation, Offer, and Award Form (Volume I)
- Acknowledgement of Amendments (Volume I)
- Schedule of Unit Prices (Volume I)
- Representations and Certifications (Volume I)
- Washington Metropolitan Council of Governments Rider Clause (Volume I)
- Pre-Award Data (Volume I)
- Certificate of Insurance (provide upon request)

- Technical Proposal (Volume II)

Failure to submit any portion of these requirements as specified may cause your proposal to be considered non-responsive and subsequently rejected.

All references to 'days' in the RFP shall be considered 'calendar days' unless otherwise stated.

DIRECTIONS FOR SUBMITTING OFFER

Email response followed by a hard copy within 5 days is preferred. Email your proposal and related documents to Kunj Behari at: kbehari@wmata.com

Packages containing proposals and related required documents must be sealed, marked and addressed as follows:

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
ATTN: Kunj Behari
OFFICE OF PROCUREMENT AND MATERIALS
ROOM #301-H
600 FIFTH STREET, N.W.
WASHINGTON, DC 20001

OFFER UNDER SOLICITATION RFP #CQ11242/KB

ALL PROPOSAL ENCLOSURES SHOULD ADEQUATELY IDENTIFY THE OFFEROR AND THE SOLICITATION NUMBER.

PROPOSALS SHALL BE TIMELY MAILED OR HAND DELIVERED TO REACH WMATA BEFORE 10:00 A.M. (LOCAL TIME) ON THE PROPOSAL DUE DATE. PROPOSALS HAND CARRIED BETWEEN 8:00AM AND 10:00AM SHOULD BE PRESENTED TO THE RECEPTIONIST ON THE LOBBY LEVEL. QUESTIONS CONCERNING THIS RFP OR THE INVITATION FOR PROPOSAL MAY BE DIRECTED TO:

**Kunj Behari
Contract Manager
(202) 962-1516
kbehari@wmata.com**

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT

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WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SOLICITATION, OFFER AND AWARD

CONTRACT NO. CQ11242	SOLICITATION NO. RFP CQ11242/Kb ☒ ADVERTISED ☒ NEGOTIATED	DATE ISSUED 01/17/11	ADDRESS OFFER TO DEPT. OF PROCUREMENT The Office of Procurement 600 Fifth Street, NW, Room 301-H Washington, DC 20001-2651
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In advertised procurement, "offeror" shall be construed to mean "bid" and "bidder."

SOLICITATION

Sealed offer in one original and Three (3) copies as specified herein for furnishing the supplies or services in the schedules will be received at the Authority until **10:00 A.M.** local time **01/27/11.** **E-mail responses followed by hard copies are preferred**
(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.

FOR INFORMATION CALL (No collect calls) Kunj Behari (202) 962-1516, e-mail: kbehari@wmata.com.

Offeror's Phone: _____

Offeror's E-mail: _____

SCHEDULE					
ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	Safety Engineering Services (See continuation of schedule on page 2)	See Price Schedule Sheet			

DUN & BRADSTREET ID NUMBER: _____

OFFEROR

Name and Address (Street, city, county, state, and zip code) ☐ Check if remittance is different from above -- enter such address in Schedule	Name and Title of Person Authorized to Sign Offer (Print or Type) 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 AREA TRANSIT
AUTHORITY

AWARD DATE

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SOLICITATION, OFFER AND AWARD

CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED: RFP CQ11242/KB	DATE:	PAGE: 2	OF: 2
NAME OF OFFEROR OR CONTRACTOR:			

SCHEDULE					
ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	See "Price Schedule Sheet" in Part I - Schedule and Supporting Solicitation Forms				

THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF THE FOLLOWING AMENDMENTS

TO SOLICITATION RFP CQ11242/KB, Contract No. CQ11242

Amendment Number _____

Dated _____

Amendment Number _____

Dated _____

Amendment Number _____

Dated _____

Amendment Number _____

Dated _____

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

**METROPOLITAN AREA TRANSIT AUTHORITY
SOLICITATION, OFFER AND AWARD
CONTINUATION SHEET**

SCHEDULE OF UNIT PRICES

NOTE: Authority at its discretion may or may not issue any all of the Typical Tasks listed in the Scope Services. Billing Rate shall be fully loaded hourly rate including all overhead, general and administrative charges and profit. Detailed resume of the staff proposed shall be provided as part of the Technical Proposal.

Travel cost shall be pre-approved by the Contracting Officer's Technical Representative (COTR) shall be charged in accordance with the U. S. General Services Administration (GSA) rate schedule

<u>Task</u>	<u>Labor Category</u>	<u>Proposed Staff</u>	<u>Hours</u>	<u>Billing Rate</u>	<u>Extended Price</u>
Task 1	Program Manager				
	Senior Safety Consultant				
	Safety Consultant				
	Senior Engineer				
	Staff Engineer				
	Safety Technician				
	Other - Specify				
		SubTotal			
Task 2	Program Manager				
	Senior Safety Consultant				
	Safety Consultant				
	Senior Engineer				
	Staff Engineer				
	Safety Technician				
	Other - Specify				
		SubTotal			

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<u>Task</u>	<u>Labor Category</u>	<u>Proposed Staff</u>	<u>Hours</u>	<u>Billing Rate</u>	<u>Extended Price</u>
Task 3	Program Manager				
	Senior Safety Consultant				
	Safety Consultant				
	Senior Engineer				
	Staff Engineer				
	Safety Technician				
	Other - Specify				
		SubTotal			
Task 4	Program Manager				
	Senior Safety Consultant				
	Safety Consultant				
	Senior Engineer				
	Staff Engineer				
	Safety Technician				
	Other - Specify				
			SubTotal		
Task 5	Program Manager				
	Senior Safety Consultant				
	Safety Consultant				
	Senior Engineer				
	Staff Engineer				
	Safety Technician				
	Other - Specify				
			SubTotal		
Task 6	Program Manager				
	Senior Safety Consultant				
	Safety Consultant				
	Senior Engineer				

<u>Task</u>	<u>Labor Category</u>	<u>Proposed Staff</u>	<u>Hours</u>	<u>Billing Rate</u>	<u>Extended Price</u>
	Staff Engineer				
	Safety Technician				
	Other - Specify				
Task 7					
	Program Manager				
	Senior Safety Consultant				
	Safety Consultant				
	Senior Engineer				
	Staff Engineer				
	Safety Technician				
	Other - Specify				
Task 8					
	Program Manager				
	Senior Safety Consultant				
	Safety Consultant				
	Senior Engineer				
	Staff Engineer				
	Safety Technician				
	Other - Specify				
Task 9					
	Program Manager				
	Senior Safety Consultant				
	Safety Consultant				
	Senior Engineer				
	Staff Engineer				
	Safety Technician				
	Other - Specify				

<u>Task</u>	<u>Labor Category</u>	<u>Proposed Staff</u>	<u>Hours</u>	<u>Billing Rate</u>	<u>Extended Price</u>
Task 10		SubTotal			
	Program Manager				
	Senior Safety Consultant				
	Safety Consultant				
	Senior Engineer				
	Staff Engineer				
	Safety Technician				
	Other - Specify				
Task 11		SubTotal			
	Program Manager				
	Senior Safety Consultant				
	Safety Consultant				
	Senior Engineer				
	Staff Engineer				
	Safety Technician				
	Other - Specify				
Task 12		SubTotal			
	Program Manager				
	Senior Safety Consultant				
	Safety Consultant				
	Senior Engineer				
	Staff Engineer				
	Safety Technician				
	Other - Specify				
		SubTotal			
		Grand Total			

ATTACHMENT II

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 (RC-101, MAY 07)

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 (RC-102, MAY 07)

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 (RC-106, MAY 07)

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 (RC-107, MAY 07)

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

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- (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 (RC-110, MAY 07)

- (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 (RC-112, MAY 07)

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.

SIGNATURE BLOCK FOR ALL REPRESENTATIONS AND CERTIFICATIONS

Name of Offeror:	_____		
Name and Title of Authorized Representative:	_____		
	Print and Sign Name		
	_____	_____	_____
	Title	Date	

(RC-115, MAY 07)

ATTACHMENT III

**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 and Addresses 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 current contracts, which demonstrates your proficiency, each with contract amount, name of contracting party, type of work and percentage of completion.
8. Attached as SCHEDULE TWO a list of similar contracts, each with contract amount, name of contracting party, and character or type of work for similar contract completed in the last two (2) years.
9. In the last two (2) years, have you ever been denied an award where you were low bidder/offer? _____

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

10. Have you ever failed to complete any contract, other than current, on which you were the low bidder? _____
- (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. Source 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 the work (contract amount) do you intend performing with your own personnel? _____ %
14. Attach as SCHEDULE 15a 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 Invitation for Bid.
15. If the Contractor or subcontractor is a joint venture, submit PRE-AWARD EVALUATION DATA form for each member of the joint venture.

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

The undersigned certifies to the accuracy of all information.

COMPANY: _____
SIGNATURE: _____
TITLE: _____
DATED: _____
LOCATION: _____

AWARD SCHEDULE CONTINUED FROM AWARD FORM:

(To be completed at Award)

TERM OF THE CONTRACT: The term of this contract shall be for a period of one (1) year from date of contract award with three (3) one (1) year options at the sole discretion of the Authority.

TYPE OF CONTRACT: The Authority will make a single award for all line items in the Price Schedule resulting from this solicitation, unless specified elsewhere, on an **indefinite delivery-task order basis**.

LEVEL OF EFFORT: This is a firm fixed price level of effort contract for supplies and services at **fixed billing rate** including all expenses.

AVAILABILITY OF FUNDS: Funding for this service is: _____ .

At the time of contract award funds are expected to be available.

CONTRACT: In accordance with the solicitation documents, Contract CQ11242 incorporates the following:

RFP CQ11242/KB dated January 17, 2011 (inclusive of Solicitation Instructions, Representations and Certifications, General Provisions, Special Provisions, Technical Specification and Amendments).

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PART I

SOLICITATION INSTRUCTIONS

AND

RELATED FORMS

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT RFP CQ11242/KB

SOLICITATION INSTRUCTIONS

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SOLICITATION INSTRUCTIONS

1. Definitions

Unless otherwise defined, the following definitions apply:

“Clarifications” are limited exchanges, between the Authority and offerors, where offerors may be given the opportunity to clarify certain aspects of their proposals or to resolve minor irregularities, informalities or clerical errors.

“Descriptive literature” means information provided by an offeror, such as cuts, illustrations, drawings, and brochures, which shows a product's characteristics or construction of a product or explains its operation. The term includes only that information needed to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

“Discussions” are negotiations that may occur after receipt of proposals (generally after establishment of the competitive range) and before award that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

“Excluded Parties List System” means an electronic database maintained and posted by the General Services Administration containing the list of all parties suspended, proposed for debarment, debarred, declared ineligible, or excluded or disqualified under the nonprocurement common rule by agencies, Government corporations, or by the Government Accountability Office.

“In writing,” “writing,” or “written” means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

“May” denotes the permissive. However, the words “no person may...” mean that no person is required, authorized, or permitted to do the act described.

“Must” (see “shall”).

“Offer” means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called “bids” or “sealed bids”; responses to requests for proposals (negotiation) are offers called “proposals”; however, responses to requests for quotations (simplified acquisition) are “quotations,” not offers.

“Offeror” and “proposer” are synonymous and refer to the entity that submits an offer in response to this solicitation.

“Option” means a unilateral right in a contract by which, for a specified time, the

Authority may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

“Organizational conflict of interest” means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Authority, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

“Preaward survey” means an evaluation of a prospective contractor’s capability to perform a proposed contract.

“Proposal modification” is a change made to a proposal before the solicitation’s closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

“Proposal revision” is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer typically as a result of discussions.

“Shall” means the imperative.

“Should” means an expected course of action or policy that is to be followed unless inappropriate for a particular circumstance.

“Will” (see “shall”).

2. Preparation of Offers

- a. Offerors are expected to examine the drawings, specifications, Schedule, appendices, exhibits, referenced material, and all instructions. Failure to do so will be at the offeror's risk.
- b. Each offeror shall furnish the information required by the solicitation. The offeror shall sign the solicitation and print or type his name on the Schedule and each Continuation Sheet thereof on which he makes any entry. 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 his authority, unless such evidence has been previously furnished to the issuing office.
- c. Unit price for each unit offered shall be shown and such price shall include packing and delivery, unless otherwise specified. A total shall be entered in the Amount column of the Schedule for each item offered. In case of a discrepancy between a unit price and extended price, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.
- d. Offers for supplies or services other than those specified will not be considered

unless authorized by the solicitation.

- e. Offeror must state a definite time for delivery of supplies or for performance of services unless otherwise specified in the solicitation.
- f. 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 drawings, specifications, etc., must be requested in writing and received by the date stated in the Solicitation Schedule. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all prospective 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 prospective offerors.

4. 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 Acknowledgment of Amendments Form (Continuation Sheet to the Solicitation Offer and Award Form), (c) by letter or telegram, or (d) by facsimile, if facsimile offers are authorized in the solicitation. Such acknowledgment must be received prior to the hour and date specified for receipt of offers. If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

5. 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. Offerors may submit electronic proposals as responses to this solicitation followed by hard copy within 5 days of electronic submittal.
 - 1. As used in herein, "electronic proposal" means a proposal, revision or modification of a proposal, or withdrawal of a proposal that is transmitted to and received by the Authority via e-mail.
 - 2. Electronic proposals are subject to the same rules as paper proposals.
 - 3. Electronic proposals are to be submitted to the e-mail address specified in Solicitation and Award Form.

4. If any portion of an electronic proposal received by the Contracting Officer is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document—
 - (1) The Contracting Officer immediately shall notify the offeror and permit the offeror to resubmit the proposal;
 - (2) The method and time for resubmission shall be prescribed by the Contracting Officer after consultation with the offeror; and
 - (3) The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complies with the time and format requirements for resubmission prescribed by the Contracting Officer.
5. The Authority reserves the right to make award solely on the electronic proposal. However, if requested to do so by the Contracting Officer, the apparently successful offeror promptly shall submit the complete original signed proposal.

6. Late Submissions, Modifications, and Withdrawals of Offers

- a. Offerors are responsible for submitting proposals, and any modifications or revisions, so as to reach the Authority by the time specified in the solicitation.
- b. Any proposal, modification, or revision received at the Authority after the exact time specified for receipt is “late” and will not be considered unless it is received before award is made, and—
 - (1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Authority infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or
 - (2) There is acceptable evidence to establish that it was received at the Authority and was under the Authority's control prior to the time set for receipt of offers; or
 - (3) It is the only proposal received.
- c. A late modification of an otherwise successful proposal that makes its terms more favorable to the Authority, will be considered at any time it is received and may be accepted.
- d. The Authority may in its sole discretion accept a late proposal in instances where it is clear that the proposal left the hands of the offeror before the time set for receipt and acceptance of the late proposal will not delay the procurement or

prejudice the other offerors.

- e. Offerors are advised that the Authority utilizes entry security screening methods and should plan accordingly.

7. Offer Expiration Date

- a. Proposals in response to this solicitation will be valid for **90** calendar days from the most recent proposal due date established by the Authority.
- b. Offerors may submit modifications to their proposals at any time before the solicitation closing date and time.
- c. Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.
- d. Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

8. Contract Award

- a. The Authority intends to award a contract resulting from this solicitation to the responsible offeror whose proposal represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.
- b. The Authority may reject any or all proposals if such action is in the Authority's interest.
- c. The Authority may waive informalities and minor irregularities in proposals received.
- d. The Authority intends to establish a competitive range of the most highly rated proposals with a reasonable chance of contract award before entering into discussions. The Authority in its sole discretion reserves the right to limit the number of proposals in the competitive range to permit an efficient competition. If an offeror's proposal is eliminated or otherwise removed from the competitive range, no further revisions to that offeror's proposal shall be accepted or considered.
- e. The Authority intends to evaluate proposals and award a contract after conducting discussions with offerors whose proposals have been determined to be within the competitive range.
- f. The Authority reserves the right to award a contract based on the initial proposals received without discussions or any contact with the offerors. Therefore, the offeror's initial proposal should contain the offeror's best terms from a price and technical standpoint.

- g. The Authority reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.
- h. The Authority may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Authority or if the unbalance is so large as to be tantamount to allowing an advance payment.
- i. If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.
- j. A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.
- k. Offerors may submit proposals that depart from stated requirements. Such proposals shall clearly identify why the acceptance of the proposal would be advantageous to the Authority. Any deviations from the terms and conditions of the solicitation, as well as the comparative advantage to the Authority, shall be clearly identified and explicitly defined in a separate listing. Deviations must be approved in writing by the Authority before award and it will be the offeror's responsibility to obtain any and all approvals. The Authority reserves the right to amend the solicitation to allow all offerors an opportunity to submit revised proposals based on the revised requirements. Should the Authority decline to approve an identified deviation, the offeror may be provided a maximum five calendar days to modify its proposal in the same manner as a mistake. However, modifications that would require a substantial rewrite or be tantamount to allowing a proposal revision will not be allowed. Proposals with unapproved deviations will be rated in accordance with these Solicitation Instructions which may lead to proposal sections or the entire proposal being rated unsatisfactory which may further lead to the proposal being eliminated from competition. Failure by the offeror to clearly identify a deviation and obtain appropriate approval shall not relieve the offeror from complying with the terms and conditions of the solicitation.

9. Disadvantaged Business Enterprise (DBE) Requirements

Attached as part of this solicitation are documents outlining the requirements for the Disadvantaged Business Enterprise (DBE) Program:

If the offer is over \$100,000, and for the offeror to be considered responsible, the following documents (see Appendix B) shall be completed and submitted with the offer:

Schedule of DBE Participation (0% goal)

Page B-12

Letter of Intent to Perform as Subcontractor/Joint Venture

Page B-13 (If applicable)

DBE Unavailability Certification

Page B-14 (where applicable)

Written request for waiver when DBE participation is less than 25 percent

DBE Monthly Status Report, after award, to the COTR and a final report at contract completion if DBE participation is applicable.

The provisions of Appendix B (if attached) do not become applicable and forms do not have to be completed, unless the total offer is \$100,000 or more. If the offer is \$100,000 or more and any portion of the written requirement is omitted, then the offer may be found to be unacceptable and subsequently rejected. Appendix B forms and/or waivers must be completed with great care by each offeror to insure that the offer is acceptable.

10. Opportunity for Disadvantaged Business Enterprises to Propose

The Washington Metropolitan Area Transit Authority hereby notifies all offerors that it will affirmatively ensure that in regard to any contract entered into pursuant to this solicitation, disadvantaged minority business enterprises will be afforded full opportunity to submit offers in response to this solicitation and will not be discriminated against on the ground of race, color, or national origin in consideration for award.

11. Notice of Protest Policy

a. WMATA policy and procedure for the administrative resolution of protests is set forth in Chapter 20 of the Procurement Policy Manual (PPM) The PPM 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 4220.1 (latest version) addresses Bid Protests. Review of protests by FTA is discretionary and will be limited to specific identified actions:

A protester must exhaust all administrative remedies with the Authority before filing an appeal to the FTA. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester learned or should have learned of an adverse decision by the grantee of other basis of appeal to FTA.

c. Alleged violations 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.

12. Pre-Award Information

- a. The Contracting Officer may conduct a pre-award survey to determine if the offeror eligible for award is responsible. To be considered responsible, the offeror must meet the following general standards:
 - (1) Have adequate financial resources to perform the contract, or the ability to obtain them;
 - (2) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
 - (3) Have a satisfactory performance record;
 - (4) Have a satisfactory record of integrity and business ethics;
 - (5) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors);
 - (6) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and
 - (7) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.
- b. Accordingly, in order that an offer be fully considered, THE OFFEROR SHALL FURNISH THE FOLLOWING INFORMATION WITH ITS 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 three 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.

- (3) A brief history of the company emphasizing its services to the public
- (4) Evidence of insurability.
- c. Disadvantaged Business Enterprise copy of FTA approval of transit vehicle manufacture certification. (Not Applicable)
- d. Doubt as to an offeror's above qualifications may require a determination of non-responsibility by the Contracting Officer.

13. Proposal Requirements

- a. The technical proposal and the cost/price proposal shall be submitted in separate volumes. The Technical proposal shall not contain any cost/pricing information.
- b. Volume 1, Price Proposal: The offeror shall submit one original (unless otherwise stated) of the following as part of its cost/price proposal:
 - (1) Signed Solicitation, Offer and Award form (two originals);
 - (2) Completed Price Schedule;
 - (3) Completed and signed Representations and Certifications;
 - (4) Completed and signed Metropolitan Washington Council of Governments Rider Clause;
 - (5) Pre-Award Evaluation Data Form
 - (6) As applicable, completed and signed Appendix B DBE forms:
 - i. Schedule of DBE Participation (B-12) and
 - ii Letters of Intent to Perform as a Subcontractor (B-13); or
 - iii DBE Unavailability Certification (B-14).
- c. Volume 2, Technical Proposal:
 - (1) General - The offeror shall submit one original and four copies of its technical proposal. Each 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 requirements of the Authority.
 - (2) Approach - The technical proposal shall be so specific, detailed, and complete as to clearly and fully demonstrate that the prospective contractor has a thorough knowledge and understanding of the requirements and has valid and practical solutions for technical problems. 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. The proposal shall not contain superfluous material that is not

directly related to this procurement.

- (3) Organization of the Technical Proposal – The technical proposal shall consist of three (3) numbered sections, clearly separated from each other by index tabs. The title and number used to identify each section shall be consistent with each of the three sections as listed. All graphs, tables, resumes, or other pre-packaged technical documentation shall be included as enclosures or appendices to the proposal section to which they pertain. Each page shall be numbered.
- (4) Technical Proposal Arrangement – As a minimum, the proposal must clearly address the following three (3) sections:

Section I - Personnel

- a. Provide the proposed program organizational chart along with a description of the responsibilities of all parties shown thereon.
- b. Include resumes for the proposed personnel as specified in Part III (SCOPE OF SERVICES) of contract specification. Resumes should contain information on education, work history, experience within the rail industry with emphasis on Safety Engineering, accomplishments, and other pertinent qualifications. Each resume shall identify work experience within the transit industry in the United States of America.
- c. The project lead for each task shall be a certified professional registered engineer recognized by one or more states of the U.S. plus one or more of the following certifications:
 - i. Certified safety and security director (WSO-CSSD) recognized by Department of Transportation
 - ii. Certified security and safety specialists recognized by Department of Transportation
 - iii. Certified safety professionals (CSP) recognized by the Board of Certified Safety Professionals.
- d. Each individual working on the contract should have a minimum 10 years of demonstrable experience in the areas of transit safety and security, project management, value engineering, project controls management, safety and security certification, training, OSHA compliance, hazard analysis, accident investigations for public transit systems.

Section II – Corporate Experience and Past Performance

- a. Consulting firm must have a minimum 10 years of demonstrable experience in the

areas of transit safety and security, project management, value engineering, project controls management, safety and security certification, training, OSHA compliance, hazard analysis, accident investigations for public transit systems.

- b. Satisfactory record of past performance with other transit and governmental agencies and private industry in work of this type or similar. Provide names, contact persons, and telephone numbers for prior clients.

Section III – Technical Approach, Subcontractors and Quality Assurance

- a. Capability and capacity to perform work within required schedules and prices.
- b. Innovative alternative/methods/relationships/procedures to minimize cost and time expended on task orders. Consistent with this, discuss how the offeror plans to provide the personnel to perform the work under assigned task orders (i.e., personnel from local, regional, and/or home office locations).
- c. Subcontractor, if proposed, shall have a minimum of seven years corporate experience relevant to the particular areas of expertise for tasks the bidder proposes to use. Subcontractor personnel proposed for assignment tasks under this contract shall be identified and their qualifications relevant to their proposed work assignments shall be provided to the depth required in Section I above for contractor personnel.
- d. Submit the offerors current Quality Assurance Program for engineering and technical services. The Quality Assurance Program should be detailed and comprehensive, and shows how it can be effectively used and followed when applying it to the Authority's task orders.

14. Restriction on Disclosure and Use of Data

- a. The Authority shall provide all reasonable precautions to insure that proprietary, technical and pricing information remains within the review process except where otherwise ordered by an administrative or judicial body, as necessary to use in a judicial or administrative proceeding. Proposers shall attach to each page of any proprietary data submitted with the solicitation the following legend:

"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.

15. Award - Single Award for All Items

The Authority contemplates a single award for all line items in the Schedule resulting from this solicitation.

16. Basis for Award

This is a "Best Value" competitive negotiated procurement.

- a. Award will be made to that responsible offeror whose proposal provides the best overall value to the Authority. In the determination of the best value, other factors and price will be separately ranked, as defined in the section for Evaluation Criteria. For the purposes of this procurement, all evaluation factors, other than price, when combined, are more important than price.
- b. Therefore, the Authority may select other than the lowest priced offer. For evaluation purposes, as proposals become more technically equivalent, 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, initial offers should be submitted on the most favorable terms the offeror can submit to the Authority.
- d. Price Evaluation will be based on the total price to the Authority for the total base price plus the total option prices as stated in the Price Schedule.

17. Evaluation Criteria

- a. Each offeror's proposal will be evaluated against the following evaluation criteria, which are listed in descending order of importance (i.e., Personnel is more important than Corporate Experience/Past Experience, which is more important than Technical Approach/Subcontractors/Quality Assurance):

- (1) Personnel
- (2) Corporate Experience and Past Performance
- (3) Technical Approach, Subcontractors, and Quality Assurance

The evaluation criteria (Personnel, Corporate Experience/Past Experience, Technical Approach, Subcontractors, and Quality Assurance) are detailed in Article 13 (Proposal Requirements).

b. Proposals will be evaluated and rated as follows:

- (1) **Beneficially Exceeds** - The proposal is responsive beyond the minimum requirements of the RFP with no significant weaknesses (and only a few, if any, minor weaknesses) noted. Fulfilling the definition of Beneficially Exceeds indicates that, in terms of the specific factor, the proposal demonstrates a level-of-effort beyond that required by the RFP, and that this effort has, or could produce, results that should prove to be substantially beneficial to the Authority.
- (2) **Acceptable** - The proposal is adequately responsive with no major weaknesses noted. A rating of Acceptable indicates no exceptional features or innovations that could prove to be beneficial and/or only minor weaknesses to diminish the quality of the offeror's performance.
- (3) **Marginal** - The proposal fails to meet the evaluation standards; however, any significant deficiencies are considered correctable. A rating of Marginal indicates that corrective actions by the offeror which would improve the rating are attainable.
- (4) **Unacceptable** - The proposal is not adequately responsive or does not address the specific factor. The offeror's interpretation of the Authority's requirements is so superficial, incomplete, vague, not comprehensive, or incorrect as to be unsatisfactory. A rating of Unacceptable indicates that mandatory corrective action would be required to prevent significant weaknesses from affecting the overall contract effort. In essence a complete rewrite of that portion of the offeror's proposal that is unacceptable would be required.

c. Price

- (1) It is expected that this contract will be awarded upon a determination that there is adequate price competition; therefore, the offeror is not required to submit or certify cost or pricing data with its proposal. If, after receipt of the proposals, the Contracting Officer determines that adequate price competition does not exist in accordance with FAR 15.403, the offeror shall provide certified cost or pricing data as requested by the Contracting Officer.

18. Type of Contract

The Authority intends to award a Firm Fixed Price contract with options.

19. Pre-Proposal Conference (Not Applicable)

20. 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.

* * *

P A R T I I

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GENERAL PROVISIONS

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End General Provisions Index

PART II, SECTION 1 - GENERAL PROVISIONS

1. DEFINITIONS

(02/02/08)

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. "Authority Representative" if designated, is the person responsible for post award execution of an Authority contract in the most effective, economical, and timely manner. The Authority Representative is the Authority's primary point of contact with its Contractor. In addition, the Authority Representative is delegated authority to modify this Contract within specified dollar limits which are available upon request. The Authority may designate additional individuals, usually in the supervisory chain as the Authority Representative, who have dollar authority in excess of the Authority Representative's stated authority (see also definition of Contracting Officer). The Authority Representative may, at his or her discretion, delegate Project responsibilities to a Project Representative and certain other responsibilities to other designees. Unless the Contractor is directed to the contrary, all correspondence with respect to this Contract shall be sent to the Authority Representative.
- c. "Contracting Officer" means an employee within the Authority's Office of Procurement and Materials with authority duly delegated from the powers of the General Manager to legally bind the Authority by signing a contractual instrument. Contracting Officers have the authority to make related determinations and findings, and take other significant actions including, but not limited to: awards, changes, modifications, final payments, suspensions, terminations, debarments, assessment of liquidated damages, and issuances of final decisions. The term includes certain other representatives of the Authority acting within delegated limits of authority. In general, the Authority's primary point of contact for pre-award administration and fiscal closeout resides with the Contracting Officer, and the primary point of contact for the post-award contract administration may be either the Authority Representative or Contracting Officer's Technical Representative.
- d. "Contracting Officer's Technical Representative (COTR)" means a duly

appointed individual assigned to perform contract administration activities as may be specifically authorized in regard to technical issues. A COTR does not have the authority to enter into contractual agreements including changes or modifications.

- e. "FTA" means the U.S. Department of Transportation, Federal Transit Administration.
- f. "Project Representative" means the individual(s), including but not limited to the Resident Engineer, to whom the Authority Representative has delegated Project responsibilities. If a Project Representative is appointed, the Project Representative represents the Authority Representative on the Project within the limits of that delegation with respect to any part of the Work.
- g. Except as otherwise provided in this Contract, the term subcontracts includes purchase orders under this Contract.
- h. 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.

2. CHANGES

(Revised 09/14/94)

- a. The Contracting Officer may at any time, by a written order, and without notice to the sureties, 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.).
 - (3) Place of performance of the services.
 - (4) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Authority, in accordance with the drawings, designs, or specifications.
 - (5) Method of shipment or packing of supplies.
 - (6) Place of delivery.

- 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 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 article. However, nothing in this article shall excuse the Contractor from proceeding with the contract as changed.

3. EXTRAS

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

4. VARIATION IN QUANTITY

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.

5. INSPECTION

- a. Definition. "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 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. Except as otherwise provided in the contract, the Authority 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 reinspection 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 corrects or 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. 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 when Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract; and when the supplies will be ready for Authority inspection. 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 do 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 paragraph (l)(1) or (l)(2) of

this clause and does not cure such failure within a period of ten (10) calendar 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.

6. 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.

7. TITLE AND RISK OF LOSS

- a. Unless this Contract specifically provides for earlier passage of title, title to supplies covered by this Contract shall pass to the Authority upon formal acceptance, regardless of when or where the Authority takes physical possession.
- b.
 - (1) Unless this Contract specifically provides otherwise, risk of loss of or damage to supplies covered by this Contract shall remain with the Contractor until, and shall pass to the Authority upon:
 - (a) Delivery of the supplies to a carrier, if transportation is FOB origin;
 - (b) Acceptance by the Authority or delivery of possession of the supplies to the Authority at the destination specified in this Contract, whichever is later, if transportation is FOB destination.
 - (2) Notwithstanding b. (1) above, the risk of loss of or damage to supplies which so fail to conform to the Contract as to give a right of rejection shall remain with the Contractor until cure or acceptance, at which time (1) above shall apply.
- c. Notwithstanding b. above, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Authority acting within the scope of their employment.

8. PAYMENTS

- a. The Contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as specified.
- b. For those contracts which exceed \$100,000 and to which Appendix 'B' applies, the failure to perform in accordance with the said Appendix may result in partial or full suspension of payment and/or progress payments.
- c. If the Contractor meets his goal as required by Appendix 'B' of this contract titled Disadvantaged/Women Business Enterprise (DBE/WBE) or if the Contractor demonstrates that every reasonable effort has been made to meet its goal, the Contractor shall be presumed to be in compliance with said Appendix. But, if the Contracting Officer finds the Contractor not to be in compliance with said Appendix, the progress of the work shall also be deemed to be unsatisfactory and there shall be retained from payment (or progress payments) made to the Contractor pursuant to this Article of the General Provisions an amount equal to the DBE/WBE participation in the Contract. Additionally, if the Contractor fails to submit monthly DBE reports, the Contracting Officer may suspend payment (or progress payments) until such time as the monthly reports have been submitted and accepted by the Authority.

9. DELAY OF WORK

- a. If the performance of all or any part of the work is delayed or interrupted 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 by his failure 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 article for any delay or interruption
 - (1) to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or
 - (2) for which an adjustment is provided or excluded under any other provision of this Contract.
- b. No claim under this clause shall 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 such delay or interruption, but not later than the date of final payment under the Contract.

10. 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. Any such order shall be specifically identified as a STOP WORK ORDER issued pursuant to this article. Upon receipt of such an order, the Contractor shall forthwith 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 TERMINATION FOR CONVENIENCE article of this Contract.
- b. If a stop work order issued under this article 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 asserted at any time prior to final payment under this Contract.
- c. If a stop work order is not cancelled and the work covered by such order is terminated for the convenience of the Authority, the reasonable costs resulting from the stop work order shall be allowed in arriving at the termination

settlement.

11. DISPUTES

(Revised 11/22/00)

- 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 article, 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 finally deciding appeals to the same extent as could the Board of Directors.
- b. This DISPUTES article 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.

12. DEFAULT

- a. The Authority may, subject to the provisions of paragraph c. below, by written notice of default to the Contractor, terminate the whole or any part of this Contract in any one of the following circumstances:
 - (1) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or
 - (2) If the Contractor fails to perform any of the other provisions of this Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms, and in either of these two

circumstances 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.

- b. In the event the Authority terminates this Contract in whole or in part as provided in paragraph a. of this article, the Authority may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Authority for any excess costs for such similar supplies or services; provided, that the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this article.
- c. Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in its sovereign capacity or the Authority in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.
- d. If this Contract is terminated as provided in paragraph a. of this article, the Authority, in addition to any other rights provided in this article, may require the Contractor to transfer title and deliver to the Authority, in the manner and to the extent directed by the Contracting Officer,
 - (1) any completed supplies, and
 - (2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this Contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which the Authority has an interest. Payment for completed supplies delivered to and accepted by the Authority shall be at the Contract price. Payment for manufacturing materials delivered to and accepted by the Authority and for the

protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the DISPUTES article of this Contract. The Authority may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Authority against loss because of outstanding liens or claims of former lien holders.

- e. If, after notice of termination of this Contract under the provisions of article, it is determined for any reason that the Contractor was not in default under the provisions of this article, or that the default was excusable under the provisions of this article, the rights and obligations of the parties shall, if the Contract contains an article providing for termination for convenience of the Authority, be the same as if the notice of termination had been issued pursuant to such article. If, after notice of termination of this Contract under the provisions of this article, it is determined for any reason that the Contractor was not in default under the provisions of this article, and if this Contract does not contain an article providing for termination for convenience of the Authority, the Contract shall be equitably adjusted to compensate for such termination and the Contract modified accordingly; failure to agree to such adjustment shall be a dispute concerning a question of fact within the meaning of the DISPUTES article of this Contract.
- f. If the Contractor fails to deliver the supplies or perform the services within the time specified in this Contract, or any extension thereof, the actual damage to the Authority for the delay will be difficult or impossible to determine. Therefore in lieu of actual damages, the Contractor shall pay to the Authority as fixed, agreed and liquidated damages for each calendar day of delay, the amount set forth elsewhere in this Contract. Alternatively, the Authority may terminate this Contract in whole or in part as provided in paragraph a. of this article, and in that event the Contractor shall be liable, in addition to the excess costs provided in paragraph b. above, for such liquidated damages accruing until such time as the Authority may reasonably obtain delivery or performance of similar supplies or services. The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor, as defined in paragraph c. above, and in such event, subject to the DISPUTES article, the Contracting Officer shall ascertain the facts and extent of the delay and shall extend the time for performance of the contract when in his judgment the findings of fact justify an extension.
- g. The rights and remedies of the Authority provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- h. As used in paragraph c. of this clause, the terms subcontractor and

subcontractors mean subcontractor(s) at any tier.

13. TERMINATION FOR CONVENIENCE OF THE AUTHORITY

- a. The performance of work under this Contract may be terminated by the Authority in accordance with this article in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Authority. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.
- b. After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:
 - (1) Stop work under the Contract on the date and to the extent specified in the Notice of Termination;
 - (2) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the Contract which is not terminated;
 - (3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.
 - (4) Assign to the Authority, in the manner, at the time, and to the extent directed by the Contracting Officer, all of the rights, title, and interests of the Contractor under the orders and subcontracts so terminated, in which case the Authority shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
 - (5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this article;
 - (6) Transfer title to the Authority and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer:
 - (a) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work terminated by the Notice of Termination, and

- (b) the completed or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to the Authority;
 - (7) Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the type referred to in paragraph 6. above; provided, however, that the Contractor
 - (a) shall not be required to extend credit to any purchaser, and
 - (b) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer. And, provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Authority to the Contractor under this Contract or shall otherwise be credited to the price or cost of the work covered by the Contractor or paid in such other manner as the Contracting Officer may direct;
 - (8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
 - (9) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the Authority has or may acquire an interest.
- c. At any time after expiration of the plant clearance period, as defined in Subpart 45.6 of the Federal Acquisition Regulations (48 CFR 45.6), as the definition may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Authority to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, the Authority will accept title to such items and remove them or enter into a storage agreement covering the same. Provided, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items or, if the items are stored, within 45 days from the date of submittal of the list and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.
- d. After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form and with certification prescribed by the Contracting Officer. Such claims shall be submitted promptly but in no event later than one year from the effective date of termination, unless

one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such one-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this Contract, determine, on the basis of information available to him, the amount, if any, due the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

- e. Subject to the provisions of paragraph d., and subject to any review required by the contracting agency's procedures in effect as of the date of execution of this Contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this article, which amount or amounts may include a reasonable allowance for profit on work done. Provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph f. of this article, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this article, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph e.
- f. In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph e. upon the whole amount to be paid the Contractor by reason of the termination of work pursuant to this article, the Contracting Officer shall, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this Contract, determine, on the basis of information available to him, the amount if any, due the Contractor by reason of the termination and shall pay to the Contractor the amounts determined as follows:
 - (1) For completed supplies accepted by the Authority [or sold or acquired as provided in paragraph b. (7) above] and not theretofore paid for a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the Contract, appropriately adjusted for any saving of freight or other charges;
 - (2) The total of:

- (a) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies paid or to be paid for under paragraph f. (1) hereof;
 - (b) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph b. (5) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (a) above; and
 - (c) A sum, as profit on (a), above, determined by the Contracting Officer pursuant to Section 49.202 of the Federal Acquisition Regulations (48 CFR 49.202), in effect as of the date of execution of this contract, to be fair and reasonable. Provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subparagraph (d) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and
 - (3) The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this Contract.
 - (4) The total sum to be paid to the Contractor under (1) and (2) of this paragraph f. shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. Except for normal spoilage, and except to the extent that the Authority shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in f. (1) and (2) (a) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Authority, or to a buyer pursuant to paragraph b. (7).
- g. Costs claimed, agreed to, or determined pursuant to paragraphs d., e. and f. of

this article shall be in accordance with the applicable contract cost principles and procedures in Subpart 31.1 of the Federal Acquisition Regulations (48 CFR 31.1) in effect on the date of this Contract.

- h. The Contractor shall have the right to appeal, under the DISPUTES article of this Contract from any determination made by the Contracting Officer under paragraph d. or f. above, except that, if the Contractor has failed to submit his claim within the time provided in paragraph d. above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph d. or f. above, the Authority shall pay to the Contractor the following:
 - (1) if there is on right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer; or
 - (2) if an appeal has been taken, the amount finally determined on such appeal.
- i. In arriving at the amount due the Contractor under this article there shall be deducted
 - (1) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this Contract;
 - (2) any claim which the Authority may have against the Contractor in connection with this Contract; and
 - (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this article, and not otherwise recovered by or credited to the Authority.
- j. If the termination hereunder be partial, prior to the settlement of the terminated portion of this Contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.
- k. The Authority may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this article, such excess shall be payable by the

Contractor to the Authority upon demand, together with interest computed at the rate of six percent per annum for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Authority; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until 10 days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reasons of the circumstances.

- I. Unless otherwise provided for in this Contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under this Contract, shall preserve and make available to the Authority at all reasonable times at the office of the Contractor but without direct charge to the Authority, all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, micro photographs, or other authentic reproductions thereof.

14. 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 \$100 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 set for bid opening, or if this is a negotiated contract, the Contract date. As to additional supplies or services procured by modification to this Contract, the term Contract date means the date of such modification.
- f. Unless there does not exist any reasonable basis to sustain an exemption, the Authority upon the request of the Contractor shall, without further liability, furnish evidence appropriate to establish exemption from any 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.

**15. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME
COMPENSATION (01/15/04)**

Pursuant to Section 102 (Overtime):

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

Section 107 (OSHA):

Contract Work Hours and Safety Standards Act - (i) The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, " Safety and Health Regulations for Construction " 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii) **Subcontracts** - The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles

normally available on the open market.

16. WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)

If this Contract is for the manufacture or furnishing of materials, supplies, articles, 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).

17. 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 (WMATA) who has been involved, directly or indirectly, in any matter of financial interest to the Contractor until at least one 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 WMATA 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 full year after such officer or employee has left the employment of the Authority.
- c. The one year requirement described in a. and b. above may be waived at the discretion of the Contracting Officer if the WMATA 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 WMATA is eventually hired, the Contractor shall be responsible for ensuring that the former employee is not directly involved in negotiating or otherwise dealing with WMATA on any particular matter over which such employee had responsibility during his or her period of employment at WMATA.
- 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 other Authority Contract.

18. 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 therefrom; 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.

19. 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.

20. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

The provisions of this article shall be applicable only if the amount of this Contract exceeds \$10,000.

- 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.

21. 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.

22. PATENT INDEMNITY

- a. If the amount of this Contract is in excess of \$10,000, the Contractor shall indemnify the Authority and its officers, agents, and employees against liability, including costs, for infringement of any United States letters patent arising out of the manufacture or delivery of supplies under this Contract. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Authority of the suite or action alleging such infringement, and shall have been 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 which addition or change was made subsequent to

- (3) delivery or performance by the Contractor; or
a claimed infringement which is settled without the consent of the Contractor, unless required by final decree of court of competent jurisdiction.

23. 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.

24. RIGHTS IN TECHNICAL DATA

(Revised June 1996)

- 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;
 - (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 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.
- 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 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.
- g. Any dispute under this article shall be subject to the Disputes article of this contract.
- h. Notwithstanding any other payment provision in this contract, the Contracting Officer may retain from 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.

25. AUDIT RECORDS-NEGOTIATION

(Revised 4/20/01)

- a. This clause is applicable if this Contract was entered into by means of negotiation and shall become operative with respect to any modification to this Contract whether this Contract was initially entered into by means of negotiation or by means of formal advertising.
- b. 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.
- c. 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. 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 the proposal for the contract, subcontract, or modification; the discussions conducted on the proposal(s), including those related to negotiating; pricing of the contract, subcontract or modification; or performance of the contract, subcontract or modification.
- e. 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. 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 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 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. 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 or less) and –
 - (1) That are 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 require the contractor to submit reports as discussed in paragraph (e) of this clause.

26. 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 article 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 article 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 article 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 article, 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 article 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 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 article 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) hereof, 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 nor more than ten 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 article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

27. CONVICT LABOR

In connection with the performance of work under this Contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1965.

28. LIMITATION ON WITHHOLDING PAYMENTS

If more than one article 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 time shall not exceed the greatest amount which may be withheld under any one such article 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; and
- c. The recovery of overpayment.

29. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA — PRICE ADJUSTMENTS

- a. This article 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 article is limited to defects in data relating to such modification.
- b. If any price, including profit, or fee, negotiated in connection with any price adjustment under this Contract was increased by any significant sums because:
 - (1) The Contractor furnished cost or pricing data which was not complete, accurate and current as certified in the Contractor's Certificate of Current Cost or Pricing Data;
 - (2) A subcontractor, pursuant to the articles of this Contract entitled SUBCONTRACTOR COST OR PRICING DATA or SUBCONTRACTOR COST OR PRICING DATA--PRICE ADJUSTMENTS or any subcontract clause therein required, furnished cost or pricing data which was not complete, accurate and current as certified in the subcontractor's

Certificate of Current Cost or Pricing Data;

- (3) A subcontractor or prospective subcontractor furnished cost or pricing data which was required to be complete, accurate and current and to be submitted to support a subcontract cost estimate furnished by the Contractor but which was not complete, accurate and current as of the date certified in the Contractor's Certificate of Current Cost or Pricing Data; or
- (4) The Contractor or a subcontractor or prospective subcontractor furnished any data, not within (1) or (3) above, which was not accurate, as submitted; the price shall be reduced accordingly and the Contract shall be modified in writing as may be necessary to reflect such reduction. However, 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, will 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.

NOTE: Since the Contract is subject to reduction under this article by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the Contractor may wish to include an article in each such subcontract, requiring the subcontractor to appropriately indemnify the Contractor. However, the inclusion of such an article and the terms thereof are matters for negotiation and agreement between the Contractor and the subcontractor and are not binding upon the Authority. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted to his lower tier subcontractors.

30. SUBCONTRACTOR COST AND PRICING DATA-PRICE ADJUSTMENTS

- a. Paragraphs b. and c. of this article 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 article 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;
 - (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 (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. above 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.

31. NEW MATERIAL

Except as to any supplies and components which the Specifications or schedule specifically provides need not be new, 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 the furnishing of supplies or components which are not new is necessary or desirable, he shall notify the Contracting Officer immediately, in writing, including the reasons therefor and proposing any consideration which will flow to the Authority if authorization to use such supplies is granted.

32. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

- a. The Bid Schedule;
- b. General Provisions;
- c. The other provisions of the Contract, whether incorporated by reference or otherwise;

- d. The Specifications; and
- e. Drawings.

- f. Where an offeror's proposal becomes a part of the contract, the specifications and drawings shall have priority unless the offeror clearly requests and receives a waiver, variance or other agreement in writing from the Authority during the award process.

33. CORRECTION OF DEFICIENCIES

- a. Definitions: As used in this article:
 - (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 article:
 - (a) Shall not be affected in any way by any other provisions under this Contract concerning the conclusiveness of inspection and acceptance; and
 - (b) Are in addition to and do not limit any rights afforded to the Authority by any other article of this Contract.
 - (2) This article 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 article 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 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, he 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 his 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 increase in the Contract price. The Contractor shall also prepare and furnish to the Authority data and reports applicable to any correction required under this article (including revision and updating of all other affected data called for under this Contract) at no increase in the Contract price.
 - (4) Modification of Contract With respect to uncorrected deficiencies: 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 to amend the Contract to permit acceptance of the affected supplies or services in accordance with the revised requirements, and an equitable reduction in Contract price shall promptly be negotiated by the parties and reflected in a supplemental agreement to this 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, he shall promptly correct the deficiency or, if he elects to invoke the procedures in paragraph c. above, he shall promptly communicate information concerning the deficiency to the Contracting Officer, in writing, together with his detailed recommendation for corrective action.

- e. No extension in time for performance; no increase in Contract price.
 - (1) 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 supplemental agreement with adequate consideration.
 - (2) It is hereby specifically recognized and agreed by the parties hereto that this article shall not be construed as obligating the Authority to increase the Contract price of this Contract.

- f. Transportation charges:
 - (1) When the Authority returns supplies to the Contractor for correction or replacement pursuant to this article, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the designated destination point under this Contract to the Contractor's plant, in addition to any charges provided for by (2) below. The Contractor shall also bear the responsibility for the supplies while in transit.
 - (2) When compliance with the terms of this article by the Contractor involves shipment of corrected or replacement supplies from the Contractor to the Authority, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the Contractor's plant to the designated destination point under this Contract, in addition to any charges provided for by (1) above. The Contractor shall also bear the responsibility for the supplies while in transit.

- g. Failure to correct: If the Contractor fails or refuses to
 - (1) present a detailed recommendation for corrective action in accordance with c. above,
 - (2) correct deficiencies in accordance with c. (3) above, or
 - (3) prepare and furnish data and reports in accordance with paragraph c. (3) above,

the Contracting Officer shall give the Contractor written notice specifying the

failure or refusal and setting a period after receipt of the notice within which it must be cured. If the failure or refusal is not cured within the specified period, the Contracting Officer may, by contract or otherwise, as required:

- (1) Obtain detailed recommendations for corrective action;
 - (2)
 - (a) Correct the supplies or services, or
 - (b) Replace the supplies or services; and if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of nonconforming supplies for the Contractor's account in a reasonable manner, in which case the Authority is entitled to reimbursement from the Contractor or from the proceeds for the reasonable expenses of care and disposition, as well as for excess costs incurred or to be incurred; and
 - (3) Obtain applicable data and reports and charge to the Contractor the cost occasioned to the Authority thereby.
- h. Correction of deficient replacements and re-performances: Any supplies or parts thereof corrected or furnished in replacement and any services re-performed pursuant to this article shall also be subject to all the provisions of the article to the same extent as supplies or services initially accepted.
- i. Disassembly / reassembly expense: The Contractor shall be liable for reasonable cost of disassembly / reassembly of larger items necessary to remove the supplies to be inspected and/or returned for correction or replacement.

34. ASSIGNMENT (02/02/08)

- 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. 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.

35. PRICING OF ADJUSTMENTS

- a. When costs are a factor in any determination of a Contract price adjustment pursuant to the CHANGES AND CHANGED CONDITIONS article 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.

36. CERTIFICATE OF CURRENT COST OR PRICING DATA (Revised 11/22/00)

The Contractor shall provide a Certificate of Current Cost or Pricing Data as required in Subpart 15.4 of the Federal Acquisition Regulations (48 CFR 15.4) in support of any negotiated contract expected to exceed \$100,000 any modification to a formally advertised or negotiated contract on which the aggregate of the increase and decreases in cost are expected to exceed \$100,000; the Contracting Officer at his discretion may request cost or pricing data for modifications on which cost are \$100,000 or less and an attendant certificate of current cost or pricing data.

37. ACCOUNTING AND RECORD KEEPING

- a. Applicability. This Article 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 Article 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 proposal format shall be as detailed in Article 39. 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 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. Subject to agreement between the Contractor and the Contracting Officer, or upon direction of the Contracting Officer for work under Article 58, the Contractor shall use Form C-113 (Daily Report - Labor Materials and Equipment). The terms of Article 58.d of this Contract shall apply regardless of the form used.

- 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.
 - (2) Until the expiration of three years from the date of payment of the final \$100 (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 articles of this contract, or by paragraphs (a) and (b) below:
 - (a) If the Contract is completely or partially terminated, for a period of three years from either the date of any resulting final settlement or the date of final payment whichever is the greater period; and
 - (b) If a pricing adjustment is involved in any appeal under the Disputes 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. When asserting a claim under the various 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 as required under this or any other Article of the Contract, any pricing adjustment or portion thereof previously granted by the Contracting Officer for which records are not available shall be rescinded and recomputed, or if a pricing adjustment has not yet been granted shall be computed, in an amount not to exceed the direct costs for the affected work for which accounts or records are not available, plus a single mark-up for indirect expenses not to exceed ten percent of the direct costs so determined by the Contracting Officer. The adjustment will be established by the Contracting Officer based upon, at his or her election, either,
- (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);
- plus a single mark-up for indirect expenses not to exceed ten percent of the direct costs so determined by the Contracting Officer. The Contractor and subcontractors shall not be allowed any profit for the work for which the Contractor or subcontractor fails to originate, or to maintain, or to make available any accounts or records as required under this Contract.
- g. The Contractor shall insert a clause containing all the provisions of this article in all subcontracts issued under this Contract, modified as necessary, for proper identification of the contracting parties and the Contracting Officer under this Contract.

38. COST OR PRICING DATA

(Revised 11/22/00)

- a. 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 his knowledge and belief, the cost or pricing data submitted 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. The cost or pricing data shall be submitted at the time the Contractor submits his proposal for the pricing of any modification to this Contract, whether or not cost or pricing data was required in connection with the initial pricing of the Contract, when the modification involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$100,000, or less at the discretion of the

Contracting Officer.

- b. The submittal of certified cost or pricing data shall not be required if 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. 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, 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.

39. CARGO PREFERENCE REQUIREMENTS

(02/02/08)

The Contractor agrees:

- a. To utilize privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.
- b. To furnish within 20 working days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) above to WMATA (through the Contractor in the case of a subcontractor's bills-of-lading) and to the Office of Cargo Preference,

Maritime Administration (MAR-590), 400 Seventh Street SW, Washington, DC 20590.

- c. To include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean liner.

40. CIVIL RIGHTS (October 20, 2000)

- 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 FTA may issue.
- b. Equal Employment Opportunity: The following equal employment opportunity requirements apply to this contract.
 - (1) Race, Color, Creed, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §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.

41. CONFLICT OF INTEREST

(02/24/94)

- a. Neither the Contractor nor any person or company affiliated with it shall have, during the term of this contract and any extensions thereof, any contractual or other financial relationship with the Authority, with any Authority prime Contractor, or with any subcontractor or supplier to any Authority prime Contractor other than the contractual relationship established under this Contract, unless an exception is granted as described below.
- b. Upon request of the Contractor and upon full disclosure and for good cause the Contracting Officer may in his sole discretion grant an exception to the requirement of a., above, when in his 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.
- c. If, during the performance of this contract and any extension thereof, the Contractor becomes aware of any relationship, financial interest, or other activity in which it or an affiliated person or company is involved which is not in compliance with the provisions of a., above, it shall promptly notify the Contracting Officer in writing and fully disclose all circumstances thereof. Should the Contracting Officer not grant an exception to the requirements of this Article, the Contractor shall, within ten (10) days of written notice from the Contracting

Officer to do so, take all action necessary to comply with the terms of a., above.

- d. If the Contractor fails to comply with the terms of this Article, 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 c., above, terminate the contract for default pursuant to the Default Article of this contract.
- e. 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.
- f. Any determination by the Contracting Officer under this Article shall be final and shall be considered a question of fact within the meaning of the Disputes Article of this Contract.

42. SUBCONTRACT PAYMENTS

(January 2000)

- a. The Contractor shall, under this contract, establish procedures to ensure timely payment of amounts due pursuant to the terms of their subcontracts. The Contractor shall pay each subcontractor for satisfactory performance of its contract, 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. 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.

- e. 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.

43. PATENT AND RIGHTS IN DATA (01/15/04)

A. **Rights in Data** - This following requirements apply to each contract involving experimental, developmental or research work:

- (1) The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists; specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to Project administration.
- (2) The following restrictions apply to all subject data first produced in the performance of this contract.
 - (a) Except for its own internal use, the Authority or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Authority or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution
 - (b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its

Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
 2. Any rights of copyright purchased by the Authority or Contractor using Federal assistance in whole or in part provided by FTA.
- (c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Authority and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Authority or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.
- (d) Unless prohibited by state law, upon request by the Federal Government, the Authority and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Authority or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Authority nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

- (e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 - (f) Data developed by the Authority or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Authority or Contractor identifies that data in writing at the time of delivery of the contract work.
 - (g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- (3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e. , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Authority and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
 - (4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- B. **Patent Rights** - This following requirements apply to each contract involving experimental, developmental, or research work:
- (1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Authority and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

- (2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Authority and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
- (3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

44. ACCESS TO RECORDS

(April 2001)

- a. The Contractor agrees to provide the Authority, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 CFR. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U. S. C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U. S. C. 5307, 5309 or 5311.
- b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case the Contractor agrees to maintain same until the Authority, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

45 BUY AMERICA

(02/02/08)

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which

provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U. S. C. §§ 7401 et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.
- b. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

47. CLEAN WATER **(April 2001)**

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U. S. C. 1251 et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- b. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

48. ENERGY CONSERVATION **(02/02/08)**

- a. The Contractor agrees to comply with mandatory standards and policies relating to the energy efficiency which are contained in the applicable state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- b. The Contractor agrees to include the requirements of this clause in all subcontracts under this contract.

49. FEDERAL CHANGES **(02/02/08)**

- a. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (14) dated October 1, 2007) between the Authority and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.
- b. The Contractor agrees to include this clause in each subcontract financed in whole or in part with Federal Assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

50. FLY AMERICA REQUIREMENTS **(April 2001)**

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

51. GOVERNMENT-WIDE DEBARMENT OR SUSPENSION **(02/02/08)**

- a. The Contractor is bound by its certification contained in its offer to the Authority that neither the Contractor, its principals, or affiliates, are excluded or disqualified, as defined at 49 C.F.R. 29.940 and 29.945. The certification is a material representation of fact, relied upon by the Authority in entering into this Contract. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 49 C.F.R. 29, Subpart C, throughout the term of this Contract.
- b. The Contractor agrees to include this requirement in all subcontracts at all tiers under this Contract.

**52. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS
(Revised 02/02/08)**

- a. The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E or any revisions thereto, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all DOT or FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests which would cause the Authority to be in violation of the FTA terms and conditions.
- b. The Contractor agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

53. LOBBYING (02/02/08)

- a. The Contractor is bound by its certification contained in its offer to the Authority regarding the use of federal or non-federal funds to influence, or attempt to influence any Federal officer or employee regarding the award, execution, continuation, or any similar action of any Federal grant or other activities as defined in 31 U.S.C. 1352, 49 CFR Part 19, or 49 C.F.R. Part 20. The Contractor agrees to comply with this requirement throughout the term of the Contract.
- b. The Contractor agrees to include these requirements in all subcontracts at all tiers under this Contract.

54. NO OBLIGATION BY THE FEDERAL GOVERNMENT (Revised 01/04/00)

- a. The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Authority, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

55. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS **(Revised 01/04/00)**

- a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U. S. C. 3801 et seq and U. S. DOT Regulations, "Program Fraud Civil Remedies," 49 C.F. R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies and affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- b. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U. S. C. 5307, the Government reserves the right to impose the penalties of 18 U. S. C. 1001 and 49 U. S. C. 5307 (n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- c. The Contractor agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

56. RECOVERED MATERIALS **(02/02/08)**

- a. The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA) as amended (42 U. S. C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.
- b. The Contractor also agrees to include these requirements in each subcontract

financed in whole or in part with Federal assistance provided by FTA.

57. RIGHTS IN DATA AND COPYRIGHTING - FTA (02/02/08)

- a. The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists; specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to Project administration.
- b. The following restrictions apply to all subject data first produced in the performance of this contract.
 1. Except for its or WMATA's own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of the U.S. Government, until such time as the Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to Agreements with academic institutions.
 2. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. 19.36, the Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, the following subject data for Federal Government purposes:
 - (i) Any subject data developed under this contract whether or not a copyright has been obtained; and
 - (ii) Any rights of copyright to which the contractor purchases ownership with Federal assistance.
- c. When the Federal Transit Administration (FTA) provides financial assistance for a planning, research, development, or a demonstration project, it is FTA's general intention to increase mass transportation knowledge, rather than limit the benefits of the Project to participants in the Project. Therefore, unless FTA determines otherwise, the Contractor agrees that, in addition to the rights set forth in subsection (b)(2) of this clause, FTA may make available to any FTA recipient, subrecipient, third party contractor, or third party subcontractor, either

FTA's license in the copyright to the subject data derived under this contract or a copy of the subject data first produced under this contract. If this contract is not completed for any reason whatsoever, all data developed under this contract shall become subject data as defined in subsection a. of this clause and shall be delivered as the Government may direct.

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

58. SEAT BELT USE POLICY (November 2000)

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.

59. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS (01/15/04)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

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

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

* * *

P A R T I I

Section 2 - SPECIAL PROVISIONS

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT RFP CQ11242/KB

SPECIAL PROVISIONS

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End Special Conditions Index

PART II, SECTION 2 - SPECIAL PROVISIONS

1. PERIOD OF PERFORMANCE

The period of performance is one (1) year from the date of contract award. The contract includes three (3) one-year options.

2. OPTION YEARS

- a. The Authority has the unilateral right to extend the contract by exercising the options subject to all terms and conditions herein.
- b. The Authority may exercise the options 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. PRICING

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

4. BILLING AND PAYMENT

- a. 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.

- b. Payment will be made on a monthly basis of properly completed invoices.

Mail original and one copy of all invoices to: the Office of Accounting, WMATA, 6th Floor, 600 Fifth Street, NW, Washington DC 20001. Also mail one copy of each invoice to the Contracting Officers Technical Representative.

5. POINT OF CONTACT

All inquiries are to be directed to:

Washington Metropolitan Area Transit Authority
Attn: Mr. Kunj Behari
Room 301-H
600 Fifth Street, NW
Washington, DC 20001
Phone: (202) 962-1516
E-Mail: kbehari@wmata.com

6. CONTRACTOR PERSONNEL

- a. The Contractor acknowledges that award of the Contract was based partly upon the past experience of the proposed program manager and program team. As such, the Contractor shall assign the same personnel identified in the Technical Proposal as key personnel to the positions shown in the Contractor's proposed program organization.
- b. Key personnel shall remain in the assigned positions unless circumstances beyond the Contractor's control occur, such as leaving the program because of death, retirement, resignation, disability, personal hardship or termination of employment.
- c. Replacements for key personnel shall be subject to the Authority's approval. Said approval shall not be unreasonably withheld. Key personnel shall be replaced by an equally qualified individual.
- e. 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.
- f. 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.

7. LEVEL OF EFFORT

- a. This is a firm fixed price level of effort contract for the supplies or services specified and effective for the period of the contract. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract.
- b. Except as this contract otherwise provides, the Authority shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by WMATA or activities specified in the Schedule.
- c. If the Authority urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract.

9. 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.

10. 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.

11. INDEMNIFICATION

- a. Contractor shall, and Contractor shall contractually require its subcontractors, if any, to indemnify, defend and hold harmless the Authority, 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 THE AUTHORITY, occurring in connection with, or in any way arising out of the use, occupancy and performance of the work and/or any acts in connection with activities to be performed under this contract, unless the loss or damage is due to the sole negligence of the Authority. Nothing in the preceding sentence shall be deemed to relieve Contractor from ultimate liability for any obligation of Contractor under this Contract.
- b. Contractor shall, and Contractor shall contractually require its subcontractors, if any, to indemnify, defend and hold harmless the Authority its directors, officers, employees and agents against any and all claims, liabilities, losses, demands, damages, penalties, costs, charges, remedial costs, environmental claims, fees or other expenses including attorneys fees, related to, arising from or attributable to any effluent or other hazardous waste, residue, contaminated soil or other similar material discharged from, removed from, or introduced on, about or under the job site; provided, however, that the foregoing indemnity does not apply to loss or damage due to preexisting conditions, whether known or unknown.
- c. If any action or proceeding relating to the indemnification required is brought against the Authority, then upon written notice from the Authority to the Contractor, the Contractor shall, at the Contractor's expense, resist or defend such action or proceeding by counsel approved by the Authority in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same. The Authority reserves the right to use its own counsel under this indemnity at Contractor's sole cost and expense.
- d. Contractor understands and agrees that it is Contractor's responsibility to provide indemnification to the Authority pursuant to this Section. The provision of insurance, while anticipated to provide a funding source for

this indemnification, is in addition to any indemnification requirements and the failure of Contractor's insurance to fully fund any indemnification shall not relieve the Contractor of any obligation assumed under this indemnification.

12. **Insurance - General Provisions**

- a. 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 the Authority. 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 the Authority'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 the Authority, and
 - 4. Have self-insurance retentions or policy deductibles no greater than \$100,000, unless approved in writing by the Authority, whose approval shall not be unreasonably withheld.
- b. 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.
- c. 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 the Authority, or Contractor may, at its option, provide the coverage for any or all subcontractors, provided the evidence of insurance submitted by Contractor to the Authority so stipulates.
- d. Contractor shall furnish evidence of all required insurance prior to the start of any work on the Authority property. Certificates of insurance (COI) and

all applicable endorsements may be submitted to the Authority 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 the Authority. However, the Authority reserves the right to request copies of policies of any required insurance as denoted below. If requested by the Authority, the Contractor shall deliver to the Authority within thirty (30) days of the request, a copy of such policies, certified by the insurance carrier as being true and complete.

- e. 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 the Authority 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.
- f. At least two (2) weeks prior to the expiration of the policies, Contractor shall provide renewal COIs and all applicable endorsements to the Authority, with terms and limits no less favorable than the expiring insurance policies.
- g. 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 the Authority at least ten (10) business days prior to commencement of operations and from time to time at the Authority's request. Contractor shall not be allowed to proceed until the evidence of insurance has been received and approved in writing by the Authority. All evidence of insurance shall be sent to:

Washington Metropolitan Area Transit Authority
Office of Procurement, Room 301-H
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 \$2,000,000 per occurrence, 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
- Terrorism coverage
- 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 Business Automobile Liability Insurance with minimum combined single limits of \$2,000,000 per occurrence covering contractor against claims for bodily injury and property damage arising out of the ownership, maintenance or use of any owned, hired, or non-owned motor vehicle. The Authority shall be added as an additional insured on the policy.

4 Professional Liability/Errors and Omissions Insurance (general engineering services relating to safety) with minimum limits of \$1,000,000 per claim covering actual or alleged negligent acts, errors or omissions committed by the Consultant in the performance of activities under this agreement, regardless of the type of damages. If the insurance is on a claims made basis, Consultant shall maintain continuous insurance coverage during the term of this agreement. The policy retroactive date must coincide with or precede the effective date of Consultant’s services under the agreement and shall continue until the termination of the agreement. The policy must allow for reporting of circumstances or incidents that might give rise to future claims, and an extended reporting period of at least one year must be purchased in the event ongoing coverage is not maintained.

13. 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.

14. 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.

15. PRIME CONTRACTOR DBE RESPONSIBILITIES

NA

16. AUTHORITY'S REPRESENTATIVE/CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE

- a. The Authority Representative/ Contracting Officer's Technical Representative (COTR) is the person responsible for post award execution of an Authority contract in the most effective, economical, and timely manner. The COTR is the Authority's primary point of contact. Unless the Contractor is directed to the contrary, all correspondence with respect to this Contract shall be sent to the Contracting Officer and COTR.
- b. Actions the COTR may be delegated include, but are not limited to:
 - 1. Issue tasks orders.

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2. Provide direction and respond to correspondence on matters from the contractor.
3. Monitor contractor compliance with contract requirements; and initiate reviews by Authority staff, public agencies and utilities as required.
4. Inspect and accept supplies delivered and services performed.
5. Notify contractor when performance is not in compliance with contract requirements.
6. Oversee the contractor to ensure they perform no work outside the scope of the contract.
7. Oversee contractor compliance with Authority regulations pertaining to traffic, safety, and fire prevention.
8. If Authority furnished property is to be provided, monitor the progress of the Contract to assure that the Authority has met its contractual responsibilities and the Contractor is meeting its responsibilities for care of the property. Insure that all Authority furnished property, provided to the contractor but not incorporated into the work, is returned and accounted for.
9. Assure contractor access to Authority facilities.
10. Make unannounced spot checks on the job sites to verify compliance with applicable labor standards and notify the Authority Office of Civil Rights of any violations.
11. Approve, in writing, contractor's progress schedules.
12. Review and approve contractor invoices and payment estimates.
13. Obtain monthly DBE status reports from the Contractor and forward them to the Authority Office of Civil Rights.
14. Request and receive change proposals from the contractors.
15. Perform cost and price analysis of contractor proposals if authorized by the CO.

16. Perform technical evaluation of contractor change proposals.
 17. Approve Pre-Negotiation Plans, if within their delegated authority.
 18. Negotiate with the contractor adjustments to contract price and/or schedule, if within their delegated authority.
 19. Support negotiation of contract changes if value of change greater than their delegated authority.
 20. Send contract modifications to the contractor for execution if within their delegated authority.
 21. Prepare and sign contract modifications and change orders if within their delegated authority.
- c. The Authority Representative's responsibilities do not include the following which are retained by the Contracting Officer:
1. Assessing liquidated damages.
 2. Issuing Stop Work Notices.
 3. Issuing decisions under the Disputes clause.
 4. Debarring contractors.
 5. Terminating contracts.

17. 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.

18. 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 for Rights in Technical Data, 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.

19. INCENTIVES AND DISINCENTIVES – Not Used

20. 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.

21. PROGRESS SCHEDULES

The Contractor shall prepare, maintain, and update a monthly status report on each task, and attached to the monthly invoices. The reports shall be in a resource profile format showing graphical representation of the budgeted cost, forecasted cost and actual cost for each task over the period of performance.

22. ADVANCE COST AGREEMENT

Within 30 days after Notice of Award, the Contractor shall make available for audit review, information on its accounting system used to project fixed and variable overhead rates applicable to possible Contract changes. The Authority's office responsible for contract audit, to the extent possible, will review and approve said accounting system. When appropriate and if possible, as a result of the audit review, Advance Cost Agreements should be executed between the Contracting Officer and the Contractor. The Cost Agreements shall be supplemental agreement to the Contract.

23. CONTRACTOR RIGHT OF WAY TRAINING

All Contractor and Subcontractor personnel and/or their technical representatives or assistants performing on-site work, inspection or testing involving access to the Authority's right of way shall have successfully completed a Right-of-Way (ROW) training course administered by the Authority.

24. CONTRACT MANAGEMENT OFFICE

The Contractor shall establish a Contract Management Office within the continental U. S. through which all contract actions, correspondence, and documentation will be coordinated. The Contract Office shall at all times have an authorized representative with full authority to represent and act for the Contractor. Additionally, from delivery of the first pilot car up through acceptance of all four pilot cars, the Contractor's lead technical representative shall be present at the Contract Management Office.

25. 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.

26. 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.

27. NOTIFICATION OF FEDERAL PARTICIPATION

This project is being funded in whole or part with Federal funds.

28. 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.

29. LIVING WAGE PROVISION (Jan 09)

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

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- (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.

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P A R T III

SCOPE OF SERVICES

SAFETY ENGINEERING SERVICES

SAFETY ENGINEERING SERVICES

SCOPE OF SERVICES

I. GENERAL

A. Purpose

To procure professional engineering and technical consulting services to support Washington Metropolitan Area Transit Authority's (WMATA). Department of System Safety & Environmental Management in programs to strengthen and establish a safety culture that is well defined, sustainable and documented through its processes, policies, and documentation.

B. Description

The work effort, as specified below, shall require the services of professional engineering and technical personnel qualified in disciplines associated with the transit safety and security, project management, value engineering, project controls management, safety and security certification, training, OSHA compliance, hazard analysis, accident investigations for public transit systems..

C. Confidential Information

The Safety Engineering Consultant (known hereinafter as the SEC) shall not divulge any confidential information which is acquired in the course of performing the work under this contract. The term "confidential" refers to information that may be considered proprietary to the Authority or any of its contractors. In this respect, policies, procedures and analyses developed by the SEC for the Authority shall constitute the Authority's information and no information pertaining to such policies, procedures and analyses shall be disclosed by the SEC associates or employees, except to the extent permitted by the Authority's Contracting Officer (CO).

D. Information Furnished by the Authority

The Authority shall furnish the SEC with documents, when available, as guidelines for work to be performed under this contract. These documents present information relative to the work to be performed by the SEC.

However, it is the responsibility of the SEC to gather all data necessary for the performance of this contract and to develop complete and final documentation.

II. SCOPE OF SERVICES

A. General

The SEC shall provide the professional and technical staff, in the quantities and at the times and places requested by the Authority, necessary to accomplish the services as described herein. Engineering work, technical reviews and safety studies and reviews will generally take place at the Authority's Jackson Graham Building (JGB), SEC home offices or local field offices conveniently accessible to the Metrorail system. SEC shall adhere to the Authority's travel policy regarding the reimbursement of travel expenses, including temporary living expenses for long and short term assignments of consultant personnel.

B. Technical Direction

The work will be conducted under the general direction of the Chief Safety Officer. Specific individuals will be designated by the Chief Safety Office as Program Managers (PMs) assigned to the task orders.

The Program Managers (PMs) assigned to the task orders will provide technical direction and assignments to the SEC. All work under the contract shall be accomplished under written task order instructions (Scope of Services) authorized by the PM(s). The written instructions will include a description of the task order, deliverables and services required, and a completion date.

C. Typical Task Orders

Typical task orders for providing technical and engineering support to Department of System Safety & Environmental Management in its safety programs included in this section below. **Note that WMATA may or may not award any or all of the following tasks:**

1. **TASK 1** - Provide support for analysis, implementation and technical support of the Safety and Security Certification Program, including:
 - a. Review and comment on established processes;

- b. Identify and document elements relating to certification
 - c. Assist or conduct verification reviews, designs and drawings
 - d. Assist in developing Certifiable Item Checklists (CILs)
 - e. Attend necessary meetings
- 2. **TASK 2** - General engineering services related to safety,
 - a. Support staff with engineering expertise in electrical, civil, mechanical, traffic or industrial engineering knowledge
 - b. Perform ad-hoc engineering studies relating to transit safety
 - c. Support documentation of findings, identification of resources and corrective actions
- 3. **TASK 3** - Accident / incident investigation and reporting
 - a. Support or perform bus, rail, operations accident investigations
 - b. Support documentation of findings, identification of resources and corrective actions
 - c. Assist in developing policy, procedures, processes for investigations
 - d. Assist in hazard identification process
- 4. **TASK 4** - Provide support for safety, construction assessments,
 - a. Assist strengthen internal assessments in transit
 - b. Support the development of processes and procedures to ensure compliance
- 5. **TASK 5** - Review, revise safety rules and procedures
 - a. Support the revision, development of rules and procedures
 - b. Assist in developing processes that include change control procedure
 - c. Review and revise rules and procedures
- 6. **TASK 6** - Support the management and implementation of the System Safety Program Plan,
 - a. Review, revise and recommend changes to the policy
 - b. Assist in identifying deficiencies between policy and practices
 - c. Support the development of training of the policy

7. **TASK 7** - Developing / administering specialized training classes,
 - a. Review, revise and recommend safety specific training courses
 - b. Assess current or proposed safety courses to ensure objectives are achieved
8. **TASK 8** - Support the safety staff in a variety of safety activities,
 - a. Support staff as resources or advisory role in system safety
 - b. Develop/update, implement and maintain regulatory compliance programs including, but not limited to, hazard communication, bloodborne pathogen, respiratory protection, evacuation plans, machine guarding, lockout/tagout, electrical hazards, personal protective equipment, confined space entry and hearing conservation.
9. **TASK 9** - Liaison with outside agencies, vendors, contractors, as required to accomplish tasks,
 - a. Review and recommend best practices, approaches, policy from peer agencies
10. **TASK 10** - Develop, implement and administer OSHA 300 recordkeeping,
 - a. Develop and administer program to meet requirement
 - b. Develop, validate and produce necessary reporting documents in a timely manner
11. **TASK 11** - Assist in the efficiencies and data management
 - a. Review, assist in the development of business process and data management
 - b. Provide best practice solutions to ensure efficiencies
12. **Task 12** - Industrial Hygiene Support
 - a. Conduct industrial hygiene surveys and sampling for indoor air quality, asbestos, mold and lead-based paint
 - b. Provide a Certified Industrial Hygienist to assist in workers compensation claims and expert testimony

- c. Provide support services for chemical management including storage, handling and use.

D. Task Order Assignments

1. Each task order shall be initiated by the Contracting Officer (CO) transmitting a Scope of Services to the SEC and requesting for a written cost proposal. The Scope of Services will define the work effort of the task order and will include the task order number, task order title, period of performance, and any additional instructions. COTR may verbally communicate requirements of a Task. In such cases SEC must document the Scope Services and submit to the COTR for approval.
2. The SEC shall provide a proposal based upon the transmitted Scope of Services. The proposal shall identify the firm (prime and subs) that will be performing the work, labor classifications, period of performance that each individual will spend on the task order, hourly rates for each individual, overhead and profit rates, direct costs, and any other relevant cost information. Proposals shall be submitted within two days from receipt of request, unless a different response time is indicated in the request.
3. The Authority will negotiate the proposals on a level of effort task order basis not-to-exceed a specified price or a Firm Fixed Price basis. SEC proposals for each task order will be negotiated by the PMs and CO, with all fixed billing rates reviewed and certified by the Office of Inspector General if required. Notice-To-Proceed (NTP) letter(s) will be issued to the SEC for the negotiated task orders by the CO. Upon receipt of the NTP(s), and within two working days, the SEC shall sign the concurrence portion of the letter(s) and return it to the CO, with a copy sent to the PMs assigned to the task orders.

III. ADDITIONAL REQUIREMENTS

A. General

All technical correspondence relating to task order efforts shall be addressed to the COTR/PMs assigned to the task orders.

B. Internal Quality Control Program

The SEC shall have in place and be responsible for executing a Quality Control (QC) Program for all engineering and technical services. This program shall require internal reviews and checks by supervisors and independent QC checks by well qualified technical staff to confirm that acceptable quality is provided.

E. Technical Files and Other Data

Technical documentation produced under this contract and/or provided by the Authority for reference purposes or by Authority contractors shall become the property of the Authority.

F. Reporting

1. The SEC shall provide monthly status reports on the task orders to the COTR/PMs.
2. The SEC shall provide written notification to the COTR/PMs of when 80% of the total firm fixed price for each task order has been expended.

IV. STAFFING REQUIREMENTS

A. General

1. Prospective contractors shall submit resumes of all proposed staff personnel. Resumes should include education and related experience. Individual billing rates detailing the salary rate (per hour), overhead and profit for each person shall be submitted, separately from the resumes, to the Contracting Officer (CO). Submittal of this information should not be construed as giving authorization for staff personnel to work on task orders. The negotiated task order cost estimate will list all staff personnel that are approved to work on a given task order. Staff personnel to be added later will require written approval by the COTR/PM prior to working on a given task order.
2. The Authority will not be liable for hours worked in excess of a normal work week (i.e., 40 hours) without prior written authorization and approval by the PM.
3. All SEC personnel shall attend safety training sessions provided by the Authority, and shall observe Authority safety procedures at all

times while performing work in the system. All SEC personnel shall be responsible for attending the Authority's safety training sessions at no cost to the Authority.

4. Over the course of a contract, there may be a need for services from a discipline that is not listed below. The SEC shall not bill Indirect Labor Costs to the task orders. Indirect Labor Costs will include, but not restricted to, Administrative, Internal Quality Control Program and SEC Principles.

B. Staff Qualifications

1. The project lead for each task shall be a certified professional registered engineer recognized by one or more states of the U.S. plus one or more of the following certifications:
 - a. Certified safety and security director (WSO-CSSD) recognized by Department of Transportation
 - b. Certified security and safety specialists recognized by Department of Transportation
 - c. Certified safety professionals (CSP) recognized by the Board of Certified Safety Professionals.
2. Each individual working on the contract should have a minimum 10 years of demonstrable experience in the areas of transit safety and security, project management, value engineering, project controls management, safety and security certification, training, OSHA compliance, hazard analysis, accident investigations for public transit systems.

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