

METROPOLITAN TRANSIT AUTHORITY

REQUEST FOR PROPOSALS

FOR

VANPOOL MANAGEMENT SERVICES

METRO REQUEST FOR PROPOSALS NO. RP1000018

**FUNDING: 80% GRANT
20% METRO**

IMPORTANT – Notice to Bidder

All responses to this solicitation must be labeled as indicated below and delivered or mailed to the following address:

Upper Left Corner of Envelope Must Indicate:
Bidder/Contractor Name and Address

Lower Left Corner of Envelope Must Indicate:
Solicitation Number
Due Date
Due Time
Solicitation Title

Metropolitan Transit Authority
Procurement Division Plan Room
1900 Main St., Suite 2021
Houston, Texas 77002
P.O. Box 61429
Houston, Texas 77208-1429

TABLE OF CONTENTS

SECTION I - BIDDING/PROPOSING REQUIREMENTS AND INSTRUCTIONS	iv
1 REQUEST FOR PROPOSAL (FORM)	iv
2 "NO BID/PROPOSAL" RESPONSE FORM	v
3 INSTRUCTIONS TO PROPOSERS	vi
SECTION II - FORMS FOR BIDDING/PROPOSING	xx
1 PROPOSAL FORM/SERVICE CONTRACT	xx
2 TECHNICAL PROPOSAL	xxi
3 SMALL BUSINESS/DISADVANTAGED BUSINESS ASSURANCE STATEMENT	xxii
4 SMALL BUSINESS/DISADVANTAGED BUSINESS UNAVAILABILITY CERTIFICATE	xxiii
5 DETERMINATION OF GOOD-FAITH EFFORT	xxiv
6 BUY AMERICA CERTIFICATE	xxvi
7 CERTIFICATION OF RESTRICTIONS ON LOBBYING	xxvii
8 CARGO PREFERENCE	xxviii
9 DEBARMENT AND SUSPENSION FORM	xxix
10 DISPUTES RESOLUTION PROCESS	xxx
11 PROPOSER'S QUESTIONNAIRE	xxxi
SECTION III - FORMS FOR BIDDING/PROPOSING/AWARD	1
1 SOLICITATION AWARD FORM	1
2 PROPOSAL AMOUNT/SCHEDULE OF ITEMS AND PRICES	3
3 KEY PERSONNEL FORM	6
4 CONTRACTOR UTILIZATION PLAN FORM	8
5 CONTRACTOR UTILIZATION PLAN PLEDGE	9
6 OFFICE OF SMALL BUSINESS - LETTER OF INTENT (LOI)	10
SECTION IV - DELIVERIES OR PERFORMANCE ARTICLES	11
1 DEFINITIONS	11
2 SERVICES TO BE PERFORMED	11
3 PERIOD OF PERFORMANCE	11
4 OPTION TO EXTEND CONTRACT TERM	11
5 CONTINUITY OF SERVICES	12
SECTION V - INSPECTION AND ACCEPTANCE ARTICLES	13
1 INSPECTION OF SERVICES	13
SECTION VI - CONTRACT ADMINISTRATION DATA ARTICLES	14
1 COMPENSATION	14
2 INVOICING AND PAYMENT	14
3 CONTRACT PERFORMANCE SECURITY	15
4 CONTRACTOR REPRESENTATIVE(S)	15
5 NOTICES	16
6 ADMINISTRATIVE CONTROL OF CORRESPONDENCE	16
7 REPORT OF ACCIDENTS	16
SECTION VII - INSURANCE ARTICLES	17
1 CONTRACTOR'S INSURANCE	17
SECTION VIII - SMALL BUSINESS PROGRAM ARTICLES	19
1 SMALL BUSINESS/DISADVANTAGED BUSINESS ENTERPRISE PROGRAM	19
2 POST-PERFORMANCE REPORTING	19
SECTION IX - SPECIAL TERMS AND CONDITIONS ARTICLES	20
1 HEALTH, SAFETY AND FIRST AID	20
2 CONFIDENTIAL INFORMATION	20
3 PERFORMANCE STANDARDS	20
4 LIQUIDATED DAMAGES	20
SECTION X - GENERAL TERMS AND CONDITIONS ARTICLES	21
1 COMPLIANCE WITH LAWS	21
2 METRO-FURNISHED PROPERTY	21
3 SUBCONTRACTING	21
4 CHANGES	21
5 DISPUTES	22
6 SUSPENSION OF WORK	23
7 TERMINATION FOR CONVENIENCE OF METRO	23
8 TERMINATION FOR DEFAULT	23
9 CONFIDENTIAL INFORMATION	24
10 OTHER CONTRACTS	24
11 PATENT INDEMNITY	24
12 DISSEMINATION OF CONTRACT INFORMATION	24

13	NOTIFICATION OF DELAY	24
14	REQUEST FOR EXTENSION	24
15	METRO DELAY OF WORK	25
16	OFFICIALS NOT TO BENEFIT	25
17	ETHICAL CONDUCT	25
18	COVENANT AGAINST CONTINGENT FEES	25
19	ASSIGNMENT.....	25
20	AUDIT AND AVAILABILITY OF RECORDS	26
21	INDEPENDENT CONTRACTOR.....	26
22	SEVERABILITY	26
23	WAIVERS	26
24	FORCE MAJEURE.....	26
25	INTERPRETATION, JURISDICTION AND VENUE	26
26	RIGHTS AND REMEDIES.....	27
27	RESPONSIBILITY OF THE CONTRACTOR	27
28	CONTRACTOR'S KEY PERSONNEL	27
29	USE OF METRO'S NAME IN CONTRACTOR ADVERTISING OR PUBLIC RELATIONS	27
30	RIGHTS IN DATA AND COPYRIGHTS	27
31	CONTRACT ORDER OF PRECEDENCE	27
	SECTION XI - FEDERAL REQUIREMENTS ARTICLES	28
1	FEDERAL CHANGES.....	28
2	ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES	28
3	FLY AMERICA	28
4	ENVIRONMENTAL REQUIREMENTS.....	28
5	RECYCLED PRODUCTS.....	28
6	RESTRICTIONS ON LOBBYING.....	29
7	FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS	29
8	INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS	29
9	NO OBLIGATION BY THE FEDERAL GOVERNMENT	29
10	METRO NON DISCRIMINATION	29
11	CONTRACTOR NON DISCRIMINATION	30
12	DEBARMENT AND SUSPENSION	30
13	ACCESS TO RECORDS.....	30
14	PRIVACY ACT	30
15	BUY AMERICA	31
16	CARGO PREFERENCE--USE OF UNITED STATES-FLAG VESSELS	31
17	ACCESS TO THIRD PARTY CONTRACT RECORDS.....	31
18	NATIONAL TRANSIT DATABASE REPORT	31
19	ENTIRE AGREEMENT.....	31
	SECTION XII - EXHIBITS	32
1	EXHIBIT "A", SCOPE OF SERVICES	32
	Attachment 1: Vehicle Leasing	41
	Attachment 2: Fare Collection	42
	Attachment 3: National Transit Database Reporting	43
	Attachment 4: Rider Incentives and JARC Leases	45
2	EXHIBIT "B", PRICE SCHEDULE.....	46
3	EXHIBIT "C" DRUG FREE WORKPLACE ACT OF 1988.....	47
4	EXHIBIT "D": DRUG-FREE WORKPLACE ACT	48
5	EXHIBIT "E" BUY AMERICA CERTIFICATE.....	65
6	EXHIBIT "F" CERTIFICATION OF RESTRICTIONS ON LOBBYING	66
7	EXHIBIT "G" CARGO PREFERENCE.....	67
8	EXHIBIT "H" DEBARMENT AND SUSPENSION	68
9	EXHIBIT "I" DISPUTES RESOLUTION PROCESS	69
10	EXHIBIT "J", CONTRACTOR'S RELEASE	70

SECTION I - BIDDING/PROPOSING REQUIREMENTS AND INSTRUCTIONS**1 REQUEST FOR PROPOSAL (FORM)**

RFP No.: RP1000018
REQ. No.: UR1000695
PROJECT No.: N/A
DATE: April 5, 2010

For: ☐ Supplies/Equipment ☒ Services ☐ Other

PROJECT DESCRIPTION: Vanpool Management Services

ISSUED BY:

METROPOLITAN TRANSIT AUTHORITY
Office of Procurement
1900 Main St, Suite 2021
Houston, Texas 77002
P.O. Box 61429
Houston, Texas 77208-1429

SUBMIT INQUIRES BY WRITING OR CALLING
(No Collect Calls Accepted):

NAME: Wanda Federovitch
TITLE: Contract Administrator II
TELEPHONE: (713) 739-3853
E-MAIL: wf01@ridemetro.org
TELEFAX: (713) 758-7888

Procurement Web Site: http://www.ridemetro.org/procurement_materials

PRE-PROPOSAL CONFERENCE TIME/LOCATION: A pre-proposal conference will be held April 13, 2010 at 9:30 a.m. local time in Conference Room 2022, located at 1900 Main Street Houston, TX. The purpose of the conference is to explain the Solicitation requirements and answer any questions prospective Proposers may have regarding the Solicitation. Questions concerning this Solicitation must be presented in writing to the Director of Procurement and Contract Administrator at or prior to the Pre-Proposal Conference. All Proposers are strongly encouraged to attend the Pre-Proposal Conference.

PROPOSAL RECEIPT/LOCATION: Proposals will be received until 2:00 P.M. local time on Wednesday, May 5, 2010 at the METRO Office of Procurement Plan Room, 2nd Floor, 1900 Main Street, Houston, Texas 77002. The proposal (original and eight (8) copies is to be submitted in a sealed envelope bearing the name and address of the Proposer and the identification "Request for Proposal No. RP1000018". Proposals received will not be publicly opened. It is anticipated that METRO will conduct oral presentations May 10-14, 2010. Contractor's Key personnel will be required to attend.

PERFORMANCE PERIOD: The Contract Performance Period will be for a period of five (5) years (with two, one year options) from the effective date of the Contract Notice to Proceed.

SMALL BUSINESS CONTRACT GOAL: METRO has adopted a Small Business/Disadvantaged Business Enterprise (SB/DBE) Program to encourage the participation of small business and disadvantaged business enterprises in contracting activities. All Proposers are required to exercise good faith to use small businesses and disadvantaged businesses to the extent indicated in the Solicitation. This Solicitation has a 6.7% SB participation goal. SB/DBE sub-contracting opportunities can be found in all components of this contract, except rider incentives and lease payments. The SB/DBE goal for the contract shall increase or decrease as components containing SB/DBE sub-contracting opportunities increase or decrease. Proposers may obtain a copy of the program by contacting METRO's Office of Small Business Office at (713) 739-4844. ALL PROPOSERS ARE REQUIRED TO EXERCISE GOOD FAITH TO USE SMALL BUSINESSES AND DISADVANTAGED BUSINESS ENTERPRISES TO THE EXTENT INDICATED IN THIS SOLICITATION.

SECURITY: METRO anticipates resultant contract will have a contract performance security of \$80,000.00.

OBLIGATION: This Request for Proposal does not obligate the Metropolitan Transit Authority to award a contract, or to pay any costs incurred in the preparation or submittal of any proposal.

REGISTRATION ON PROCUREMENT WEB SITE: All Proposers should register on METRO's procurement website at http://www.ridemetro.org/procurement_materials to insure that they receive the latest solicitations and updates via their registered e-mail address.

2 "NO BID/PROPOSAL" RESPONSE FORM

If no Bid is to be submitted, detach this sheet from the solicitation, complete the information requested below, fold, affix postage and mail.

NO ENVELOPE NECESSARY.

- ☐ Do not provide this product line. Remove us from your source list for these items.
☐ Unable to obtain required insurance.
☐ Unable to obtain required bonding.
☐ Not equipped to handle this project.
☐ Do not carry this item.
☐ Not within the scope of our capabilities.
☐ Insufficient bidding/proposing time.
☐ Unable to identify items(s).
☐ Can supply item, however, cannot be competitive.
☐ Cannot comply with Delivery/Performance Period.
☐ Project size is too large.
☐ Project size is too small.
☐ Not interested in this type of project. Explain: _____

☐ Cannot comply with specifications. Explain: _____

☐ Other: _____ We
☐ Do ☐ Do Not desire to be maintained on your solicitation mailing list

TYPE NAME AND ADDRESS OF COMPANY:_____
Company Name_____
Type or Print Name of Signatory_____
Address_____
Title of Signatory_____
City State ZIP_____
Signature of Authorized Company Official

FROM:

Affix
Stamp
Here

TO: METROPOLITAN TRANSIT AUTHORITY
Procurement Division
1900 Main
Houston, Texas 77002
P.O. Box 61429
Houston, Texas 77208-1429

3 INSTRUCTIONS TO PROPOSERS**A. INTRODUCTION**

1. The Metropolitan Transit Authority of Harris County Texas, (METRO) is seeking proposals, under the negotiated method of procurement, from qualified Proposers (firms) to provide Contractor services for Fleet Management and Maintenance of Vehicles/Off-Road Equipment. METRO invites your firm to submit a proposal in response to this Request entitled Project Management Consultant, as generally described in the Statement of Work, Exhibit "A" of this solicitation.
2. Enclosed is a Request for Proposal (RFP) and a proposed contract. The proposed contract is made available so you may be aware of the contemplated terms and conditions of any resulting contract. If you take exception to the solicitation (including the terms and conditions of the proposed contract), please elaborate in your proposal.

B. EXAMINATION OF DOCUMENTS

1. A complete set of proposal documents shall be used in preparing a proposal; METRO assumes no responsibility for errors or misinterpretations resulting from the use of incomplete sets of documents.
2. METRO, in making copies of these documents available on the above terms, does so only for the purpose of obtaining proposals on the work and does not convey a license or grant for any other use.
3. Each Proposer should carefully examine these documents and take such other steps as may be reasonably necessary to ascertain the contract performance requirements. Failure to do so will not relieve the Proposer from responsibility for estimating properly the difficulty or cost of successfully performing the contract. Extra compensation will not be allowed for conditions which are determinable by examining these documents.

C. EXPLANATION TO PROPOSERS

Any explanation desired by a Proposer regarding the meaning or interpretation of the Request for Proposal or its Statement of Work, must be requested in writing at least ten (10) calendar days before date set to receive proposals. Questions can be submitted via the following e-mail address: wf01@ridemetro.org. Any interpretation made will be in the form of an amendment to the Request for Proposals or information letter and will be furnished to all prospective Proposers. Receipt of Amendments by the Proposer must be acknowledged in the space provided on the Request for Proposal or Amendment Form or by letter received before the time set for receipt of proposals. Oral explanations or instructions given before the award of the Contract will not be binding. METRO will assume no responsibility for any understanding or representations concerning conditions made by any of its officers or agents or employees prior to the execution of the Contract, unless included in these documents.

D. PROPOSER QUALIFICATIONS/ELIGIBILITY FOR AWARD

- 1 Each Proposer shall complete, and submit the applicable forms contained in these documents. If the Proposer is a joint venture, each joint venturer shall prepare and submit a separate form. Failure to complete and return the Proposer's Questionnaire may be grounds for rejection of the proposal.
- 2 In order for a Proposer to be eligible to be awarded the Contract, his proposal must be responsive to the Request for Proposal and METRO must be able to determine that the Proposer is responsible to perform the Contract satisfactorily.
- 3 Responsive proposals are those complying in all material aspects of the solicitation. Proposals, which do not comply with all the terms and conditions of this solicitation, will be rejected as nonresponsive.
- 4 Responsible Proposers must demonstrate:
 - a) Proposer has prior experience with vanpool management service, leasing of vanpool vehicles and fare collection similar to METRO's present Star Regional Vanpool Program.
 - b) Proposer has been in business at least five (5) years and is fully capable of providing vanpool business development services to attract as well as retain vanpool riders, expand service area routes and increase employer sponsors.
 - c) Proposer has financial resources adequate to perform the Contract, or ability to obtain such resources as are required during the performance of the Contract (a current financial statement is required);
 - d) Proposer is able to obtain performance security for the contract and demonstrates with letter from surety;

- e) Proposer shall demonstrate successful completion of similar types of vanpool management services of similar size as the METRO project and is still providing these services or have successfully completed contracts. References should be comparable to METRO's size and demographics;
 - f) Proposer has necessary technical and management capability to improve operating efficiencies of recruiting and retaining vanpool participants;
 - g) Proposer has a satisfactory record of current and/or past performance in behalf of METRO and/or other owners, including the areas of vanpool program administration, business development and services, record keeping reporting, qualified supervision, skilled workforce, safety, quality of equipment, materials and workmanship, timely performance, warranties and guarantees;
 - h) Proposer has a satisfactory record, as a Contractor, of making good-faith efforts to achieve Small Business/Disadvantaged Business Program goals in past METRO projects, as well as providing evidence satisfactory to METRO that the Proposer will comply with Small Business Program/Disadvantaged Business requirements and goals contained herein;
 - i) Certify that it is not on the U.S. General Services Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs". Signing and submitting the proposal is so certifying;
 - j) Proposer is otherwise qualified and eligible to receive an award under applicable laws and regulations.
 - k) Include all necessary forms including questionnaire.
5. METRO reserves the right to make monthly invoice payments via MasterCard credit card on the resultant contract. In accordance with METRO's invoicing and payment terms referenced in the proposed Contract, the Contractor would submit an original invoice and all required submittals for services performed. Upon inspection and acceptance of the submitted invoice and supporting documents, the payment would occur that day or the next day depending when the payment is processed.
6. A Proposer may be requested to submit written evidence verifying that they meet the minimum criteria necessary to be determined a responsible Proposer. Refusal to provide requested information will result in the Proposer being declared nonresponsive, and the proposal will be rejected.

E. PROPOSAL CONTENTS

There are two parts of this Request for Proposal that must be completed: The Technical Proposal and the Price Proposal, as described below. Both documents must be submitted by the date and time established for receipt of proposals for a proposal to be considered by METRO.

1. Technical Proposal: Each Technical Proposal shall be submitted in the format described below and include as a minimum, the following information:
 - a. Executive Summary. The executive summary shall be signed by the Proposer's authorized representative and shall provide a concise summarization of the services being proposed to meet METRO's needs, the Proposer's approach to providing the services, and documentation as to why the Proposer is best qualified to perform these services. The executive summary shall be limited to no more than five (5) pages.
 - b. Proposer's Approach to Providing all Services Identified. The Proposer shall describe the proposed approaches for providing the services described in this Request for Proposals. Proposer shall clearly define and explain how services will be provided.
 - i. Program Administration – This should include Proposer's approach in providing for Program Administration services described in Exhibit "A", including attachments thereto. Services as described herein are:
 1. Management structure and approaches, including selection, oversight and contingency plans.
 2. Customer Service efforts for assisting customers and performing customer service tasks.
 3. Administration arrangements including offices and tools for performing project functions.
 4. Miscellaneous requirements established by METRO for vanpool operations, including fare collection in accordance with Exhibit "A", Attachment 2, and administration of rider incentives in accordance with Exhibit "A", Attachment 4.
 - ii. Business Development – This should include Proposer's approach in providing for Business Development services described in Exhibit "A", including attachments thereto. Services as described herein are:
 1. New Business Development resources and approaches for attracting and retaining participants.

2. Account Management efforts for maintaining productive account relationships.
 3. Marketing & Public Relations efforts for support of STAR's market position.
 4. Vanpool Group Formation efforts for initiating new vanpool routes.
 5. Vanpool Maintenance efforts for sustaining existing vanpool routes.
 6. Miscellaneous requirements established by METRO for vanpool business development.
- iii. Services – This should include Proposer's approach in providing for Services in support of STAR as described in Exhibit "A", including attachments thereto. Services as described herein are:
1. Equipment resources and arrangements for performance of the Contract and operation of STAR, including vehicle leasing in accordance with Exhibit "A", Attachment 1.
 2. Emergency Ride Home alternatives for instances where the METRO-provided taxi arrangements are not available.
 3. Systems to be used for fare collection, fleet management, relationship management, administration of STAR, including any proposed alternatives to the use of RidePro.
 4. Miscellaneous requirements established by METRO for vanpool services and support.
- iv. Operating Requirements – This should include Proposer's approach in providing for Operating Requirements of STAR as described in Exhibit "A", including attachments thereto. Proposer's description shall include approaches not described as part of Program Administration, Business Development and Services above. Services as described herein are:
1. Project Management and Coordination provisions and efforts for project authorization, coordination, planning, reviewing, interfacing and staff training.
 2. Reports and Deliverables as required for METRO or by METRO for others, including for National Transit Database in accordance with Exhibit "A", Attachment 3.
 3. Performance Standards and Pay for Performance recommendations for METRO's consideration.
 4. Miscellaneous Project Requirements as required for METRO or by METRO for others.
 5. Miscellaneous Response Requirements as required for METRO evaluation of proposals.
- c. Qualifications and Experience of Firm and Key Personnel, and Performance. The Proposer shall describe the qualifications of the Proposer and Key Personnel to satisfactorily provide the required services by reason of experience and record of accomplishment in providing **similar services** as those described in this Request for Proposals. The Proposer shall clearly describe the qualifications, experience and past and present performance of the firm and key personnel.
- i. Qualifications, Experience and Performance of the Firm – This should include description of Proposer's business, organization and financial standing; history and experience providing vanpool management services; and record of accomplishment performing similar work. Qualifications, experience and performance described herein are:
1. Introduction of firm, including, when possible, all subcontractors that will be involved in the performance of work indicating primary business experience and length of time in business.
 2. History and experience of the Firm in vanpool management services to demonstrate ability to:
 - a. Perform vanpool management services for large urban, regional or state vanpool programs;
 - b. Increase and sustain ridership in various market conditions;
 - c. Administer vanpool fare collection operations;
 - d. Perform fleet leasing and administration duties;
 - e. Operate vanpool services in a cost-effective manner;
 - f. Meet METRO's goals and objectives for STAR; and
 - g. Operate in close coordination with a transit agency.
 3. Minimum of five (5) years experience in providing these same types of services to public agencies or private organizations. Proposer shall give a description of direct experience on projects of similar size, scope and complexity.
 4. Record of accomplishment in the performance of similar services, including the successful use of approaches recommended for STAR.
 5. Identify clients represented in the past three (3) years in which similar services were provided, on similar projects or contracts, as well as three (3) current clients with name and telephone number of contact person, nature and duration of project.
 6. Relevant experience in project work involving federal funds, and working with federal, state or local governmental agencies.
 7. Sound financial standing with ability to perform all functions of the project, including vehicle leasing and fare collection.
- ii. Qualifications, Experience and Performance of Key Personnel – This should identify qualifications, experience and record of accomplishment of the Key Personnel proposed for assignment to the project. Qualifications, experience and performance described herein are:

1. Identify qualifications and experience of Key Personnel proposed for assignment to the project and provides resumes of each.
 2. Provide a staffing plan and organization chart, identifying the project manager and any other Key Personnel, including subcontractors, for assignment to the specified tasks as provided for in Proposer's approach to providing all services identified in response to Exhibit "A", including attachments thereto. Discuss the direct qualifications and experience of each individual relevant to METRO's requirement and Proposer's response.
 3. Include personnel with the following minimum experience:
 - a. Project Manager shall have no less than five (5) years experience managing a vanpool program to include administration, business development and support services;
 - b. Fare collection leadership shall include at least one individual with no less than three (3) years experience with responsibility for a complex billing and payment processing operation; and
 - c. Other Key Personnel shall have no less than two (2) years experience performing similar duties with similar levels of responsibility as proposed.
 4. Record of accomplishment in the performance of past assignments, including in performance of similar duties with similar levels of responsibility as proposed.
 5. Indicate the percentage of time allocated to the project for resources that are not dedicated full-time to this project.
- d. **Project Management Structure and Methodology** (in accordance with Exhibit "A"). The Proposer shall describe the management structure and methodology to satisfactorily manage the project and all services identified in Exhibit "A", including attachments thereto, and in Proposer's response. The Proposer shall clearly describe how the project team will be structured and managed.
- i. **Management Structure** – This should identify the management reporting and oversight structure, including contingency and succession plans. Management structures described herein are:
 1. Provide general explanation and chart that identifies project leadership and reporting responsibilities.
 2. Include the placement of subcontractors, if proposed, in the primary management structure.
 3. Identify how oversight and supervision provide for assurance of accurate and complete performance of staff duties, including avoidance of errors and omissions.
 4. Identify plans for backup and contingency management, including succession for positions of Key Personnel.
 - ii. **Project Methodology** – This should describe the methodology and approaches for the entire project, including Program Administration, Business Development and Services. Project methodologies described herein are:
 1. Provide detailed management plan, incorporating estimated labor-hours and resources to provide leadership and to provide technical assistance, compliance, reporting and human resources to select, train, lead and supervise personnel.
 2. Describe methodologies for the entire project, including Program Administration, Business Development, Services, and Operating Requirements, including vehicle leasing, fare collection and all deliverables. Proposer shall demonstrate a comprehensive program for administering STAR with oversight, safeguards, backup and contingency plans for project requirements.
 3. Describe plans for transition of project to Proposer's responsibility, including transition phases and schedule.
 4. Provide methodologies and approaches for meeting objectives to:
 - a. Increase STAR's contribution to reducing vehicle miles traveled in the region;
 - b. Improve STAR's efficiency of reducing vehicle miles traveled;
 - c. Increase awareness and positive perception of STAR;
 - d. Enhance capabilities for attracting new riders to sustain routes that lose ridership and create growth in ridership;
 - e. Expand availability of vanpool services, including for low-income riders and those with few alternatives for commuting to and from work.
 5. Provide methodologies and approaches for providing:
 - a. Flexibility for adjusting to changes in funding availability, direction from METRO and market conditions;
 - b. Effective utilization of small or disadvantaged business enterprises in meeting the requirements for the project, including flexibility for meeting goals in a changing environment;
 - c. Adding value to STAR in addition to the requirements identified in Exhibit "A", including the attachments thereto, and in Proposer's response; and
 - d. Access to records and systems for METRO's Project Manager.
 6. Provide a volume analysis in support of the projected work activities upon which the staffing level

proposal is based.

2. Price Proposal: Each Proposer's cost proposal shall be submitted concurrently with the technical proposal and shall be in a separately sealed envelope clearly named as such, and referencing this Solicitation No. RP1000018. A complete breakdown of all costing elements must be included. The price proposal shall be prepared in accordance with Section III, Paragraph 2, "Proposal Amount/ Schedule of Items and Prices".

Proposer shall incorporate labor billing rates in the proposal differently for their home office staff and for field office staff utilizing METRO offices to perform their duties, pursuant to the Uniform Audit & Accounting Guide for Transportation Consultants (<http://downloads.transportation.org/Audit-AccountingGuide.pdf>) and in accordance with Federal Acquisition Regulation (FAR) (www.acquisition.gov/far/).

The Pricing Proposal Template includes five (5) sections with three (3) sections for component labor, expense and subcontracting costs; one (1) section for incentives; and one (1) section for the project total:

1. Program Administration – labor, expenses and subcontractors.
2. Business Development – labor, expenses and subcontractors.
3. Services – labor, expenses and subcontractors.
4. Incentives – rider incentives based on ridership.
5. Total – Sum of the four (4) component sections.

Component sections 1, 2, and 3 include templates for presenting labor resources, expense resources, and subcontractors. Proposer shall provide a descriptive name for each resource and duplicate the template for each unique resource proposed for the project. Proposer shall provide subtotals for the labor, expense and subcontracting portions of each component section and a total for all labor, expense and subcontracting costs in each component. For example, if Proposer suggests three types of labor positions for program administration, such as manager, clerk and assistant, the Proposer will make three copies of the labor template, rename them for manager, clerk and assistant, respectively, and complete the hours/units, unit cost and extended cost for each of the three types of positions for each of the seven (7) years included in the proposal, and provide a subtotal for all proposed program administration labor. This process will be repeated for the proposed expenses and proposed subcontracting and a total calculated for all proposed program administration labor, expense and subcontracting costs. This process will be repeated for the business development and services components. Labor hours for more than one person in the same position and pay level can be listed as one resource with the total proposed hours to be billed for all persons in that position.

The Incentives component section 4 includes a template for presenting the proposed rider incentives to match the Proposed ridership levels. Proposer shall complete the units, unit cost and extended cost for rider incentives for each of the seven (7) years included in the proposal. If more than one type or amount of rider incentive is proposed, Proposer shall duplicate the rider incentive template, give each copy a unique name to match the proposed incentive, and provide a total for the extended cost of all rider incentives. See Attachment 4 to the Scope of Services for a description of the current rider incentives.

The project total section 5 includes summary totals from each of the four (4) component sections and a grand total for the project.

3. Format: Each Proposer's proposal shall follow the following format:
 - a. Executive Summary
 - b. Proposer's Approach to Providing all Services Identified
 - i. Program Administration
 - ii. Business Development
 - iii. Services
 - iv. Operating Requirements
 - c. Qualifications and Experience of Firm and Key Personnel, and Performance
 - i. Qualifications, Experience and Performance of the Firm
 - ii. Qualifications, Experience and Performance of Key Personnel
 - d. Project Management Structure and Methodology
 - i. Management Structure
 - ii. Project Methodology
 - e. Price Proposal (sealed envelope)

F. PROPOSAL EVALUATION

The proposals will be evaluated by an Evaluation Committee comprised of METRO staff members who have expertise and knowledge in the disciplines related to the project and in accordance with this Request for Proposals. The Committee's evaluations are to be based on all available information, including proposals, reports, discussions, reference and other appropriate checks, and the personal knowledge of the individual members in the areas of their expertise. Proposal requirements set forth herein are designed to provide guidance to the Proposer concerning the type of documentation that will be used by the Evaluation Committee.

Proposals will be evaluated using the criteria set forth below. The importance of each factor is also listed below.

	FACTOR	RELATIVE IMPORTANCE
1.	Qualifications/Experience of Firm/Past/Present Performance	25 points
2.	Qualifications and Experience of Personnel	25 points
3.	Project Management Structure and Methodology	25 points
4.	Pricing	20 points
5.	Small Business Participation	5 points

G. SOURCE SELECTION

- Selection of a firm to provide the services required herein may be made by an Evaluation Committee. The Evaluation Committee will determine the most qualified firm through validation of factors in paragraph "F" above and oral presentations, if necessary. If the decision is made to conduct oral presentations, the firms will make a final presentation to the Evaluation Committee.
- An alternative evaluation process is the establishment of a Senior Selection Committee. This committee has the option of involving itself in the selection process at the very beginning, foregoing an Evaluation Committee of lower staff members all together, or to become involved after an Evaluation Committee has made an initial shortlist.

H. PREPARATION OF PROPOSAL

- A proposal shall be submitted on the forms furnished, or copies thereof, shall be completed in ink or by typewriter and shall be manually signed. If erasures or other changes appear on the forms, each erasure or change shall be initialed by the person signing the proposal. Telegraphic, facsimile, or e-mailed proposals are not authorized.
- If a proposal is from an individual, sole proprietorship, or a Proposer operating under a trade name, the proposal shall be signed by that individual.
- A proposal by a partnership shall be executed in the partnership name and signed by a partner; the official address of the partnership shall be shown below the signature.
- A proposal by a corporation shall be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal shall be affixed and attested by the corporate secretary or assistant secretary.
- A proposal submitted by a joint venture shall list the name of all joint venturers and the mailing address of each and shall be executed by all joint venturers in the same manner as if they were individually submitting proposals. The signature portion of the Proposal Form shall be altered as appropriate for execution by the joint venture and all joint venturers.
- All names shall be typed or printed below the signature.
- The proposal shall contain an acknowledgment of receipt of all amendments.
- Communications regarding this solicitation are to be directed to the address and to the attention of the person shown on the Request for Proposal.
- If a Proposer considers any of the terms or conditions of the solicitation (including the proposed Contract) to be unacceptable, the Proposer should identify those which are so, and cite reasons therefore in the supplement to its cover letter. Any such exceptions or revisions, and the reasons therefore, will be considered as factors in evaluation of the proposal.

I. SUBMISSION OF PROPOSALS

A proposal shall be submitted so as to be received no later than the exact time and at the place indicated in the Request for Proposal and shall be enclosed in a sealed envelope clearly identified as a proposal with the project title, Request for Proposal number and proposal receipt time. The envelope shall identify the name and address of the Proposer and shall contain any other required documents. Failure to do so may result in a premature opening of, or a failure to open, such proposal.

J. LATE PROPOSALS; MODIFICATION OR WITHDRAWAL OF PROPOSALS

1. Any proposal or modification of proposal received at the METRO office designated in the Request for Proposal after the exact time specified for receipt will not be considered. Late proposals received will be retained unopened in the official contract file.
2. A proposal may be withdrawn in person by a Proposer or his authorized representative, provided his identity is made known and he signs a receipt for the proposal, but only if the withdrawal is made prior to the exact time set for receipt of proposals.
3. Modifications of proposals already submitted will be considered if received at the office designated in the Request for Proposal by the time set for receipt of proposals.

K. DISQUALIFICATION

METRO reserves the right to disqualify a proposal, after receipt of the proposal, upon evidence of collusion with intent to defraud or other illegal practices on the part of a Proposer.

L. PROTESTS INSTRUCTIONS

1. Each protest or objection to the solicitation documents shall be submitted for resolution to the Vice President of Procurement & Materials. Each such protest shall be in writing and shall be supported by the information set forth in Chapter XIX of METRO's Procurement Manual to enable the protest to be considered. A protest will not be considered if it is insufficiently supported or it is not received within the time limits specified herein.
2. A protest based upon terms, conditions or form of a proposed procurement action prior to receipt of proposals, shall be submitted so that it is received by the Vice President of Procurement & Materials no later than five (5) calendar days prior to the proposal due date.
3. For protest concerning award decisions, including proposal evaluations, the initial protest submission must be received by the Vice President of Procurement and Materials not later than five (5) calendar days after the interested party knows, or through exercise of reasonable diligence should have known, whichever is earlier, of the grounds of the protest.
4. Each protest will be processed in accordance with METRO's Protest Procedures located in Chapter XIX of METRO's Procurement Manual. A copy of the procedures will be provided to the protester upon written request to METRO's Vice President of Procurement & Materials.
5. A written final determination on any protest will be rendered by METRO's President and Chief Executive Officer and provided to the protester as soon as practicable.
6. The protester must exhaust its administrative remedies by pursuing METRO's protest procedures to completion prior to appealing METRO's decision to the FTA.
7. Federal Transit Administration (FTA) Circular 4220.1F, Chapter VII, addresses proposal protests. A copy of this paragraph will be provided to the protester upon written request to METRO. Review of a protest by FTA will be limited to a grantee's failure to have or follow its written protest procedures, its failure to review a complaint or protest, or violations of Federal law or regulations. 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 METRO or other basis of appeal to FTA. Violations of a specific Federal law or regulation will be handled by the complaint process stated within that law or regulation. Alleged violations on other grounds are under the jurisdiction of the appropriate State or local administrative or judicial authorities.

M. POSTPONEMENT OF DATE SET FOR RECEIPT OF PROPOSALS

Notwithstanding the time for receipt of proposals established in the Request for Proposals, the date and time for receipt of proposals may be postponed solely at METRO's discretion.

N. AWARD OF CONTRACT

1. A not-to-exceed contract, with fixed, unit costs, will be awarded to the responsive, responsible Proposer whose proposal conforming to this solicitation will be most advantageous to METRO, price and other factors considered. A copy of the proposed contract is provided herein for the information of prospective Proposers.
2. METRO may accept within the time specified herein, any proposal; whether or not there are negotiations subsequent to its receipt, unless the proposal is withdrawn by written notice received by METRO prior to award. If subsequent negotiations are conducted, they shall not constitute a rejection or counter offer on the

part of METRO.

3. METRO may award a contract, based on initial proposals received, without discussion of such proposals. Accordingly, each initial proposal should be submitted on the most favorable terms from a price and technical standpoint which the Proposer can submit to METRO.
4. METRO may award a contract to other than the Proposer who submits the lowest price proposal, when in its best interest to do so.
5. METRO reserves the right to: (1) cancel the entire proposal; (2) issue subsequent Request for Proposals; (3) negotiate with all qualified Proposers considered to be within the competitive price range; reject any or all proposals and to waive informalities and minor irregularities in proposals received.
6. Any financial data submitted with any proposal hereunder or any representation concerning facilities or financing will not form a part of any resulting contract.
7. A written Notice-of-Award will be issued to the successful Proposer upon being selected for award of a contract and execution of any resultant contract.

O. PROHIBITION ON LOBBYING

No Proposer shall, directly or indirectly, engage in any conduct (other than the submission of the proposal or other prescribed submissions and/or presentations before the Evaluation or Senior Selection Committee) to influence any employee of METRO or any member of the Metropolitan Transit Authority Board of Directors concerning the award of a contract as a result of this Solicitation. Violation of this prohibition may result in disqualification of the Proposer from further participation in future METRO solicitations or contracts.

P. DISCOUNTS

1. No discounts will be considered in the evaluation of proposals.
2. Discounts for early payment may be offered in the original proposal or on individual invoices submitted under the resulting contract, and discounts offered will be taken by METRO if payment is made within the discount period specified.
3. Discounts that are included in proposals become a part of the resulting contract and are binding on the Contractor.

Q. TAXES

METRO is exempt from payment of Federal Excise and Transportation Tax and the Texas Limited Sales, Excise and Use Tax. Proposers shall not include an assessment of these taxes in their proposal.

R. SMALL BUSINESS CONTRACT GOAL

1. The Metropolitan Transit Authority of Harris County, Texas (METRO) has implemented a Small Business/Disadvantaged Business Enterprise Program (SB/DBE), hereinafter referred to as the Program, for small businesses and disadvantaged businesses attempting to provide goods and/or services as prime Contractors to METRO or as subcontractors to other prime Contractors to METRO. It is the policy of METRO to promote equal opportunity and nondiscrimination in all of its procurement matters in accordance with state and federal law. The Program seeks to provide small businesses and disadvantaged businesses a full and fair opportunity to participate in METRO projects. The Small Business/Disadvantaged Business Enterprise Program shall not be used to discriminate against any person or company or group of persons or companies because of race, color, religion, sex, age, disability or national or ethnic origin. Each bidder, Proposer, Contractor and subcontractor shall comply with this nondiscrimination requirement. In a subcontracting market which operates in a non-discriminatory manner, it would be expected that the distribution of subcontracts would generally reflect the availability of qualified and available Contractors of various ethnic groups.
2. Any small business whose gross annual income averaged over the past three (3) years does not exceed the Small Business Administration's size standards as specified in 13CFR Part/21 is eligible to apply for participation in the Program. Successful completion of a certification process with METRO's Small Business Program Office constitutes enrollment in the Program. Small business eligibility will be determined without regard to race, color, religion, sex, age, disability, national origin or veteran status.
3. In applying for the Program, any small business may also voluntarily identify itself as a disadvantaged business enterprise by showing that 51 percent of the business is owned by one or more individuals who are socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is

owned by one or more such individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. METRO employs the definition of "socially and economically disadvantaged" as found at 49 Code of Federal Regulations (CFR) Part 26, Section 26.5.

4. This Solicitation has a Contract Goal for small business participation. Contract Goals may be satisfied by utilizing certified small businesses or certified disadvantaged business enterprises or a combination of both.
5. In connection with this Solicitation, METRO has established the following percentage, of the total dollar amount of the offer, as its Contract Goal for Small Business participation.

6.7% SB

SB/DBE sub-contracting opportunities can be found in all components of this contract, except rider incentives and lease payments. The SB/DBE goal for the contract shall increase or decrease as components containing SB/DBE sub-contracting opportunities increase or decrease.

6. Contractor's Utilization Plan

- a. METRO requires that every bidder or proposer submit a Contractor's Utilization Plan (the "Plan") when submitting its bid or proposal or response to request for qualifications. The Plan should set forth how the Contract Goal for the proposed project is to be met. The Plan will be used by METRO as a factor in evaluating whether a Proposer has complied with the requirements of the Program and has made Good-Faith Efforts to satisfy the Contract Goal. METRO shall require Contractor to submit a revised Contractor Utilization Plan in the event of changes in the amount of contract expenditures for items where SB/DBE sub-contracting opportunities exist. For planning purposes, the Proposer should target 35% SB/DBE participation in the proposal for items other than the rider incentives and lease payments.
- b. This solicitation is made pursuant to a competitive request for proposal. Your Contractor's Utilization Plan must include the following:
 - i. A Plan submitted as a part of a proposal outlining SB/DBE participation, inclusive of scope, responsibilities and percentage of work. Failure to submit a completed Plan will result in proposal being deemed non-responsive.
 - ii. A Plan must include letters of intent or executed subcontracts for each listed Small Business or Disadvantaged Business.
 - iii. A Plan must include a pledge of prompt payment for the SB/DBE Subcontractors.
 - iv. An affirmative statement by the proposer that it has adhered to METRO's Nondiscrimination Mandate and has not discriminated against any small or disadvantaged business in considering subcontracting opportunities based on race, sex, religion, national or ethnic origin, age or disability.
 - v. A Plan must include a pledge to adhere to the dispute resolution provisions (mediation and arbitration) as required by the Program.
 - vi. When requested, a timeline for performance by SB or DBE Subcontractors as required.
- c. The Contractor shall adhere to the Plan submitted unless a waiver is received from the Director of the Office of Small Business. Any changes in the Plan regarding the proposed use of SBs or DBEs in discharging the contract duties must be approved by the Director. The approval of the will not be unreasonably withheld upon a showing of good cause to make the change.

7. Determination of Good -Faith Effort

- a. Any business that receives a contract with METRO covered by its Small Business/Disadvantaged Business Enterprise Program shall be required to make a good-faith effort to award subcontracts to small businesses. Good Faith Efforts are discussed at length in Section F of METRO's Procedures to Enhance Small Business/Disadvantaged Business Enterprise Opportunities.
- b. If an award is made, the contractor will adhere to METRO's monthly on-line reporting requirements and submit a copy of the Contract Audit screen.
- c. A list of all METRO Certified Small Businesses and Disadvantaged Businesses may be obtained

either in hard copy from METRO or electronically accessed through the following internet address:
<http://www.RideMETRO.org>.

- d. A subcontractor is an entity that enters into a contract with a contractor to provide a portion of the goods or services for which the contractor is responsible under the terms of its contract with METRO. As discussed herein, a Contractor must be able to document the Good Faith Efforts taken to comply with METRO's Contract Goals and the requirements of the Program.

8. Incentives Utilizing Small Businesses and Disadvantaged Businesses

- a. Fees for Solicitation Documents. Submitters making a valid bid and participating in the Program will receive a refund for up to seven (7) sets of documents purchased from METRO.
- b. Bid Security / Bond. A bid security will no longer be required except for federally funded construction solicitations exceeding \$100,000.
- c. METRO's Incentives. METRO may utilize other incentives, as set forth in the bid specifications or request for proposal, as it determines appropriate.

9. Insurance Requirements

The bidder/proposer whose bid is accepted shall, within the time established in the Invitation for Bids, enter into a written Contract with METRO and, if required, furnish Certificates of Insurance in the amounts indicated in the Contract.

10. Small Business/Disadvantaged Business Enterprise Program

- a. For all contracts for which contract goals have been established, each bidder/proposer will be required to submit Small Business and Disadvantaged Business participation information to METRO and the award of the contract will be conditioned upon satisfaction of the requirements established by METRO. The apparent successful bidder/proposer, shall submit with its bid or proposal a Contractor's Utilization Plan.
- b. If the small business participation submitted by the bidder/proposer does not meet the Contract Goals, the bidder/proposer must submit evidence demonstrating that good-faith efforts were made to meet the goals.
- c. To determine sufficient Good-Faith Efforts to meet the Contract Goal, a bidder/proposer shall document the steps it has taken to obtain Small Business and/or Disadvantaged Business participation, including but not limited to the following:
 - i. Attendance at a pre bid meeting, if any, scheduled by METRO to inform SBs and DBEs of subcontracting opportunities under a given solicitation;
 - ii. Review list of METRO certified firms, METRO Opportunity University graduates and firms certified through the Texas Unified Certification Program to determine potential subcontractors;
 - iii. Advertisement in general circulation media, trade association publications, and other media for at least 15 days before bids or proposals are due, when possible;
 - iv. Written notification to Small Businesses and/or Disadvantaged Businesses that their interest in the contract is solicited. The notice shall include a description of the subcontracting opportunities and identify the contact person within the Contractor's office. The notice must be sent to at least five (5) businesses in the current METRO or TUCP directory of certified SB and DBE entities that perform the type of work required. If METRO's directory does not include at least five (5) certified SBs or DBEs in the industry or commodity needed, the Contractor shall send the notice to other SBs and/or DBEs on lists maintained by other government agencies or organizations so long as the selected Subcontractors become certified by METRO prior to Board action;
 - v. Efforts made to select portions of the work proposed to be performed by Small Businesses or Disadvantaged Businesses in order to increase the likelihood of achieving the stated goal and, to the extent feasible and consistent with prudent industry practice, efforts to divide the contract work in reasonable lots;
 - vi. Efforts to provide interested SBs or DBEs with adequate information about the plans,

specifications, and requirements of the contract in a timely manner to assist them in responding to the solicitation;

- vii. Negotiating in good faith with interested SBs or DBEs. Evidence of such negotiation includes, at a minimum:
 - The names, addresses, and telephone numbers of SBs or DBEs that were contacted;
 - A description of the information provided to SBs or DBEs regarding the plans and specifications for portions of the work to be performed; and
 - A statement of why additional agreements with SBs and DBEs were not reached.
 - viii. Not rejecting SBs or DBEs as being unqualified without sound reasons based on a Business the Bidder/Proposer contacted but rejected as unqualified, the reasons for the Bidder/Proposer's exclusion;
 - ix. Efforts made to assist the Small Businesses or Disadvantaged Business contacted that needed assistance in obtaining bonding or insurance required by the Bidder/Proposer or METRO;
 - x. Efforts made to assist interested SBs and DBEs in obtaining necessary equipment, supplies, materials or related assistance or services; and
 - xi. Efforts made to utilize the services of available small business and/or disadvantaged business organizations that provide assistance in the recruitment and placement of SBs and DBEs.
- d. To determine whether a bidder/proposer that has failed to meet the Contract Goals may be awarded the contract, METRO will determine whether the efforts the bidder/proposer made to obtain small business participation were "Good-Faith Efforts". Efforts that are merely pro forma are not Good-Faith Efforts to meet the goals. In order to award a contract to a bidder/proposer that has failed to meet Contract Goals, METRO will determine whether the bidder/proposer actively and aggressively made efforts to meet METRO's Contract Goal.
- e. In determining whether a bidder/proposer has made Good-Faith Efforts, METRO may take in account the performance of other bidders/proposers in meeting the Contract Goals. For example, when the apparent successful bidder/proposer fails to meet the Contract Goal, but others meet it, METRO may reasonably raise the questions of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If an apparent successful bidder/proposer fails to meet the goal, but meets or exceeds the average SB/DBE participation obtained by other bidders/proposers, METRO may view this, in conjunction with other factors, as evidence of the apparent successful bidder/proposer having made Good Faith Efforts.
- f. Bidders/Proposers that fail to meet Contract Goals and fail to demonstrate Good-Faith Efforts shall not be eligible to be awarded the contract. The firms submitted as proposed subcontractors to meet the contract goal must be certified prior to Board action.
11. Materials and supplies shall be counted towards the small business goal as follows:
- a. 100 percent of the cost of materials or supplies purchased from a small business manufacturer can be applied towards the small business goals of this contract. A manufacturer is defined as a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment of the general character described by the scope and/or specifications of the contract.
 - b. 60% of the cost of materials or supplies purchased from a small business regular dealer can be applied towards the small business goals of this contract. A regular dealer is defined as a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the scope and/or specifications of the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
12. The proposer/bidder shall submit copies of documents demonstrating that each small business team member is acceptably certified as either a small or disadvantaged business enterprise, and verifying that such certification is current as of the date of submission. METRO accepts the following certifications:

- SBE - Metropolitan Transit Authority of Harris County (METRO)
- DBE - City of Houston/Texas Unified Certification Program (TUCP)
- SBE/DBE - U. S. Small Business Administration §8(a) Certification
- DBE - City of Austin
- DBE – Corpus Christi Regional Transportation Authority
- DBE – North Central Texas Regional Certification Agency
- DBE – South Central Texas Regional Certification Agency
- Any U. S. Department of Transportation (DOT) approved DBE certification

Other certifications may be acceptable. However, if the firm's certification does not fall into any of the above-referenced categories, in addition to the certificate, the proposer/bidder must supply the contact information of the certifying agency, complete with telephone number.

METRO does not accept the following certifications:

- State of Texas HUB (Historically Underutilized Business)
- Minority Business Enterprise only
- Women Business Enterprise only
- City of Houston Small Business certification only

If a proposer/bidder submits a firm as part of its small business participation that is not yet certified as referenced above, that firm must submit their complete application package, with all required supporting documents, to METRO prior to the proposal submittal date. Additional information and certification forms may be found at METRO's website: www.ridemetro.org under "Opportunities."

S. INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting a proposal, the Proposer is providing the certification set out in Paragraph T below.
2. The certification in this Instructions to Proposers is a material representation of fact upon which reliance will be placed by METRO to enter into a resultant contract. If it is later determined that the Proposer/Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, METRO may pursue available remedies, including suspension and/or debarment.
3. The Proposer shall provide immediate written notice to METRO if at any time the Proposer learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms covered "transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "primary covered transaction," "principal," "proposal" and "voluntarily excluded", as used herein, have the meanings set out in the Definition and Coverage sections of rules implementing Executive Order 12549. You may contact the person to whom your proposal is submitted for assistance in obtaining a copy of this regulation.
5. The Proposer agrees by submitting a proposal that, should the resulting contract for the proposed covered transactions entered into, it shall not knowingly enter into any subcontract with a firm who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by METRO.
6. The Proposer further agrees by submitting this proposal that it will include the instruction titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," at Paragraph T below, without modification, in all solicitations for lower tier covered transactions, expected to equal or exceed \$25,000.00.

T. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTION

1. The Proposer certifies, by signing the attached certificate, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the Proposer is unable to certify to any of the statements in this certification, the Proposer shall attach an explanation to the bid being submitted to METRO.

U. METRO-FURNISHED PROPERTY

No material, equipment or facilities will be furnished by METRO unless otherwise stated in the solicitation.

V. SOLICITATION ORDER OF PRECEDENCE

In the event of an inconsistency between provisions of this solicitation prior to award, the inconsistency shall be resolved by giving precedence in the following order:

1. Solicitation amendments (if any) with the latest having precedence;
2. Scope of Services;
3. Instructions to Proposers;
4. The Proposal Form;
5. The proposed contract articles; and
6. Any other full-text provision of this solicitation whether incorporated by reference or otherwise.

W. APPROVAL OF CONTRACT

If required by the METRO Procurement Manual, award of a Contract evolving from this solicitation shall be contingent upon the prior receipt of written approval from the METRO Board of Directors. No contractual agreement shall be binding on METRO until this approval has been obtained. It shall be the responsibility of firms responding to this solicitation to monitor Board award decisions. All persons and/or entities responding to this Solicitation hereby acknowledge the contract award requirement enumerated in this Paragraph. Anticipated Board Items are posted on METRO's web site at <http://www.ridemetro.org/AboutUs/Board/Agenda.aspx>.

Public notice of solicitation results

The anticipated METRO Board meeting month for approval of a contract resulting from this solicitation will be forthcoming. It is the responsibility of the proposer to check METRO's website for notices on the specific dates for METRO Board meetings. All proposers of this Solicitation and METRO hereby agree that this provision shall serve as the minimum required action by the proposer toward exercising due diligence in obtaining the results of this Solicitation. The requirement of approval by the METRO Board of Directors for any particular solicitation is dependent upon several factors. However, all proposers shall be required to check the METRO web site regarding whether or not the solicitation associated with their proposal requires approval by the METRO Board of Directors. All persons and/or entities responding to this Solicitation hereby acknowledge the Public Notice of Solicitation Results enumerated in this Paragraph. METRO Board meeting notices are posted on METRO's web site at: <http://www.ridemetro.org/AboutUs/Board/Agenda.aspx>

X. SUBMISSION REQUIREMENTS AND PROCEDURES

Each Proposer must complete, sign and return the following forms/documents indicated below:

SECTION II- FORMS FOR BIDDING/PROPOSING:

- *1 "PROPOSAL FORM/SERVICE CONTRACT".
- *2 "TECHNICAL PROPOSAL".
- *3 "SMALL BUSINESS/DISADVANTAGED BUSINESS ASSURANCE STATEMENT".
- **4 "SMALL BUSINESS/DISADVANTAGED UNAVAILABILITY CERTIFICATE".
Must be completed and submitted with proposal when goal is not reached.
- *5 "DETERMINATION OF GOOD FAITH EFFORT". The Proposer will be responding "yes" or "no" to the statements listed on this form and supply supporting documentation with the proposal with each "no" statement.
- *6 "BUY AMERICA CERTIFICATE".
- *7 "CERTIFICATION OF RESTRICTION ON LOBBYING".
- *8 "CARGO PREFERENCE"
- *9 "DEBARMENT AND SUSPENSION FORM". The Proposer must provide this document with their proposal

and document must be signed.

- *10 "DISPUTES RESOLUTION PROCESS". Proposer shall designate on this form the type of disputes resolution process (Disputes Appeals Committee or Non Binding Third Party Arbitration) that will apply to any resultant contract resulting from this solicitation. In the event the successful Proposer fails to make such designation on this form as instructed, any resulting contract will incorporate the "Disputes Appeal Committee" process for disputes resolution.
- *11 PROPOSER'S QUESTIONNAIRE

SECTION III- FORMS FOR BIDDING/PROPOSING/AWARD

- * 1 "SOLICITATION AWARD FORM". Will be signed by the successful Proposer upon award of a contract.
- *2. "PROPOSAL AMOUNT/SCHEDULE OF ITEMS AND PRICES". Submit in a separate sealed envelope.
- * 3. "KEY PERSONNEL". The Proposer shall list significant personnel associated with providing the services.
- *4. "CONTRACTOR UTILIZATION PLAN FORM". The Proposer shall complete and return this form if the use of a subcontractor(s) are proposed.
- * 5. "CONTRACTOR'S UTILIZATION PLAN PLEDGE". The contractor shall complete and return this form if the use of a subcontractor(s) are proposed. A pledge of prompt payments to each SB/DBE subcontractor should be included. Finally, please provide an affirmative statement that the prime contractor adheres to METRO's Nondiscrimination Mandate and that it has not discriminated against any small or disadvantaged businesses in considering subcontracting opportunities based on race, sex, religion, national or Ethnic origin, age or disability.
- * 6 "SMALL BUSINESS/DISADVANTAGED BUSINESS LETTER OF INTENT". Must be submitted with the proposal.

NOTE: THE ABOVE "CONTRACTOR'S UTILIZATION PLAN PLEDGE", "CONTRACTOR UTILIZATION PLAN FORM" AND "SMALL BUSINESS/DISADVANTAGED BUSINESS LETTER OF INTENT" CONSTITUTE THE CONTRACTOR'S UTILIZATION PLAN TO SUBCONTRACT TO SB/DBE BUSINESSES.

EXHIBIT "C"

- *1 Copy of Contractor's policy regarding the Drug Free Workplace Act of 1988

- * Provide with Proposal Submittal
- ** Provide with Proposal Submittal, if applicable

SECTION II - FORMS FOR BIDDING/PROPOSING**1 PROPOSAL FORM/SERVICE CONTRACT**

READ THE INSTRUCTIONS TO PROPOSERS. THIS FORM TO BE SUBMITTED IN ONE COPY.

NAME OF PROJECT:
Vanpool Management Services

DATE OF REQUEST FOR PROPOSAL: April 5, 2010

RFP NO.: RP1000018

REQUISITION NO.: UR1000695

PROJECT NO.: N/A

PROPOSER'S NAME AND ADDRESS: (Type or Print, incl. "Zip Code")

DATE:

In compliance with the above referenced Request for Proposal, the undersigned hereby proposes to furnish all necessary resources and other means to furnish the services required, or portion thereof, listed in this Proposal, and as presented by the undersigned.

The undersigned agrees that this offer will remain valid for a period of one hundred twenty (120) calendar days after the date of receipt of proposals.

RECEIPT OF PROPOSAL AMENDMENT
(Give number and date of each):

The undersigned acknowledges receipt of the below listed Amendment(s).

NAME OF PROPOSER (Type or Print)

FULL NAME OF PARTNERS (Type or Print)

BUSINESS ADDRESS (Type or Print, incl. "Zip Code")

BY (Sign in ink, type or print name under signature)

TITLE (Type or print)

DIRECTIONS FOR SUBMITTING PROPOSALS: Envelopes containing proposals, guarantee, and other proposal documents shall be sealed, marked, and addressed as follows:

METROPOLITAN TRANSIT AUTHORITY
OFFICE OF PROCUREMENT PLAN ROOM
1900 Main St.
P.O. Box 61429
Houston, Texas 77208-1429

NOTE: Identify the envelope containing a proposal with the Project Title, Request for Proposal Number, proposal due date and Proposer's company name and address.

2 TECHNICAL PROPOSAL
(to be submitted by Proposer)

3 SMALL BUSINESS/DISADVANTAGED BUSINESS ASSURANCE STATEMENT

The undersigned certifies that he/she has read, understands and agrees to be bound by the small business provisions set forth in this Solicitation. The undersigned further certifies that he/she is legally authorized by the Bidder/Contractor to make the statements and representations in this Solicitation and that said statements and representations are true and accurate to the best of his/her knowledge and belief. The undersigned agrees to attain the small business utilization percentages of the total offer amount as set forth below:

Small Business Utilization Goal = 6.7 %

SB/DBE sub-contracting opportunities can be found in all components of this contract, except rider incentives and lease payments. The SB/DBE goal for the contract shall increase or decrease as components containing SB/DBE sub-contracting opportunities increase or decrease.

The undersigned will enter into formal agreement(s) for work to be identified on the "Contractor Utilization Plan Form" form conditioned upon execution of a contract with METRO and agrees to include the two assurance statements below in all subcontracts.

The undersigned certifies that the firm shown below has not discriminated against all small business or disadvantaged business or other potential subcontractor because of race, color, religion, sex, age, disability or ethnic or national origin, but has provided full and equal opportunity to all potential subcontractors irrespective of race, color, religion, sex, age, disability, or ethnic or national origin.

The undersigned understands that if any of the statements and representations are made knowing them to be false or there is a failure to implement any of the stated intentions, objectives, goals, and commitments set forth herein without prior approval of METRO's President & Chief Executive Officer or duly authorized representative, the Bidder/Contractor will be subject to the loss of any contract or the termination thereof resulting from this bid and could be ineligible for future METRO contract awards.

Signature: _____

Title: _____ Date of Signing: _____

Firm or Corporation: _____

Address: _____

Telephone Number: _____

4 SMALL BUSINESS/DISADVANTAGED BUSINESS UNAVAILABILITY CERTIFICATE

SMALL BUSINESS UNAVAILABILITY CERTIFICATE

(Name)	(Title)
--------	---------

(Business Name)

DATE CONTACTED	SMALL BUSINESS	TELEPHONE NO.	CONTACT PERSON	MATERIALS OR SERVICES	RESULTS
1.					
2.					
3.					
4.					
5.					
6.					

To the best of my knowledge and belief, said small business was unavailable for this solicitation, unable to prepare a bid/proposal or prepared a bid that was rejected for the reason(s) stated in the RESULTS column above.

The above statement is a true and accurate account of why I was unable to award a subcontract(s) or supply order(s) to the small business listed above.

NOTE: This form is to be submitted with all Bidder/Proposer documents for Waiver of small business participation. (See Instructions to Bidders/Proposers) Signature: _____

(Bidder/Offerer)

5 DETERMINATION OF GOOD-FAITH EFFORT

Bidder/Proposer/Contractor: _____

Address: _____

Phone: _____ Fax: _____ e mail: _____

In making a determination that a Good Faith Effort has been made, METRO requires the Bidder/Proposer/Contractor to complete a checklist and submit supporting documentation explaining in what ways the Bidder/Proposer/Contractor has made a Good Faith Effort according to each requirement with a copy of notice, or solicitation or letter of justification. The Bidder/Proposer/Contractor will respond to the following and provide supporting documentation as requested.

Please answer "yes" or "no." Were you able to meet the Contract Goal in selecting Small Businesses or Disadvantaged Businesses as part of your bid or proposal submission? Yes _____ No _____

If you answered "yes," you are not required to answer the remaining questions below. If you answered "no," please respond as requested below.

In an effort to document my Good Faith Efforts to meet the Contract Goals regarding Small Business or Disadvantaged Business participation, I am able to present evidence of:

Yes _____ No _____ Attendance at a pre bid meeting, if any, scheduled by METRO to inform SBEs and DBEs of subcontracting opportunities under a given solicitation.

Yes _____ No _____ Review of the list of METRO certified firms, METRO Opportunity University graduates and firms certified through the Texas Unified Certification Program to determine potential subcontractors.

Yes _____ No _____ Advertisement in general circulation media, trade association publications, and other media for at least 15 days before bids or proposals are due.

Yes _____ No _____ Written notification to Small Businesses and/or Disadvantaged Businesses that their interest in the contract is solicited. The notice included a description of the subcontracting opportunities and identified the contact person within my office. The notice was sent to at least five (5) businesses in the current METRO or TUCP director of certified SBE and DBE entities that perform the type of work required.

Yes _____ No _____ Efforts made to select portions of the work proposed to be performed by Small Businesses or Disadvantaged Businesses in order to increase the likelihood of achieving the stated goal and, to the extent feasible and consistent with prudent industry practice, efforts to divide the contract work in reasonable lots.

Yes _____ No _____ Efforts to provide interested SBEs or DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to the solicitation.

Yes _____ No _____ Negotiating in good faith with interested with SBEs or DBEs, including:

a) The names, addresses, and telephone numbers of SBEs or DBEs that were contacted;

b) A description of the information provided to SBEs or DBEs regarding the plans and specifications for portions of the work to be performed; and

c) A statement of why additional agreements with SBEs and DBEs were not reached.

Yes _____ No _____ Not rejecting SBEs or DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. Concerning each Small Business or Disadvantaged Business the Bidder/Proposer contacted but rejected as unqualified, the reasons for the Bidder/Proposer's exclusion.

Yes _____ No _____ Efforts made to assist the Small Businesses or Disadvantaged Business contacted that needed assistance in obtaining bonding or insurance required by the Bidder/Proposer or METRO.

Yes _____ No _____ Efforts made to assist interested SBEs and DBEs in obtaining Necessary equipment, supplies, materials or related assistance or services.

Yes _____ No _____ Efforts made to utilize the services of available small business and/or disadvantage business organizations that provide assistance in the recruitment and placement of SBEs and DBEs.

NOTE: If the prime contractor is unable to meet the solicitation goal or if any of the above items are answered "no," the Bidder/Proposer/Contractor must attach supporting documentation or a letter of justification. The attachments submitted by the Bidder/Proposer/Contractor will be reviewed by METRO and a written notice of acceptance or deficiency of Good-Faith effort will be issued. This form is due at time of bid submission.

Signature of Bidder/Contractor: _____ Title: _____

Date: _____

6 BUY AMERICA CERTIFICATE

The Bidder/Contractor hereby certifies that it will meet the requirements of 49 U.S.C. 5323 (j)(1), and the applicable regulations in 49 CFR Part 661.5.

Name of Bidder/Contractor: _____

Date of Signing: _____

Signature: _____

Title: _____

OR

The Bidder/Contractor hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323 (j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Name of Bidder/Contractor: _____

Date of Signing: _____

Signature: _____

Title: _____

7 CERTIFICATION OF RESTRICTIONS ON LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- 1) No federal appropriated funds have been or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an office or employee of any agency, a member of Congress, an officer or employee of Congress in connection with the awarding of any federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, 20__.

Company Name: _____

By: _____
(Signature of Company Official)

(Title of Company Official)

8 CARGO PREFERENCE

Bidder agrees to utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage involved (computed separately for dry bulk carriers, dry cargo liners, and tankers), whenever shipping any equipment, material, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

Bidder agrees 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 the paragraph above to the FTA Administrator and to METRO (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20230.

Bidder also agrees to insert the substance of the Contract article, entitled "Cargo Preference - Use of United-Flag Ships" in all subcontracts issued pursuant to the Contract.

Signature: _____

Typed Name: _____

Title: _____

Company: _____

Date: _____

9 DEBARMENT AND SUSPENSION FORM

The undersigned certifies, by submission of this certification, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

If the Company is unable to certify to any of the statements in this certification, the Company shall attach an explanation to this certification.

I hereby certify that I am authorized to execute this certification on behalf of the Company and certify the truthfulness and accuracy of the contents herein or attached hereto to the best of my belief. The Company does/does not (strike one) have in-house legal counsel.

Company Name: _____

By: _____
signature of company official) Date

(title of company official)

The following shall also be completed if the Company has in-house legal counsel:

The undersigned legal counsel for _____ hereby certifies that

_____ has authority under State and local law to comply with the subject assurances and that the certification above has been legally made.

Signature of Company's Attorney Date

10 DISPUTES RESOLUTION PROCESS

METRO hereby provides the bidder the opportunity to select a contract disputes process for resolving disputes by utilizing either a METRO Disputes Appeals Committee or non-binding third party arbitration.

Bidder shall designate on this form, by initialing the appropriate blank below, the type of disputes resolution process (Disputes Appeals Committee or non-binding third party arbitration) that it elects to apply to any contract resulting from this solicitation.

(initial your selection)

____ METRO DISPUTES APPEAL COMMITTEE

If the Bidder selects this process, the wording of the Contract Disputes Article will read as follows:

Any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement will be decided by the Contracting Officer, who will reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer will be final unless, within ten (10) calendar days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the METRO Contract Appeals Committee. The Contract Appeals Committee will be designated by the President & Chief Executive Officer and will hear the Contractor's appeal and make a recommendation to the President & Chief Executive Officer for the final decision. In connection with any appeal proceeding under this Article, the Contractor will be afforded an opportunity to be heard and to offer evidence in support of his appeal. The decision of the President & Chief Executive Officer will be final and conclusive with respect to the Contractor's administrative remedies under this Disputes Article. 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. This Disputes Article does not preclude consideration of questions of law in connection with decisions provided for above. Nothing in this Contract, however, shall be construed as making final the decision of any administrative official, representative, or committee on a question of law.

____ NON-BINDING THIRD PARTY ARBITRATION

If the Bidder selects this process, the wording of the Contract Disputes Article will read as follows:

A. Any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement will be decided by the Contracting Officer, who will reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer will be final unless, within ten (10) calendar days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal of the final decision.

B. Upon receipt of written appeal, an arbitrator mutually acceptable to METRO and the Contractor shall be selected. Unless otherwise agreed by the parties, arbitrators shall be selected through the American Arbitration Association. Unless otherwise agreed by the parties, the arbitrator shall schedule a hearing within ten (10) days of his/her selection. The hearing shall be informal but either party has the right to be represented by counsel if it so desires. No post hearing brief shall be filed or transcripts made. Either party may file a written statement of position at the hearing. There shall be no formal rules of evidence. The hearing shall normally be completed within one (1) day. The arbitrator shall render a written recommendation within three (3) working days after the conclusion of the hearing. By mutual agreement of the parties, the time for rendering a decision may be extended for an additional two (2) working days. The recommendation of the arbitrator shall be based on the record before the arbitrator and should include a brief written explanation of the basis for the recommendation. The written findings of the arbitrator shall be submitted to the President & Chief Executive Officer who shall make the final decision on the dispute. Costs of the arbitration, including transportation, travel, lodging and any other directly related charges by the arbitrator or the American Arbitration Association, shall be shared equally by METRO and the Contractor.

C. The decision of the President & Chief Executive Officer will be final and conclusive with respect to the Contractor's administrative remedies under this Disputes Article. 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. This Disputes Article does not preclude consideration of questions of law in connection with decisions provided for above. Nothing in this Contract, however, shall be construed as making final the decision of any administrative official, representative, or committee on a question of law.

(In the event the successful bidder fails to select a method of disputes resolution, as provided for above, any subsequent contract will incorporate the "Disputes Appeal Committee" process for disputes resolution)

11 PROPOSER'S QUESTIONNAIRE

Name of Company: _____

Address of Company: _____

Location of office responsible for providing services if different from above:

Geographical Service Area: _____

NOTE: Each Contractor and/or subcontractor anticipated to be utilized in performance of these services should complete, where applicable, this questionnaire and submit along with the Prime Proposer's proposal.

A. Has your firm ever been audited by METRO? Yes ____/No ____

B. If yes, the date of the last audit was: _____

C. Have you attached a copy of your firm's last annual financial (profit/loss) statement?

Yes ____/No ____

D. All insurance to be furnished to METRO by a Contractor in performance of a contract, must be on policies written by insurance companies licensed to operate within the State of Texas and have a minimum A.M. Best rating of B+ or greater: VI or greater as shown in the latest publication of the Best's Key Rating Guide. Please identify below, the name of your intended insurance carrier and their rating under the latest Best's Key Guide Rating.

Insurer's Name: _____

Best Rating: _____

E. Will your firm be able to provide METRO with a certificate for the insurance coverage's and amounts specified by METRO in the RFP?

Yes ____/No. ____

- F. If insurance requirements are not specified in the proposal, does your firm agree (on an award of the Contract) to provide METRO with a certificate of insurance, which will identify METRO as an added insured, to their standard corporate policy of the coverage's and amounts stated therein?
- Yes ____/No ____
- G. Is your firm aware of and will it comply with Government Code, Title 10, Chapter 2251, Vernon Texas Codes Annotated, when making payments to subcontractors?
- Yes ____/No ____
- H. Does your firm agree to (in the event of an award) make corporate data and records available to METRO (as they relate to the Contract) for audit during performance of and for a period of three (3) years after Contract completion?
- Yes ____/No ____
- I. Your firm maintains their accounts on (check one that is applicable):
- (1) An Accrual Basis Accounting System? ____
- (2) A Cash Basis Accounting System? ____
- J. Are your firm's accounting records subjected to an annual independent audit?
- Yes ____/No ____
- (If yes, kindly furnish us a copy of CPA reports for the last two (2) years.)
- K. Has your firm recently been audited by a cognizant Federal Government Audit Agency?
- Yes ____/No ____
- If yes:
- (1) By which agency? _____
- (2) Periods covered by the audit: _____
- L. If previously audited by a Federal Auditing Agency, have you attached a copy of the latest audit performed by such agency?
- Yes ____/No ____
- M. Has your firm established project accounting records to record costs by individual projects?
- Yes ____/No ____
- N. Are the costs in these records used as the basis for your firm's financial status reports and billing purposes?
- Yes ____/No ____
- O. Is the building where the firm is located (check one that is applicable):
- (1) Leased ____
- (2) Corporately owned ____
- (3) Individually owned ____
- P. Does the firm post credits for rebates, returns and allowances as a reduction to expenditures?
- Yes ____/No ____

Q. Does the firm have other branches operating in other places?

Yes ____/No ____

If yes:

(1) How many? ____

(2) Are separate accounting reports prepared for each branch?

Yes ____/No ____

R. What is the address and telephone number of your firm's headquarters?

S. What is the address of the office/location where your firm's financial records are kept/stored?

T. What is your firm's fiscal year ending date? _____

U. Who at your office would be the METRO Auditor's principal contact? Phone Number?

V. If your firm has FAX and e-mail capacity, what is the number and address?

W. What are your firm's office hours?

X. Does your firm currently employ or has it ever employed, at any time over the past twelve (12) months, any current or former METRO employees, associates, or representatives in any capacity whatsoever?

Yes ____/No ____

If answer is Yes, please provide on a separate sheet of paper the name of the individual, the purpose of employment, and the period employed.

Y. Does your firm currently employ or carry on it's payrolls any individual of a nationality other than United States citizen?

Yes ____/No ____

If yes, are they known to have entered and are working in the United States in accordance with the established laws of the United States Immigration and Naturalization Authority?

Yes ____/No ____

- Z. List names, titles, and telephone numbers of individuals authorized to negotiate with METRO in connection with this Request for Proposal.

Name	Title	Telephone No.
------	-------	---------------

Name	Title	Telephone No.
------	-------	---------------

- AA. How many years has your organization been in business as a Contractor under your present business name?
_____ years

- BB. How many people are currently employed by your firm?

1. In Harris County? _____

2. Outside Harris County? _____

- CC. List the names of key personnel who will be directly responsible for or in any way involved in providing the required services.
Resumes must be included for named personnel.

Name	Position/Title

- DD. Have you or your organization, or any officer or partner thereof, failed to complete a Contract? _____

If so, give details:

- EE. Provide a list of references, including contact name and telephone number for any projects your firm was unable to complete (include projects from which your firm was removed, terminated, contract not extended, or lost within the

last five years, describing circumstances surrounding these events.

FF. Is any litigation pending against your organization that will affect your company's ability to perform the required services?

Yes _____ No _____

If so, give details:

GG. Name your principal financial institution for financial responsibility reference.

Name of Bank: _____

Street Address: _____

City and State: _____ Telephone: _____

Officer familiar with Proposer's account: _____

HH. State your firm's annual average receipts over the past 3 fiscal years

\$ _____

CURRENT AUDITED FINANCIALS, IN ACCORDANCE WITH FEDERAL ACQUISITION REGULATION (FAR) —PART 31 CONTRACT COST PRINCIPLES AND PROCEDURES, MUST BE SUBMITTED AND SHALL INCLUDE BOTH FIELD AND HOME OFFICE RATES FOR OVERHEAD, IN ACCORDANCE WITH UNIFORM AUDIT AND ACCOUNTING GUIDE FOR TRANSPORTATION CONSULTANTS

II. List names of clients (other than individuals), including public bodies, for whom you have furnished the same or similar type service.

Name of Client	Business Address	Type of Business	Telephone
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

The undersigned certified that he/she is legally authorized by the Proposer to make the statements and representations contained in this document, and represents and warrants that the foregoing information is true and accurate to the best of his/her knowledge, and intends that the Metropolitan Transit Authority, Harris County, Texas, rely thereon in evaluating the Proposer.

Name of Company: _____

Signature: _____

Title: _____

Date: _____

SECTION III - FORMS FOR BIDDING/PROPOSING/AWARD

1 SOLICITATION AWARD FORM

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY TEXAS
REQUEST FOR PROPOSALS

=====

Requisition No. UR1000695

RFP No. RP1000018

Date of RFP: April 5, 2010

Contract No. N/A

Description of Project: Vanpool Management Services

=====

(TO BE COMPLETED BY PROPOSER AT THE CONCLUSION OF NEGOTIATIONS OF THE CONTRACT)

CONTRACTOR NAME AND ADDRESS:

(Full Name of Firm, Corporation, Partnership, Joint Venturer - Type or Print)

PHONE: () _____

FAX NO: () _____

=====

In compliance with the above referenced Request for Proposals, the undersigned hereby proposes to furnish all of the resources necessary to complete the above referenced project for the total cost listed in Section III, Proposal Amount/Schedule of Items and Prices herein and in accordance with the Contract.

Any resulting contract will consist of this form and Sections III through XII of the original solicitation.

Upon written acceptance of this offer, executed by METRO and mailed or otherwise furnished, the Proposer/Contractor will within fourteen (14) calander days (unless a longer period is allowed) after receipt of award documents, provide required certification of insurance and performance bonds with good and sufficient surety.

The resulting contract sets forth the entire agreement between the parties with respect to the subject matter thereof, and Supersedes and replaces all proposals, negotiations, representations, and implied obligations. The obligations, liabilities and remedies set forth herein are exclusive and shall operate as limitations on any action brought in connection with this Contract, including an action in tort. The resulting contract is binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns, but shall not inure to the benefit of any third party or other person.

=====

OFFER
(TO BE COMPLETED AND SIGNED BY CONTRACTOR)

SIGNATURE OF CONTRACTOR:

ATTEST:

BY: _____
(MUST BE SIGNED BY AUTHORIZED PERSON)

NAME: _____

TITLE: _____

DATE: _____

BY: _____

NAME: _____

TITLE: _____

Note: 1) If Joint Venturer, each party shall provide the above information and sign the offer.

=====

ACCEPTANCE AND AWARD
(TO BE COMPLETED AND SIGNED BY METRO)

Contract No. _____

METRO and the Contractor have executed this Contract and it shall be effective on the ____ day of _____, 2010.

METROPOLITAN TRANSIT AUTHORITY
OF HARRIS COUNTY

Executed for and on behalf of the Metropolitan Transit
Authority pursuant to Resolution No. _____ of the Board
of Directors on the ____ day of _____, 2010 and
on file in the office of the Assistant Secretary of the Authority.

BY: _____
NAME: Paul Como
TITLE: Vice President Procurement and Materials

ATTEST:

By: _____
NAME: Hilda M. Montemayor
TITLE: Assistant Secretary

APPROVED AS TO FORM:

By: _____
NAME: Paula Alexander
TITLE: General Counsel

APPROVED:

By: _____
NAME: Louise Richman
TITLE: Vice President and Chief Financial Officer

2 PROPOSAL AMOUNT/SCHEDULE OF ITEMS AND PRICES**PROPOSER:** _____

Proposer is required to submit a CD with a complete breakdown of ALL costs on the Schedule of Items and Prices. Proposer must include all labor categories with breakout of unburdened labor, overhead rates for both field and home rates, and profit. Proposer must identify how many people included in each labor category.

Proposer agrees to furnish all labor, tools, equipment, supervision, transportation, insurance, accounting, documentation, reports, and all other things necessary to perform the work complete, in strict compliance with the terms and conditions of the Contract and at the firm unit rates stated herein.

Resources		Year 1	Year 2	Year 3	Year 4	Year 5	5-Year Total	Option Year 1	Option Year 2	7-Year Total
Labor Expenses & Subcontractors										
Program Administration:										
Labor Resource 1 – Units (hours/quantity)										
Labor Resource 1 – Unit Costs \$										
Labor Resource 1 – Extended Cost \$										
Repeat for all Program Administration Labor (*)										
Total Labor – Extended Cost \$										
Expense Item 1 – Units (hours/quantity)										
Expense Item 1 – Unit Costs \$										
Expense Item 1 – Extended Cost \$										
Repeat for all Program Administration Expenses (*)										
Total Expenses – Extended Cost \$										
Sub-contractor 1 – Units (hours/quantity)										
Sub-contractor 1 – Unit Costs \$										
Sub-contractor 1 – Extended Cost \$										
Repeat for all Program Administration Sub-contractors (*)										
Total Sub-contractors – Extended Cost \$										
Include "Other Resources" if needed (*)										
Total Program Administration Proposal										
Business Development:										
Labor Resource 1 – Units (hours/quantity)										
Labor Resource 1 – Unit Costs \$										
Labor Resource 1 – Extended Cost \$										

Resources		Year 1	Year 2	Year 3	Year 4	Year 5	5-Year Total	Option Year 1	Option Year 2	7-Year Total
Labor, Expenses & Subcontractors										
Repeal for all Business Development Labor (*)										
Total Labor – Extended Cost \$										
Expense Item 1 – Units (hours/quantity)										
Expense Item 1 – Unit Costs \$										
Expense Item 1 – Extended Cost \$										
Repeal for all Business Development Expenses (*)										
Total Expenses – Extended Cost \$										
Sub-contractor 1 – Units (hours/quantity)										
Sub-contractor 1 – Unit Costs \$										
Sub-contractor 1 – Extended Cost \$										
Repeal for all Business Development Sub-contractors (*)										
Total Sub-contractors – Extended Cost \$										
Include "Other Resources" if needed (*)										
Total Business Development Proposal										
Services:										
Labor Resource 1 – Units (hours/quantity)										
Labor Resource 1 – Unit Costs \$										
Labor Resource 1 – Extended Cost \$										
Repeal for all Services Labor (*)										
Total Labor – Extended Cost \$										
Expense Item 1 – Units (hours/quantity)										
Expense Item 1 – Unit Costs \$										
Expense Item 1 – Extended Cost \$										
Repeal for all Services Expenses (*)										
Total Expenses – Extended Cost \$										
Sub-contractor 1 – Units (hours/quantity)										

Resources		Year 1	Year 2	Year 3	Year 4	Year 5	5-Year Total	Option Year 1	Option Year 2	7-Year Total
Labor, Expenses & Subcontractors										
Sub-contractor 1 – Unit Costs \$										
Sub-contractor 1 – Extended Cost \$										
Repeat for all Services Sub-contractors (*)										
Total Sub-contractors – Extended Cost \$										
Include "Other Resources" if needed (*)										
Total Services Proposal										
Incentives:										
Rider Incentives – Units (quantity)										
Rider Incentives – Unit Costs \$										
Rider Incentives – Extended Cost \$										
Total Rider Incentives Proposal										
Project Total:										
Total Program Administration Proposal										
Total Business Development Proposal										
Total Services Proposal										
Total Rider Incentives Proposal										
Project Total										

(*) Insert additional sections for each Labor, Expense, Sub-contractor, or Other Resource required to fully describe Resources needed for Program Administration, Business Development, and Services proposals, including unit cost, quantity of units, and extended annual cost for each resource.

3 KEY PERSONNEL FORM

PRIME CONTRACTOR

TEL () -

FAX () -

E-MAIL: _____

KEY PERSONNEL (PRIME CONTRACTOR)

Name (phone no., fax, and e-mail if other than above)

SUBCONTRACTOR A

TEL () -

FAX () -

E-MAIL: _____

KEY PERSONNEL (SUBCONTRACTOR)

Name (phone no., fax, and e-mail if other than above)

SUBCONTRACTOR B

TEL () -

FAX () -

E-MAIL: _____

KEY PERSONNEL (SUBCONTRACTOR)

Name (phone no., fax, and e-mail if other than above)

SUBCONTRACTOR C

TEL () -

FAX () -

E-MAIL: _____

KEY PERSONNEL (SUBCONTRACTOR)

Name (phone no., fax, and e-mail if other than above)

SUBCONTRACTOR D

TEL () -

FAX () -

E-MAIL: _____

KEY PERSONNEL (SUBCONTRACTOR)

Name (phone no., fax, and e-mail if other than above)

SUBCONTRACTOR E

TEL () -

FAX () -

E-MAIL: _____

KEY PERSONNEL (SUBCONTRACTOR)

Name (phone no., fax, and e-mail if other than above)

4 CONTRACTOR UTILIZATION PLAN FORM

Bidder/Proposer presents the following participants in this solicitation and any resulting Contract.
All Bidders/Proposers, including small businesses bidding as prime contractors, are required to demonstrate good faith efforts to include eligible small businesses in their submissions as subcontractors and/or suppliers.

CONTRACTOR		Type of Work to be Performed or Materials Supplied	Indicate if Small Business Y/N		Percent of Contract Effort		Price
Name of Business Business Address Telephone No. Contact Person	SBE		DBE	SBE	DBE		
SUBCONTRACTOR							
Name of Business Business Address Telephone No. Contact Person							
Name of Business Business Address Telephone No. Contact Person							
Name of Business Business Address Telephone No. Contact Person							
SUPPLIERS		Counts for 100% toward small business goal when purchased from small business manufacturer and 60% when purchased from small business regular dealer (see Instructions to Bidders/Proposers).					
Name of Business Business Address Telephone No. Contact Person							
Name of Business Business Address Telephone No. Contact Person							

Submitted by: _____ Business Name: _____
 Address: _____
 Telephone/Fax: _____ Date: _____

Total amount of contract to be performed by:

TOTAL \$ _____
 Contractor: \$ _____
 SubContractor(s): \$ _____
 Supplier(s): \$ _____

5 CONTRACTOR UTILIZATION PLAN PLEDGE**Pledge of Prompt Payments to SBE/DBEs**

I pledge to pay all SBE/DBEs within five (5) calendar days after receiving payment from METRO for amounts previously invoiced for work performed or materials furnished under the contract.

Signature: _____

Title: _____

Date: _____

(FOR CONSTRUCTION CONTRACTS)

I pledge to release the retainage of all SBE/DBE Subcontractors within thirty (30) days after satisfactory completion and approval of work performed. SBE/DBEs may petition the Prime Contractor to make the final payment and may notify METRO of the request. As METRO releases retainage for payment to the Subcontractor, the Prime Contractor is required to immediately (within 15 days) pay the Subcontractor. The release of retainage will be made to the SBE/DBEs regardless of the prime invoicing METRO.

METRO's Nondiscrimination Mandate

I affirm that _____ (company name) adheres to METRO's Nondiscrimination Mandate and has not discriminated against any small or disadvantaged business in considering subcontracting opportunities based on race, sex, religion or ethnic origin, age or disability.

Signature: _____

Title: _____

Date: _____

6 OFFICE OF SMALL BUSINESS - LETTER OF INTENT (LOI)

Solicitation No. RP1000018

PLEASE SUBMIT SEPARATE FORMS FOR EACH SUBCONTRACTOR\SUPPLIER
For use by submitters to identify subcontractors and suppliers.

Submitter: _____

Address: _____

Phone Number: _____ Fax Number: _____

Project Title: _____

Time Period Covered: _____

Percentage/amount of contract with small business subcontractor/supplier

Percentage: _____ \$ _____

Name of small business subcontractor\supplier: _____

Address: _____

Phone: _____ Proposed Contract Amount: _____

Description of proposed materials or services to be performed under agreement with small business for amount indicated above:

Signature of Subcontractor/Supplier_____
Title_____
Signature of Prime Contractor_____
Title

SECTION IV - DELIVERIES OR PERFORMANCE ARTICLES**1 DEFINITIONS**

- A. The term "President & Chief Executive Officer" means the President & Chief Executive Officer of the Metropolitan Transit Authority and the term "the duly authorized representative" means any person specifically authorized to act for the President & Chief Executive Officer. These representatives are authorized to obligate METRO by executing this Contract and any modification thereto.
- B. The term "Contracting Officer" means the Contract Administrator who has been designated the responsibility, by the METRO Vice President of Procurement & Materials Management, for overall administration of the Contract, excluding the execution of Contract modifications.
- C. The term "Project Manager" means the individual(s) designated to act on behalf of METRO in monitoring the technical quality and progress of the Consultant's Services and certifying as to its acceptability under the terms of the Contract.
- D. Depending upon the disputes resolution process selected by the Consultant at the time of proposal:
1. The term "Contract Appeals Committee" means the METRO administrative body designated by the President & Chief Executive Officer to hear a Consultant's appeal submitted under the "Disputes" Article of the Contract.
 2. The term "Arbitrator" means the individual selected by both METRO and the Consultant to hear an appeal submitted under the "Disputes" Article of the Contract.
- E. The term "Subcontract" means any agreement including purchase orders (other than one involving an employer-employee relationship) entered into by a METRO Prime Contractor calling for equipment, supplies or services required for Contract performance, including any modifications thereto.
- F. The term "Subcontractor" means any individual, partnership, firm, corporation or joint venture who contracts with the Contractor to furnish services, labor, equipment, and/or materials under this Contract. As used herein, the terms subcontractor and supplier are synonymous.
- G. The term "Services" means Vanpool Management Services specified or indicated in the Contract documents including all alterations, amendments or extensions thereto made by authorized changes. As used herein, the terms service and work are synonymous.

2 SERVICES TO BE PERFORMED

- A. The Contractor shall furnish all necessary resources required for vanpool Management services in accordance with the terms and conditions of this Contract. Specific services to be performed are listed in the "Scope of Service" attached hereto as Exhibit "A", and made a part hereof.
- B. The Contractor shall, except as may be specified elsewhere in this Contract, furnish all labor, supervision, management, facilities, materials, tools, equipment, supplies and services necessary to provide Vanpool Management Services (hereinafter called the "Services"). All services shall be performed in accordance with the Scope of Services, attached hereto as Exhibit "A", and made a part hereof.

3 PERIOD OF PERFORMANCE

This Contract shall be effective for a period of five (5) years (with two (2) one (1) year options), unless otherwise extended or terminated by METRO in accordance with the terms and conditions of this Contract.

METRO may require the Contractor to continue to perform any or all Services under this Contract for a period not-to-exceed ninety (90) days after the scheduled date of Contract completion including any extension thereof. The Contracting Officer may exercise this option, at any time within thirty (30) days prior to Contract completion, by giving written notice to the Contractor. The Contract unit prices in effect at the time this option is exercised shall apply to any extension made pursuant to this Article unless provision for appropriate price adjustment has been made elsewhere in this Contract.

4 OPTION TO EXTEND CONTRACT TERM

- A. METRO reserves the right to extend the term of this Contract up to two (2) one (1) year options by giving the Contractor thirty (30) days advance written notification.
- B. Beginning with the effective date of the option period, if exercised, the Contractor shall continue to perform Services

as called for by METRO at the unit prices negotiated for the option period in the Compensation Article of the Contract.

5 CONTINUITY OF SERVICES

A. The Contractor recognizes that the services under this Contract are vital to METRO and must be continued without interruption and that upon Contract expiration, a successor, either METRO or another Contractor, may continue them. The Contractor agrees to exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

B. The Contractor shall make available necessary personnel records and allow the successor to conduct onsite interviews with these employees. If selected employees are agreeable to the changes, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

C. Should employees being transferred be required to undergo training the Contractor shall work with the successor as to agreeable dates/times employees may be allowed to attend training session(s).

SECTION V - INSPECTION AND ACCEPTANCE ARTICLES**1 INSPECTION OF SERVICES**

- A. The Contractor shall provide and maintain a quality control and service inspection system acceptable to METRO covering the services under this Contract. Complete records of all inspection services performed by the Contractor shall be maintained and made available to METRO during Contract performance and for a three (3) year period after the term of the Contract or final disposition of any litigation or claim arising out of Contract.
- B. METRO has the right to inspect and test all services called for by the Contract, to the extent practicable at all times and places during the term of the Contract. METRO shall perform inspections and tests in a manner that will not unduly delay the services.
- C. If any of the services do not conform to Contract requirements, METRO may require the Contractor to perform the services again in conformity with Contract requirements, at no additional compensation.
- D. When the defects in services cannot be corrected by performance, METRO may:
1. Require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements; and
 2. Reduce the Contract price to reflect the reduced value of the Services performed.
- E. If the Consultant fails to promptly perform the Services again or take the necessary action to ensure future performance in conformity with Contract requirements, METRO may:
1. By contract or otherwise, perform the Services and charge to the Consultant any cost incurred by METRO that is directly related to the performance of such Services; or
 2. Terminate the Contract for default.

SECTION VI - CONTRACT ADMINISTRATION DATA ARTICLES**1 COMPENSATION**

A. As full consideration for the satisfactory performance by the Contractor of this Contract, METRO shall pay to the Contractor compensation in the amount of not-to-exceed _____ and ___/100 Dollars (\$ _____), less any prompt payment discount earned or set forth in paragraph B, and in accordance with the payment

B. Prompt payment discount(s): __%. In connection with any discount offered for prompt payment, time shall be computed from the date of receipt of a properly prepared invoice by METRO or final acceptance of all materials and goods furnished and work performed, whichever is later. For the purposes of computing the discount earned, payment shall be considered to have been made on the date that the payment is mailed or the date which an electronic funds transfer was made.

C. If METRO in its sole discretion pays the contractor's invoices in an electronic payment system, the contractor will allow a payment discount __% as a discount offered for the electronic transfer of funds.

. If METRO in its sole discretion pays the contractor's invoices in with a credit card, the contractor will allow a payment discount __% as a discount offered for payment via credit card.

2 INVOICING AND PAYMENT

A. The Contractor shall submit an original invoice for payment to the address shown below for vanpool management services which have been inspected and accepted by METRO:

Sr. Director of Accounting/Controller
METROPOLITAN TRANSIT AUTHORITY
1900 Main St., 5th Floor (77002)
P.O. Box 61429
Houston, Texas 77208-1429

B. METRO shall pay the amount due the Contractor under this Contract after:

1. Completion and acceptance of all Services for the invoiced period;
2. Presentation of a properly prepared invoice;
3. Presentation with each invoice of a print out of METRO's online Contract Audit Screen demonstrating payments to subcontractors and confirmation of receipt of payment by subcontractors;
4. Presentation with the final invoice a release of all claims against METRO arising by virtue of this Contract, other than claims, in stated amounts that the Contractor and/or subcontractors have specifically accepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this Contract has been assigned. The Contractor shall complete a "Contractor's Release" form, Exhibit "I", or other Contractor's release form acceptable to METRO.
5. If the Contractor has previously been paid for items or services that have later been found deficient, defective or otherwise unacceptable, subsequent invoices may be adjusted accordingly. In such instances, METRO shall provide the Contractor written explanation for such adjustments

C. SubContractor and Supplier Payments:

1. The Contractor shall provide payment to each subcontractor and supplier within five (5) calendar days after receiving payment from METRO for amounts previously invoiced for services performed or materials furnished under the Contract. Subcontract payment provisions shall require payments to subcontractors within five (5) calendar days after the prime Contractor receives payment from METRO. Interest on late payments is subject to the provisions of Government Code, Title 10, Chapter 2251, Vernon Texas Codes Annotated regarding payments to subcontractors/subcontractors.
2. In the event of disputed amounts, the Contractor shall provide a written response to a subcontractor/subcontractor or supplier, with a copy to the Contracting Officer, specifically addressing any disputed amounts on invoices. The Contractor should resolve all disputed invoices at the earliest time to avoid a delay in the submission of print out of METRO's on-line Contract Audit Screen with subcontractor payment verification which could delay payment to the Contractor. In the event that the Contractor cannot resolve a subcontractor or supplier disputed invoice, the Contractor should bring the matter to the attention of the Contracting Officer at the time of submitting the Contractor's invoice for payment. The Contracting Officer will investigate the situation and make a determination whether the Contractor's invoice should be processed for payment without the required Contract Audit verification. The Contracting Officer will not mediate the dispute between the Contractor and any subcontractor, subcontractor or supplier in the resolution of disputed invoices.

D. METRO's On-Line Contract Audit:

1. Invoices shall contain the Contract number and shall be accompanied by the print out of METRO's on-line Contract Audit screen documenting payments.
2. Failure of the Contractor to submit the print out of METRO's on-line Contract Audit screen will be cause for the return of the invoice to the Contractor as an improperly prepared invoice.
3. In the event that no invoice is due for the past month, the print out of METRO's on-line Contract Audit screen shall nevertheless be completed and forwarded to the Contracting Officer without subcontractor/supplier certifications.

E. METRO is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales, Excise and Use Tax. METRO's Federal Excise Tax Number is 76-79-0020K and METRO's State Tax Exempt Tax Exempt Number is 1-74-1998278-4. The Contractor's invoices shall not contain assessment of any of these taxes.

F. Payments will be made within fifteen (15) business days after receipt of a properly prepared invoice, which includes documents such as the print out of METRO's on-line Contract Audit screen. Payments shall be considered made when METRO deposits Contractor's payment in the mail or the date on which an electronic transfer of funds was made. Interest on payments under this Contract shall accrue and be paid only in accordance with Government Code, Title 10, Chapter 2251, Vernon Texas Codes Annotated which shall be the Contractor's sole remedy under this Article.

G. All products and deliverables resulting from Services performed and covered by payments made shall, at the time of payment, become the sole property of METRO, but this provision shall not be construed as:

1. Relieving the Contractor from the sole responsibility for all products and deliverables upon which payments have been made or the re-accomplishment of any inaccurate work; or as
2. Waiving the right of METRO to require the fulfillment of all of the terms of the Contract.

3 CONTRACT PERFORMANCE SECURITY

The Contractor shall provide contract performance security made payable to the Metropolitan Transit Authority of Harris County, Texas (METRO). The security shall be in an amount of not less than \$80,000.00. **ONLY THE FOLLOWING TYPES OF SECURITY ARE ACCEPTABLE AND MUST BE IN ORIGINAL FORM. FACSIMILE, ELECTRONIC OR PHOTOCOPIES ARE NOT ACCEPTABLE.**

- a. Irrevocable letter of credit issued, in the name of the Contractor, by a financial institution subject to the laws of Texas.
- b. A performance bond from a company authorized by the Texas Department of Insurance to issue surety bonds.
- c. Cashiers/or Certified Check drawn on a federally insured financial institution acceptable to METRO.

This contract performance security shall remain in effect for the entire term of the contract. The irrevocable letter of credit shall be automatically renewed annually. Surety companies providing the bond must be approved for the amount of the bond(s) on U.S. Department of Treasury Circular 570.

The contract performance security shall be submitted to the Contracting Officer within fourteen (14) calendar days after receipt of a copy of the executed Contract or a Notice of Award. The Notice to Proceed will not be issued until a properly executed contract performance security is received and accepted by the Contracting Officer.

4 CONTRACTOR REPRESENTATIVE(S)

A. Prior to start of Contract performance, the Contractor shall advise METRO in writing of the primary and alternate representative (including phone number) who will have management responsibility for the total Contract effort to receive and act on technical matters and resolve problems of a contractual nature.

B. At the termination of this Contract the Contractor shall return to METRO's Project Manager all METRO issued identification badges and METRO Q Fare cards for deactivation by METRO's Human Resources Department. The Contractor shall also immediately notify METRO's Project Manager and return such identification badges and METRO Q Fare cards for those Contractor employees whose services are no longer needed during the course of this Contract. The Contractor will be assessed \$10.00 fee for any identification badges or METRO Q Fare cards that are lost or not returned to METRO.

C. The Contractor shall screen all employees and require satisfactory personal references in order to determine character of prospective employees before hiring.

D. Contractor employees shall, while on duty at a METRO facility, wear in plain view on the upper portion of the outer garment,

a metal or plastic identification badge to be furnished by the Contractor, containing the company name, employee's name or company identification number of employee, if any. All prescribed identification shall immediately be delivered to the Contractor for cancellation upon release of any employee.

E. All employees of Contractor shall be neatly attired at all times in a manner that will reflect credit both upon Contractor and the facility in which they are working.

F. Persons employed by the Contractor to perform services under this Contract shall be legally authorized to work in the United States.

G. When working in METRO facilities, the Contractor shall prohibit his employees from disturbing papers on desks, opening desk drawers or cabinets, or using telephone or office equipment provided for official METRO use.

H. The Contractor shall require his employees to comply with the instructions pertaining to conduct and other regulations called to the attention of the Contractor by the Project Manager or his designee.

I. At the request of the Project Manager, the Contractor shall remove an employee from his work force that is found unacceptable or unsatisfactory by the Project Manager. It shall be the Contractor's responsibility to find a suitable replacement for the removed employee.

5 NOTICES

All notices to either party by the other shall be delivered personally or sent by U.S. registered or certified mail, postage prepaid, addressed to such party at the following respective addresses for each:

Authority: Wanda Federovitch
METROPOLITAN TRANSIT AUTHORITY
OF HARRIS COUNTY, TEXAS
1900 Main St., 8th Floor (77002)
Post Office Box 61429
Houston, Texas 77208-1429

Contractor:

and shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change of address to the other in the manner provided for above.

6 ADMINISTRATIVE CONTROL OF CORRESPONDENCE

Contract related correspondence, transmittal letters, etc., issued by each party to this Contract will refer to the Contract number shown on this Contract. The correspondence shall be addressed to the appropriate METRO representative set forth elsewhere in this Contract. Should it be addressed to other than the Contracting Officer a copy shall be provided to the Contracting Office

7 REPORT OF ACCIDENTS

The Contractor shall immediately report to the Project Manager any accident or incident while in the performance of this Contract, involving personnel or damage to material and equipment. The Contractor shall also report this to the Contracting Officer and the Project Manager in writing the same day or within two (2) business days if the accident or incidents occurs on a non-business day. Copies of accident investigation reports of accidents as required shall be provided to the Project Manager. The Contractor shall keep METRO advised on the status of claims or legal actions filed against the Contractor involving this Contract, whether or not METRO is named in the action.

SECTION VII - INSURANCE ARTICLES**1 CONTRACTOR'S INSURANCE**

A. The Contractor shall purchase and maintain in effect during the entire period of this contract, including any maintenance period thereof, insurance of the types and with minimum limits of liability as stated below. Such insurance shall protect Contractor from claims which may arise out of or result from Contractor's operations whether such operations are performed by Contractor or by any subcontractor or by anyone for whose acts any of them may be liable.

1. **WORKERS' COMPENSATION INSURANCE** providing Statutory Benefits in accordance with the Workers' Compensation Act of the State of Texas and/or any other State or Federal law as may be applicable to the work being performed under this contract.
EMPLOYER'S LIABILITY INSURANCE with limits of liability not less than:

\$100,000	Each Accident
\$100,000	Each Employee for Disease
\$500,000	Policy Limit for Disease
2. **COMMERCIAL GENERAL LIABILITY INSURANCE** including Products/Completed Operations and Contractual Liability with limits of liability not less than:

\$500,000	Each Occurrence
\$500,000	Products/Completed Operations Aggregate
\$1,000,000	General Aggregate
3. **BUSINESS AUTOMOBILE LIABILITY INSURANCE** covering all owned, hired and non-owned motor vehicles used in connection with the work being performed under the contract with limits of liability not less than:

\$500,000	Each Accident Combined Single Limit for Bodily Injury and Property Damage
-----------	---
4. **CRIME INSURANCE** including coverage for Robbery and Employee Dishonesty. Limits of liability under such insurance shall be not less than \$250,000 and the deductible, if any, must be paid by contractor. Metropolitan Transit Authority of Harris County Texas (METRO) is loss-payee as its interest may appear.

B. The policies providing Commercial General Liability and Business Automobile Liability insurance as required in Paragraphs A.2 and A.3 shall be endorsed to name METRO, its directors and employees as Additional Insureds as respects Contractor's operations in performance of this contract. Such insurance as is provided herein shall be primary and non-contributing with any other valid and collectible insurance or self-insurance available to METRO.

C. All policies providing Contractor's insurance as required in Paragraphs A.1, A.2, and A.3 above shall be endorsed to provide thirty (30) days written notice of cancellation or non-renewal to METRO at the address designated elsewhere in the contract for Notices.

D. The limits of liability as required above may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies. But in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required above.

E. All policies of insurance presented as proof of compliance with the above requirements shall be on forms and with insurance companies approved by METRO. All such insurance policies shall be provided by insurance companies having Best's ratings of B++ or greater and VI or greater (B++/VI) as shown in the most current issue of Best's Key Rating Guide. Policies of insurance issued by insurance companies not rated by Best's or having Best's ratings lower than B++/VI will not be accepted as complying with the insurance requirements of the contract unless such insurance companies were approved in writing prior to award of contract.

F. Contractor agrees to waive all rights of subrogation or recovery against METRO, its directors, employees and agents arising out of any claims for injury(ies) or damages resulting from the work performed by or on behalf of Contractor under this agreement and/or the use of any METRO premises or equipment in the performance of this agreement. The policies providing Workers Compensation Employers Liability, Commercial General Liability and Business Automobile Liability insurance as required in paragraphs A.1, A.2 and A.3 shall be endorsed to recognize this required

waiver of subrogation.

G. Proof of compliance with these insurance requirements shall be furnished METRO in the form of an original certificate of insurance signed by an authorized representative or agent of the insurance company(ies), within fourteen (14) days of notice of award of contract and before any work under this contract will be allowed to commence. Certificates will be unacceptable unless they clearly show that all of the above stipulated requirements have been met. Renewal or replacement certificates shall be furnished METRO not less than seven (7) days prior to the expiration or termination date of the applicable policy(ies). Otherwise, METRO may halt all work under this contract upon expiration or other termination of any required coverage, and work will not be allowed to resume until a satisfactory renewal certificate is received.

H. Contractor shall require any and all subcontractors performing work under this contract to carry insurance of the types and with limits of liability as Contractor shall deem appropriate and adequate for the work being performed. Contractor shall obtain and make available for inspection by METRO, upon METRO's request, current certificates of insurance evidencing insurance coverage's carried by such subcontractors.

INDEMNIFICATION AGREEMENT

A. CONTRACTOR AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS METRO, ITS DIRECTORS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEY'S FEES, FOR BODILY INJURY, SICKNESS, DISEASE OR DEATH OF ANY PERSON, OR FOR DAMAGES TO ANY PROPERTY, INCLUDING CONSEQUENTIAL DAMAGES OR LOSS OF USE THEREOF, BROUGHT OR RECOVERABLE BY THIRD PARTIES AGAINST METRO, ITS DIRECTORS AND/OR EMPLOYEES AND ARISING OUT OF OR RESULTING FROM ANY NEGLIGENT ACT OR OMISSION BY CONTRACTOR IN THE PERFORMANCE OF THIS CONTRACT.

B. THE INDEMNITY PROVIDED FOR IN THIS ARTICLE SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS OR DAMAGE, CAUSE OF ACTION, SUIT OR LIABILITY BROUGHT OR RECOVERABLE AGAINST METRO, ITS DIRECTORS AND/OR EMPLOYEES TO THE EXTENT THE INJURY, DEATH OR DAMAGE RESULTS FROM A NEGLIGENT ACT OR WILLFUL BEHAVIOR BY METRO.

SECTION VIII - SMALL BUSINESS PROGRAM ARTICLES**1 SMALL BUSINESS/DISADVANTAGED BUSINESS ENTERPRISE (SB/DBE) PROGRAM**

A. The Contractor hereby agrees to attain small business participation in the amount of 6.7% of the total Contract amount. SB/DBE sub-contracting opportunities can be found in all components of this contract, except rider incentives and lease payments. The SB/DBE goal for the contract shall increase or decrease as components containing SB/DBE sub-contracting opportunities increase or decrease.

B. The Contractor shall enter into agreements for the services identified in the "Contractor Utilization Plan Form", Contract Section III.

C. The Contractor's failure to comply with the aforementioned small business participation provisions may result in:

1. Withholding of payment until such compliance is achieved or a waiver of the provisions is provided by METRO;
2. Revocation of the benefits and incentives provided under the Program; or
3. The Contract may be canceled, terminated or suspended in whole or in part.

D. The Contractor, subconsultants, subcontractors and suppliers shall permit access to their books, records and accounts by the Contracting Officer or a designated representative for the purpose of investigation to ascertain compliance with these specified requirements. Such records shall be maintained by the Contractor in a fashion which is readily accessible to METRO for a minimum of three (3) years following completion of this Contract.

E. To ensure that all obligations under this Contract are met, METRO will conduct periodic reviews of the Contractor's small business efforts during Contract performance. The Contractor shall bring to the attention of METRO's Contracting Officer any situation in which regularly scheduled payments are not made to small business subconsultants, subcontractors or suppliers.

F. The Contractor shall notify the METRO Contracting Officer of the names of any proposed substitute small business subconsultants, subcontractors and/or suppliers under this Contract.

G. The Contractor may review documents at METRO which specify:

1. Guidance for making determinations of small business participation in the Program;
2. The procedure used to determine whether a company is in fact a small business; and
3. The Appeals procedure for denial of certification as a small business.

2 POST-PERFORMANCE REPORTING

At the conclusion of the Contract, the Contractor will be required to report on first tier subcontractor utilization by scope of work and dollar amount of the subcontracts. This report shall include identification of the subcontractors, whether the subcontractors are eligible small businesses and the dollar amount of the subcontracts.

SECTION IX - SPECIAL TERMS AND CONDITIONS ARTICLES**1 HEALTH, SAFETY AND FIRST AID**

A. METRO places and requires Contractor to place the highest importance and priority on health and safety for all services performed by Contractor at any METRO facility. "At all METRO Facilities, the Contractor shall comply with all applicable Federal, State and local safety rules and regulations including OSHA 1910 General Industry Standards, as well as any safety and health requirements of METRO". Contractor shall ensure that all of their employees are made aware of all safety, fire and health requirements and regulations applicable to the work to be performed pursuant to this Contract. METRO shall furnish Contractor with copies of all safety and health requirements of METRO which relate particularly to the services Contractor has been requested to perform and to the general safety of any particular METRO facility.

B. Contractor shall not permit to exist a hazardous, unsafe, unhealthy or environmentally unsound condition or activity over which it has control at a METRO facility. In the event Contractor becomes aware of any such condition or activity, it shall promptly notify METRO and immediately take whatever steps are necessary to eliminate, terminate, abate or rectify such condition. If METRO becomes aware of such condition or activity before it is known to Contractor, it shall notify Contractor and request Contractor's prompt corrective action. METRO shall take prompt corrective action with respect to any hazardous, unsafe, unhealthy or environmentally unsound condition or activity resulting from its activities or operations. Each party shall cooperate with the other to eliminate, terminate, abate and rectify any such condition.

C. In the case of any emergency, METRO shall make emergency first aid and related services available to the employees of Contractor to the same extent that such emergency first aid and related services would be available to an employee of METRO located at the same facility. Nothing contained herein shall be construed as imposing any duty upon METRO to provide emergency first aid treatment or related services to Contractor's employees where such emergency first aid treatment or related services are not already available to any employee.

2 CONFIDENTIAL INFORMATION

A. Any and all reports, information, data and/or written matter given to Contractor, and any new reports, information or data developed in support of Contractor's activities during the performance of this Contract shall be considered confidential and shall not be released by Contractor to any individual or organization outside of METRO without prior written approval from METRO.

B. Any and all work product which is produced during and in the performance of this Contract shall become the property of METRO and may be copied, published or otherwise disseminated by METRO in any manner without additional compensation to the Contractor.

3 PERFORMANCE STANDARDS

To be determined during negotiations, in accordance with Exhibit "A", Section 3.3, "Performance Standards and Pay for Performance".

4 LIQUIDATED DAMAGES

A. Liquidated damages shall be assessed if the Contractor fails to provide by the METRO established due date(s), any National Transit Database report(s). Refer to Section XI, Article 18, "National Transit Database Report". The assessments are:

- monthly reports \$100.00 daily
- annual report \$500.00 daily, from 1-15 days
\$2,000.00 daily, from 16 -30 days
\$5,000.00 daily, from 31 and beyond

B. Liquidated damages shall be assessed if the Contractor has Key Management Personnel vacancies. The assessments are:

- Project Manager \$500.00 daily,
- All other positions \$100.00 daily, after position being vacant 30 days

C. Liquidated damages shall be assessed in the amount of \$80,000.00 if the contract is terminated for default. Refer to Section X, Article 8, Termination for Default.

SECTION X - GENERAL TERMS AND CONDITIONS ARTICLES**1 COMPLIANCE WITH LAWS**

The Contractor shall give all notices and comply with all Federal, State and Municipal laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of this Contract, including, but not limited to, the laws referred to in this Contract. If the Contractor or METRO observes that this Contract is at variance therewith in any respect, the observing party shall promptly notify the other party in writing, and any necessary changes shall be adjusted by appropriate contract modification. Upon request, the Contractor shall furnish to METRO certificates of compliance with all such laws, ordinances, rules, regulations and orders.

2 METRO-FURNISHED PROPERTY

A. METRO will deliver to the Contractor, at the times and locations stated in this Contract, the METRO-furnished property described in this Contract.

B. Title to METRO-furnished property shall remain with METRO. The Contractor shall use the METRO-furnished property only in connection with this Contract.

C. Upon delivery of METRO-furnished property to the Contractor, the Contractor assumes the risk and responsibility for its loss or damage, except for:

1. Reasonable wear and tear;
2. To the extent the property is consumed in performing this Contract; or
3. As otherwise provided for by the provisions of this Contract.

D. Upon completing this Contract, the Contractor shall follow the instructions of METRO regarding the disposition of all METRO-furnished property not consumed in performing this Contract or previously delivered to METRO.

3 SUBCONTRACTING

A. The Contractor shall not subcontract any portion of the work without obtaining METRO's written consent thereto.

B. Information submittal requirements for prospective subcontractors shall be the same as presented by the Contractor in its proposal except as may have been otherwise consented to by METRO. METRO may, at its discretion, waive or reduce subcontractor information submittal requirements. METRO reserves the right to obtain copies off any or all subcontracts from the Contractor during the term of this Contract.

C. The Contractor shall not, without the written consent of METRO, either replace a subcontractor previously listed (See Forms for Bidding/Proposing/Award, "Contractor Utilization Plan Form), or permit such subcontract to be assigned or transferred, or allow that portion of the Work to be performed by anyone other than the listed subcontractor, except the Contractor may perform a previously subcontracted portion of the Work itself with qualified personnel upon written notice to METRO.

D. Nothing contained in the Contract shall be construed as creating any contractual relationship between any subcontractor and METRO. The Contractor shall be responsible to METRO for acts and omissions of the contractor's own employees, and of subcontractors and their employees. The Contractor shall also be responsible for the coordination of the work of the trades, subcontractors and material men. The Contractor shall, without additional expense to METRO, employ specialty subcontractors where required. Neither METRO nor its representatives will undertake to settle any differences between the Contractor and its subcontractors, or between subcontractors.

4 CHANGES

A. The President & Chief Executive Officer or the duly authorized representative may at any time, by written order, make changes within the general Scope of this Contract in the Services to be performed.

1. Specifications or Description of services to be performed,
2. Time of performance (i.e., hours of day, days of the week, etc.),
3. Place of performance of the services,
4. In METRO-furnished facilities, equipment, materials, services, or site

B. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, whether or not changed by the order, the President & Chief Executive Officer or the duly authorized representative shall make

an equitable adjustment in the Contract price, the time of performance, or both, and shall modify the Contract.

C. The Contractor must submit any "proposal for adjustment" under this Article within thirty (30) calendar days from the date of receipt of the written order. However, if the President & Chief Executive Officer or the duly authorized representative decides that the facts justify it, the President & Chief Executive Officer or the duly authorized representative may receive and act upon a proposal submitted before final payment of the Contract.

D. Failure to agree to any adjustment shall be a dispute under the "Disputes" Article of this Contract. However, nothing in this Article shall excuse the Contractor from proceeding with the Contract as changed.

E. Except for those changes properly authorized and executed as provided in this Article, the Contractor shall notify the Contracting Officer in writing promptly within fifteen (15) calendar days from the date that the Contractor identifies any METRO conduct (including actions, inactions and written or oral communications) that the Contractor regards as a change to the Contract terms and conditions. This notification shall contain all information available to the Contractor regarding the change. Contractor's failure to provide notification as required herein may jeopardize being compensated for the change if in fact a change has been made.

F. The parties agree that the terms and conditions of this contract may only be modified and/or amended by mutual agreement between the parties. Said mutually agreed upon amendment and/or modification shall be written and executed by both parties prior to becoming effective.

5 DISPUTES

The Contractor has elected the disputes resolution process below (marked X) with submittal of the disputes resolution form included in the bid/proposal.

_____ METRO DISPUTES APPEAL COMMITTEE

Any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement will be decided by the Contracting Officer, who will reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer will be final unless, within ten (10) calendar days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the METRO Contract Appeals Committee. The Contract Appeals Committee will be designated by the President & Chief Executive Officer and will hear the Contractor's appeal and make a recommendation to the President & Chief Executive Officer for the final decision. In connection with any appeal proceeding under this Article, the Contractor will be afforded an opportunity to be heard and to offer evidence in support of his appeal. The decision of the President & Chief Executive Officer will be final and conclusive with respect to the Contractor's administrative remedies under this Disputes Article. 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. This Disputes Article does not preclude consideration of questions of law in connection with decisions provided for above. Nothing in this Contract, however, shall be construed as making final the decision of any administrative official, representative, or committee on a question of law.

_____ NON-BINDING THIRD PARTY ARBITRATION

A. Any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement will be decided by the Contracting Officer, who will reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer will be final unless, within ten (10) calendar days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal of the final decision.

B. Upon receipt of written appeal, an arbitrator mutually acceptable to METRO and the Contractor shall be selected. Unless otherwise agreed by the parties, arbitrators shall be selected through the American Arbitration Association. Unless otherwise agreed by the parties, the arbitrator shall schedule a hearing within ten (10) days of his/her selection. The hearing shall be informal but either party has the right to be represented by counsel if it so desires. No post hearing brief shall be filed or transcripts made. Either party may file a written statement of position at the hearing. There shall be no formal rules of evidence. The hearing shall normally be completed within one (1) day. The arbitrator shall render a written recommendation within three (3) working days after the conclusion of the hearing. By mutual agreement of the parties, the time for rendering a decision may be extended for an additional two (2) working days. The recommendation of the arbitrator shall be based on the record before the arbitrator and should include a brief written explanation of the basis for the recommendation. The written findings of the arbitrator shall be submitted to the President & Chief Executive Officer who shall make the final decision on the dispute. Costs of the arbitration, including transportation, travel, lodging and any other directly related charges by the arbitrator or the American Arbitration Association, shall be shared equally by METRO and the Contractor.

C. The decision of the President & Chief Executive Officer will be final and conclusive with respect to the Contractor's administrative remedies under this Disputes Article. 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. This Disputes Article does not preclude consideration of questions of law in connection with decisions provided for above. Nothing in this Contract, however, shall be construed as making final the decision of any administrative official, representative, or committee on a question of law.

6 SUSPENSION OF WORK

A. The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the Services of this Contract for the period of time that the Contracting Officer determines appropriate for the convenience of METRO.

B. If the performance of all or any part of the Services are, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Contracting Officer in the administration of this Contract, or by the Contracting Officer's failure to act within the time specified in this Contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly. However, no adjustment shall be made under this article for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Contract.

C. A claim under this article shall not be allowed 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 (but this requirement shall not apply as to a claim resulting from a suspension order), and unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the Contract.

7 TERMINATION FOR CONVENIENCE OF METRO

A. METRO may terminate the Contract at any time after award of the Contract by written notice to the Contractor if METRO determines that such termination is in its best interest. Upon receipt of written notice of termination, the Contractor shall cease performance to the extent specified in the notice of termination. In the event of termination in whole, the Contractor shall prepare a final invoice within thirty (30) calendar days of such termination reflecting the service(s) actually furnished pursuant to the Contract and to the satisfaction of METRO, that have not appeared on any previous invoice.

B. METRO agrees to pay the Contractor, in accordance with the terms of the Contract, for conforming service(s) actually furnished and verifiable costs that have been incurred or will be incurred by the termination, which shall be the sole amount owed to the Contractor whether for damages or otherwise, by virtue of the termination of this Contract.

8 TERMINATION FOR DEFAULT

A. METRO may, subject to Paragraphs D. and E. below, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to perform the services within the time and in the manner specified in this Contract or any extension thereof; or fails to perform any of the other provisions of this Contract.

B. METRO's right to terminate this Contract may be exercised if the Contractor does not cure the condition or conditions constituting default within ten (10) calendar days (or such longer period as may be authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

C. If METRO terminates this Contract, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, services similar to that terminated, and the Contractor will be liable to METRO for any excess costs. Contractor agrees that it would be difficult to calculate METRO's costs to hire or assign METRO employees to perform services that Contractor was to perform under the Contract for the time period necessary to obtain a replacement Contractor and agrees to pay \$80,000 as liquidated damages, in lieu of METRO's actual damages, for the costs of such employees and the services they perform.

D. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include:

1. Acts of God or of the public enemy,
2. Acts of METRO in its contractual capacity,
3. Fires,
4. Floods,
5. Epidemics,
6. Quarantine restrictions,
7. Strikes,
8. Unusually severe weather,

9. Acts of terrorism.

In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

E. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted work was obtainable from other sources in sufficient time for the Contractor to meet the required performance schedule.

F. METRO shall pay the Contract price(s) for completed and accepted services. METRO may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect METRO against loss because of outstanding liens or claims of former lien holders.

G. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of METRO.

H. The rights and remedies of METRO under this Article are in addition to any other rights and remedies provided by law or under this Contract.

9 CONFIDENTIAL INFORMATION

The Contractor acknowledges that information provided to METRO is governed by Chapter 552, Government Code. To the extent permitted by law, METRO will during the review of competitive proposals, keep confidential all information that, if released, would give advantage to a competitor or bidder.

Pursuant to Section 552.110, Government Code, METRO will keep confidential trade secrets obtained from a person and privileged that are confidential by statute or judicial decision. METRO will keep confidential commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

10 OTHER CONTRACTS

METRO may undertake or award other Contracts for additional work at or near the site of the Work under this Contract. The Contractor shall fully cooperate with the other Contractors and with METRO employees and shall carefully adapt scheduling and performing the Work under this Contract to accommodate the additional Work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of Work by any other Contractor or by METRO employees.

11 PATENT INDEMNITY

Except as otherwise provided, the Contractor agrees to indemnify METRO and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any Patent of the United States arising out of the performance of this Contract or out of the use or disposal by or for the account of METRO of supplies or equipment furnished hereunder.

12 DISSEMINATION OF CONTRACT INFORMATION

The Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the performance of this Contract, without prior written consent of METRO's President & Chief Executive Officer. Two (2) copies of any material proposed to be published or distributed shall be submitted to the METRO President & Chief Executive Officer through the Contracting Officer.

13 NOTIFICATION OF DELAY

The receipt by METRO of notice from the Contractor shall not waive METRO's right under this Contract to determine that such delay or failure to meet deadlines represents an Event of Default under this Contract.

14 REQUEST FOR EXTENSION

The receipt by METRO of a request for extension or the granting of the request for extension shall not waive METRO's right under this Contract to determine that such extension represents an Event of Default under this Contract.

15 METRO 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 implicitly authorized by this Contract, or by his failure to act within the time specified in this Contract (or within a reasonable time if no time is 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. However, no adjustment shall be made under this Article for any delay or interruption (i) to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or (ii) for which an adjustment is provided or excluded under any other provision of this Contract.

B. No claim under this Article shall be allowed (i) for any costs incurred more than twenty (20) days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved; and (ii) 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.

16 OFFICIALS NOT TO BENEFIT

A. No member or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom.

B. No member, officer or employee of METRO, or of any other local public body having jurisdiction over METRO, during his tenure or for one year thereafter, shall have any interest direct or indirect, in the Contract or the proceeds thereof.

C. The Contractor covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the services required under this Contract. In the event any question of possible conflict should arise, the determination of METRO shall be controlling. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed by the Contractor.

17 ETHICAL CONDUCT

A. The METRO Board of Directors has adopted a Code of Ethics governing the conduct of its officers and employees. Contractor agrees it will familiarize itself with this Code of Ethics and that it will not offer, confer or agree to confer any prohibited benefit as consideration for a METRO Board Member's or employee's decision, opinion, recommendation, vote or other exercise of discretion as a public servant or in exchange for the Board Member's or employee's having exercised his official powers or performed his official duties nor will the Contractor participate in any other violation of this Code.

B. Contractor is required to maintain those records necessary to prove beyond a reasonable doubt Contractor's compliance with METRO Code of Ethics Policy. METRO shall have the right to review for the purpose of determining compliance with Code of Ethics Policy all disbursement records and supporting documents including invoices, payment vouchers, employee expense reports and petty cash records.

C. Breach of this Article by the Contractor may result in termination of the Contract and exclusion of the Contractor from future Contracts with METRO for a period of time determined by the METRO Board of Directors.

18 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 METRO 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.

19 ASSIGNMENT

The Contractor's performance under this Contract shall not be assigned except upon written consent of METRO. The Contractor may assign monies due or to become due to him under the Contract and such assignment will be recognized by METRO, if given proper notice thereof, to the extent permitted by law. Assignment of monies will be subjected to proper offsets in favor of METRO and to deductions provided for in the Contract. Money withheld, whether assigned or not, will be subject to being used by METRO for the completion of the work in the event that the Contractor defaults under the Contract. The validity of the assignment and the rights of the assignee against METRO shall be governed by the laws of the State of Texas.

20 AUDIT AND AVAILABILITY OF RECORDS

A. The Contractor shall make available at its office at all reasonable times the materials described below for examination, audit, or reproduction, until three (3) years after final payment or final disposition of litigation under this Contract.

B. The Contractor shall maintain and the Contracting Officer or representatives of the Contracting Officer shall have the right to examine and audit books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all expenditures claimed to have been incurred or anticipated to be incurred in performing 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 the Contract and whatever applicable records are maintained.

C. METRO, the Department of Transportation Inspector General, the Federal Transit Administration Administrator, the Federal Highway Administration Administrator, the Comptroller General or any duly authorized representative(s) shall have the right to examine and audit all books, records, documents, and other data of the Contractor, including computations and projections, related to negotiating, pricing, or performing the Contract or modification.

D. If this Contract is completely or partially terminated, the records relating to the Work terminated shall be made available for three (3) years after any resulting final termination settlement.

E. Records pertaining to appeals under the Disputes Article or to litigation or the settlement of claims arising under or relating to the performance of this Contract shall be made available until disposition of such appeals, litigation, or claims.

21 INDEPENDENT CONTRACTOR

It is understood and agreed that the Contractor shall be deemed to be an independent Contractor in all its operations and activities hereunder; that the employees furnished by the Contractor to perform Work hereunder shall be deemed to be Contractor's employees or independent Subcontractors; that Contractor employees shall be responsible for all obligations and reports covering social security, unemployment insurance, income tax, and other reports and deductions required by state or federal law.

22 SEVERABILITY

If any provision of this Contract or the application thereof to any person or circumstance, is rendered or declared illegal for any reason and shall be invalid or unenforceable, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law.

23 WAIVERS

A. Neither METRO's review, approval or acceptance of, nor payment for, the Work required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of the Contract, and the Contractor shall be and remain liable to METRO in accordance with applicable law and the terms of this Contract for all damages to METRO caused by the Contractor's negligent act, error or omission in the performance of any of the Work furnished under this Contract.

B. The waiver by METRO of any breach of any term, covenant, condition, or agreement herein contained shall not be deemed to be a waiver of any subsequent breach of the same, or of a breach of any other term, covenant, condition, or agreement herein contained.

24 FORCE MAJEURE

A. To the extent that the Vendor shall be wholly or partially prevented from its performance within the terms specified of any obligation or duty placed on Vendor by reason of or through riot, fire, flood, acts of war, acts of terrorism, insurrection, accident, by order of any court, legislative action, act of God, or specific cause reasonably beyond the parties' control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty may be suspended until such disability to perform is removed. Determination of force majeure shall rest solely with METRO.

B. In the event Vendor seeks to characterize an event a "Force Majeure Event", Vendor shall have the obligation to immediately notify METRO at the time Vendor becomes aware of said Force Majeure event. Further, vendor shall have the obligation to provide METRO with notice upon the cessation of force Majeure event.

25 INTERPRETATION, JURISDICTION AND VENUE

This Contract shall be construed and interpreted solely in accordance with the laws of the State of Texas. Venue of any suit, right or cause of action arising under or in connection with this Contract shall lie exclusively in Harris County, Texas.

26 RIGHTS AND REMEDIES

The rights and remedies of METRO provided for under this Contract are in addition to any rights or remedies provided by law.

27 RESPONSIBILITY OF THE CONTRACTOR

A. The Contractor shall be responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications, and other services furnished by the Contractor under this Contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in his designs, drawings, specifications, and other services.

B. The Contractor shall provide all necessary supporting calculations and back-up documentation as requested by METRO, including all subcontracts, basic agreements and work orders.

C. If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

28 CONTRACTOR'S KEY PERSONNEL

Contractor's key personnel listed in Section III.3, "Key Personnel", are considered to be essential to performance of any of the services being contemplated hereunder. Prior to substituting other personnel for any of the individuals specified, the Contractor shall notify METRO reasonably in advance and shall submit justification in sufficient detail to permit evaluation of the impact on these Services. No such substitutions shall be made by the Contractor without first securing METRO's approval. The bidding/proposing form entitled "Key Personnel" may be amended from time to time during the course of the Contract to either add or delete personnel, as appropriate.

29 USE OF METRO'S NAME IN CONTRACTOR ADVERTISING OR PUBLIC RELATIONS

If the Contractor should desire to use METRO's name, logo or any other material in its advertisement or public relations programs, the Contractor shall receive prior approval from METRO. Any such information relating to METRO shall be factual and in no way imply that METRO endorses the Contractor's firm, services, or products. The Contractor shall insert the substance of this Article in each subcontract and supply contract or purchase order.

30 RIGHTS IN DATA AND COPYRIGHTS

A. "Subject data" as used in this article means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Contract. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, 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 used for contract administration.

B. METRO reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for METRO's purposes the "subject data" described as follows:

1. Any subject data developed under this Contract, or under a subcontract financed by this Contract, whether or not a copyright has been obtained.
2. Any rights of copyright to which the Contractor purchases ownership using Federal funds.

C. METRO shall have the right at any time to correct, cancel, or ignore any restrictive notice or legend on subject data not authorized by the terms of this Contract.

31 CONTRACT ORDER OF PRECEDENCE

In the event of an inconsistency between provisions of this Contract, the inconsistency shall be resolved by giving precedence in the following order:

1. Contract Modifications, if any
2. Technical Specifications/ Scope of Service
3. The Contract Articles
4. Drawings

SECTION XI - FEDERAL REQUIREMENTS ARTICLES**1 FEDERAL CHANGES**

Contractor shall at all times comply with all applicable Federal Transit Administration (FTA) regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the FTA Master Agreement (Form FTA MA (16) dated October 1, 2009) between METRO 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.

2 ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

The Contractor agrees to comply with, and assure that any subcontractor and/or subcontractor or any other third party contractor under this Contract complies with all applicable requirements regarding Access for Individuals with Disabilities contained in the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § § 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 49 U.S.C. § 5301(d); and any other applicable federal regulations, including any amendments thereto.

3 FLY AMERICA

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 sub-recipients of federal funds and their contractors are required to use U.S. flag air 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 air 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 all subcontracts that may involve international air transportation.

4 ENVIRONMENTAL REQUIREMENTS

The Contractor and any subcontractor or third party contractor under this Contract shall comply with all applicable environmental requirements and regulations, including any amendments, as follows:

A. Clean Air

1. 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 METRO and understands and agrees that METRO will, in turn, report each violation as required to assure notification to Federal Transportation Agency (FTA) and the appropriate Environmental Protection Agency (EPA) Regional Office.

2. 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.

B. Clean Water

1. 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 METRO and understands and agrees that METRO will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

2. 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.

C. Energy Conservation. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

5 RECYCLED PRODUCTS

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.

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contracts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. See form in Section II, entitled "Certification of Restrictions on Lobbying".

7 FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

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 or 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 the 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 the above two (2) clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

8 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the contract provisions. All contractual provisions required by DOT, as set forth in the latest edition of FTA Circular 4220.1f in effect at the time of this contract award, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any METRO requests, which would cause METRO to be in violation of the FTA terms and conditions.

9 NO OBLIGATION BY THE FEDERAL GOVERNMENT

A. METRO and the Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying 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 METRO, 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 the above 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.

10 METRO NON DISCRIMINATION

METRO shall not discriminate on the basis of race, color, national origin, or sex in the award and performance on any DOT-assisted contract or in the administration of its Program or the requirements of 49 CFR Part 26. METRO shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. METRO's Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Contract. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Contract. Upon notification to METRO of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. § 3801, et seq.).

11 CONTRACTOR NON DISCRIMINATION

The Contractor or subcontractor(s) shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. 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 METRO deems appropriate.

12 DEBARMENT AND SUSPENSION

A. This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

B. The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

C. Contractor must sign and submit the Debarment and Suspension Certification.

The certification in this clause is a material representation of fact relied upon by METRO. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to METRO, 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 CFR 29, Subpart C while this offer is valid and throughout the period of any Contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

13 ACCESS TO RECORDS

A. The Contractor agrees to provide METRO, 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. Contractor also agrees, pursuant to 49 C.F.R. 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. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

B. Where METRO enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the Contract to METRO, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

C. 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.

D. 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 Contractor agrees to maintain same until METRO, 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).

E. FTA does not require the inclusion of these requirements in subcontracts.

F. The same materials shall be made available to the Federal Highway Administration (FHWA), the U. S. Office of the Inspector General and their authorized representatives for review and inspection. Additionally, the State, the Local Government, the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this contract for the purpose of making audits, examinations, excerpts and transcriptions.

14 PRIVACY ACT

A. 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, regarding Drug and Alcohol enforcement activities. 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 the 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.

B. 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 the Federal Transit Administration.

15 BUY AMERICA

A. The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR 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 49CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment and software. Separate requirements for rolling stock are set out at 5323 (j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the United States and have a 60 percent domestic content.

B. A bidder or offeror must submit to METRO the appropriate Buy America certification with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier subcontractors. See bidding/proposing form entitled "Buy America Certification".

16 CARGO PREFERENCE--USE OF UNITED STATES-FLAG VESSELS

The Contractor agrees:

1. to use privately owned United States-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liner and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to the Contract to the extent such vessels are available at fair and reasonable rates of United States-flag commercial vessels;

2. to furnish within twenty (20) working days following the date of loading for shipment originating within the United States or within thirty (30) working days following the date of loading, for shipment 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 (1) above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590, and to METRO (through the Contractor in the case of a subcontractor's bill-of-lading); and

3. 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 vessel.

17 ACCESS TO THIRD PARTY CONTRACT RECORDS

The Contractor agrees to require, and assures that its subrecipients require, their third party contractors and third party subcontractors at each tier to provide to the U.S. Secretary of Transportation, the Federal Transit Administration (FTA), the Federal Highway Administration (FHWA), the U. S. Office of the Inspector General and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5325(g). The Recipient further agrees to require, and assures that its subrecipients require, their third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper project management as determined by FTA and FHWA.

18 NATIONAL TRANSIT DATABASE REPORT

A. Contractor shall prepare and submit to METRO an audited National Transit Database (NTD) Report within sixty (60) calendar days after the end of METRO's fiscal year (September 30) and not later than November 29 of each calendar year until completion of Contract. The NTD Report shall be in compliance with the latest FTA guidelines, including the required financial, safety, service supplied/consumed, fleet composition and similar forms.

B. Contractor shall submit monthly, NTD reports within thirty (30) calendar days after the close of each period for METRO to determine data is being collected and reported correctly.

C. Contractor shall follow instructions included in Exhibit "A", Attachment 3 for NTD data collection and reporting. Non compliance shall result in the assessment of liquidated damages, in accordance with Section IX, Paragraph 4, "Liquidated Damages".

19 ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the parties and shall supersede all prior offers, negotiations, exceptions and understandings, whether oral or written, between the parties hereto. No modification of this Contract (including any change in the work) shall be binding upon METRO or the Contractor unless evidenced by a written modification issued pursuant to the "Changes Provision" or by other written order modification hereof, as appropriate.

1 EXHIBIT "A", SCOPE OF SERVICES

SCOPE OF SERVICES
FOR
VANPOOL MANAGEMENT SERVICES
FOR THE
METRO STAR REGIONAL VANPOOL PROGRAM

1.0 GENERAL

This scope of services is for vanpool management services for the METRO STAR Regional Vanpool Program, a service of the Metropolitan Transit Authority of Harris County, Texas (METRO). This scope of services provides detail for services to assist METRO with the regional vanpool program, including administration, business development and support services.

The Contractor shall provide all resources required to perform all vanpool management services unless otherwise specified. The resources shall include, but not be limited to management, administrative, operating and support staff, supplies, equipment, applications and services to manage and administer the requirements of this scope of services. METRO will consider proposals that identify Contractor's approaches to meeting each of the requirements contained in this scope of services.

1.1 Definitions

As used herein, the following terms shall have the meaning stated below:

STAR - The METRO STAR Regional Vanpool Program, which resulted from the consolidation, rebranding, and restructuring of previously existing vanpool programs in the region. STAR is a service of METRO and receives planning, funding and operating support from the Entities.

Entities - METRO, H-GAC, TxDOT, FHWA, and FTA. The Entities may expand to include other agencies or governments that enter into agreements with METRO for STAR service.

METRO - Metropolitan Transit Authority of Harris County, Texas.

H-GAC - Houston-Galveston Area Council.

TxDOT - Texas Department of Transportation.

FHWA - Federal Highway Administration of the United States Department of Transportation.

FTA - Federal Transit Administration of the United States Department of Transportation.

Service Area - The Service Area for STAR consists of the eight-county region in and around Houston, including all of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties. The Service Area may extend into the surrounding counties to accommodate routes that travel into or from the primary Service Area and by agreement with other Entities.

Rider Incentives - STAR makes payments toward Vanpool operating costs as an incentive for riders to use the service on a regular basis. See Attachment 4: **Rider Incentives and JARC Leases** for additional detail.

JARC Leases - STAR makes payments toward Vanpool leases as a mechanism for supporting the service financially. See Attachment 4: **Rider Incentives and JARC Leases** for additional detail.

Vanpool - A form of public transportation used primarily for trips to and from work. Vanpools are open to the general public, use passenger vans with seating capacities of six (6) to fifteen (15) adults, and are driven by volunteer drivers who are part of the vanpool groups.

Contractor or Proposer - A provider or proposed provider of services to METRO included in this scope of services, identified in any subsequent negotiation process, or otherwise related to the operation of STAR.

Current Operator - The Contractor under agreement with METRO for operation of STAR from May 1, 2007 through the completion of transition to operation of STAR under a new agreement with a qualified Contractor pursuant to this scope of services. Transition period is anticipated to begin in approximate October 1, 2010 and shall be completed no later than November 30, 2010.

1.2 Background

METRO has been engaged in vanpool services and operations since establishing the first transit way in Houston. In 1996, the METROVan program became the regional vanpool and rideshare program through agreement with H-GAC to supply FHWA grant funds for expansion. In 2006, METRO assumed responsibility for the miniPOOL construction corridors vanpool demonstration project. In 2007, METRO engaged the Current Operator to consolidate METROVan and miniPOOL into a single regional vanpool program and to enhance program effectiveness and operating efficiencies. The Current Operator restructured the vanpool services of METRO and established the STAR brand for these services. STAR now provides centralized leasing of vanpool vehicles and fare collection through the Contract Operator. METRO's agreement with the Current Operator will end no later than November 30, 2010. A new Contractor agreement for vanpool management services to operate STAR shall be in place with time to transition responsibilities from the current agreement to the new agreement before the end of the current agreement.

One of METRO's key strategic objectives is to increase ridership. Vanpooling is a proven public transportation service for producing ridership and generating benefits to regional mobility and air quality. Another of METRO's key strategic objectives is to improve the agency's operating ratio, or the portion of operating costs covered by fare revenues.

1.3 Project Description

METRO operates a regional vanpool service for the Houston Galveston Transportation Management Area. This vanpool service is operated as METRO STAR, and provides service for commuters to and from work within the STAR Service Area. This scope of services provides requirements for Contractor support that may be employed, wholly or in part, for operation of STAR. These requirements include providing vanpool program administration services, providing vanpool program business development services, and providing equipment, supply and support services for METRO and the regional vanpool program.

1.4 Project Goals

METRO's primary goals for STAR are:

- a) Enhance the effectiveness of vanpool initiatives in reducing vehicle miles traveled and emissions in the region.
- b) Improve operating efficiencies of acquiring and retaining vanpool participants.
- c) Maximize marketplace awareness and potential for vanpooling initiatives presented to area commuters, employers and sponsors.
- d) Increase the leverage of available federal and local funding sources to maximize long-term potential for vanpooling in the region.

1.5 Project Objectives

METRO's primary objectives for STAR are:

- a) Increase STAR's net contribution to the reduction of vehicle miles traveled in the region for each year of operation through growth in the numbers of routes, riders and trips taken. Proposer should use a target growth rate of not less than 10% per year.
- b) Improve the efficiency of STAR operations as determined by the total cost to METRO for each vehicle mile travel reduced in the region through STAR. Proposer should target improvement of at least 20% during the term of the agreement.
- c) Increase the levels of awareness and positive perception of STAR services in the Service Area as measured by response of consumers, employers and stakeholder groups. Proposer should target a 100% increase in affirming response rates over the term of the agreement.
- d) Enhance capabilities for attracting new riders to STAR to sustain vanpool routes that lose riders and to create growth in ridership. Proposer should include approaches for increasing the quantity of new riders attracted as well as for lowering investments of time and resources required for acquiring and retaining each new rider.
- e) Expand the availability of vanpool services within the Service Area, including for low-income riders and for commuters with few alternatives for commuting to and from work.

1.6 Services and Capabilities

METRO is seeking a Contractor that is a proven vanpool program operator to support METRO in the operation of STAR for achieving METRO's strategic objectives and STAR's stated goals and objectives. The contractor shall provide the following services and capabilities:

- a) Program administration of a large, regional vanpool service sponsored by a transit agency or other government entity.
- b) Business development and customer services to attract and retain vanpool riders, routes, and employer sponsors.
- c) Support for vanpool operations with vehicle leasing and fare collection services.
- d) Vanpool management services in support of funding, reporting, and financial requirements.

METRO will consider additional services and capabilities of Proposer for potential to add value to STAR.

1.7 Schedule

METRO anticipates that an agreement with the selected Contractor will become effective no later than October 1, 2010. METRO anticipates a period of performance not to exceed seven (7) years, including two (2) one (1) year options following an initial five (5) year term.

2.0 VANPOOL MANAGEMENT SERVICES

The vanpool management services Contractor shall address each of the requirements identified for program administration, business development, services and support of METRO and STAR. Proposer shall identify approaches intended to meet each specific requirement and may include alternative approaches where Contractor identifies multiple approaches that have proven successful in other projects. METRO values both experience and creativity in Contractor support. Proposer shall describe their own experience in applying the approaches proposed for STAR and the results achieved, if any. METRO shall consider Contractor's experience with proposed approaches in evaluating the proposal. Proposer shall provide an evaluation of creative new approaches incorporated in the proposal, together with observations of similar approaches employed by others, when there is no direct experience to describe. METRO will consider Contractor's evaluation of new creativity included in proposed approaches.

2.1 Program Administration

The Proposer shall provide documentation of all proposed program administration efforts to be provided for the successful administration and operation of STAR. The program administration proposal shall include all project management, supervision and administration roles necessary for Proposer to meet operating requirements of the project. Proposer shall fully describe the proposed methodologies to be used in administering STAR.

Identify the staff resources, contract resources and costs associated with each component. The program administration proposal shall include:

- a) Management - Describe the management structure and approaches proposed for use in managing METRO's contract requirements, program financial matters, project staffing, program processes, program service requirements, sub-contracting needs, and other management functions. The management structure shall provide a single point of contact for all project management responsibilities. This structure shall provide appropriate management and supervision of functions proposed for meeting the individual requirements of this scope of services. The management discussion of the program administration proposal shall include the following additional considerations:
 - i) Comprehensive program for administering STAR;
 - ii) Leadership, oversight and supervision of all required functions and duties;
 - iii) Safeguards against errors and omissions;
 - iv) Backup and contingency performance plans; and
 - v) Coordination of plans and activities with METRO.
- b) Administration - Describe the proposed arrangements for providing project offices, equipment, materials, supplies, and support services associated with vanpool program administration. Nine (9) workstations are available in METRO's administration building, including five (5) call center stations and four (4) professional stations. Requests for additional space may be considered.
- c) Miscellaneous - Include specific requirements noted in section 3.0 OPERATING REQUIREMENTS and attachments to this scope of services which are to be considered program administration elements in Contractor's proposal.
- d) Other - Describe any other resources and efforts not included above which are proposed in conjunction with the program administration role for STAR as alternatives or enhancements to the requirements described.
- e) Experience - Describe Contractor's experience and results or evaluation of new creativity with identified approaches in the program administration proposal.

2.2 Business Development

The Proposer shall provide documentation of all proposed business development efforts to be provided for the successful maintenance and expansion of participation levels for STAR. The business development proposal shall include all sales, marketing, public relations and customer service roles necessary for Proposer to meet growth objectives of STAR. Proposer shall fully describe the proposed methodologies to be used in developing business.

Identify the staff resources, contract resources and costs associated with each component. The business development proposal shall include:

- a) New Business Development - Describe the business development resources and approaches proposed for conducting new business development at all levels in the Service Area, including geographic coverage, strategic

objectives and strategies for sales and marketing. The business development structure shall provide for attracting and retaining riders, adding routes, employer accounts and stakeholder support. Management and supervision of this function shall be provided in the program administration proposal.

- b) Account Management - Describe the account management resources and approaches proposed for providing account management to current and future relationships with employers, other groups and partners.
- c) Marketing & Public Relations - Describe the marketing and public relations resources and approaches proposed for providing marketing and public relations support for STAR, including anticipated sources, costs, service types and other considerations. Include discussion of approaches for coordinating these activities with similar activities of METRO for other public transportation services. METRO maintains internal marketing and communications capabilities, including printing, which may be utilized to support STAR. METRO's project manager shall coordinate the internal marketing and public relations support with Contractor.
- d) Customer Service - Describe the customer service resources and efforts proposed for providing customer communications, ride matching, and vanpool administration components of the program, including driver and rider registration, routes, changes, incentive processing, reporting and other customer services. The customer services proposal shall also provide for the assistance of interested commuters in accessing STAR service.
- e) Vanpool Group Formation - Describe the vanpool formation resources and efforts proposed for initiating new vanpool groups, including communications and new start support.
- f) Vanpool Maintenance - Describe the vanpool maintenance resources and efforts proposed for maintaining existing vanpools, including new rider solicitation and support options.
- g) Miscellaneous - Include specific requirements noted in section 3.0 OPERATING REQUIREMENTS and attachments to this scope of services which are to be considered business development elements in Contractor's proposal.
- h) Other - Describe any other resources and efforts not included above which are proposed in conjunction with the business development role for STAR as alternatives or enhancements to the requirements described.
- i) Experience - Describe Contractor's experience and results or evaluation of new creativity with identified approaches in the business development proposal.

2.3 Services

The Proposer shall provide documentation of all other proposed services to be provided for the successful administration and operation of STAR (including but not limited to all equipment, systems and emergency ride home) The services proposal shall include all equipment, systems and emergency ride home roles necessary for Proposer to support STAR. Proposer shall fully describe the methodologies to be used in supporting STAR.

Identify the staff resources, contract resources and costs associated with each component. The other services proposal shall include:

- a) Equipment - Describe the equipment resources and approaches proposed by Contractor for equipment to be utilized in operation of STAR, including sources, costs, equipment types, and other considerations. Vanpool vehicles are to be provided in accordance with **Attachment 1: Vehicle Leasing**. Proposer shall describe capabilities for completing the required vehicle leasing arrangements prior to the anticipated effective date of the agreement. Proposer shall explicitly state their commitment to successfully completing the vehicle leasing arrangements in this manner. Management and supervision of this function shall be provided in the program administration proposal.
- b) Emergency Ride Home - Describe any alternative resources and approaches proposed by Contractor to provide emergency ride home services for STAR. METRO provides resources for emergency ride home services via taxi through existing contracts between METRO and taxi services. In the event these contract services cease to be available in the future, Proposer shall have an alternative. Additionally, there are situations where the taxi services are not readily available to provide emergency trips from vanpool destinations far from the central city and Contractor may be required to make alternative arrangements.
- c) Systems - Describe the system resources and approaches proposed by Contractor for systems, applications and software licenses to support program administration, business development and services required for STAR. Describe provisions for METRO's continued use of systems beyond the term of the proposed performance period, access to systems by METRO, ownership by METRO, required support and maintenance arrangements, and technology life cycle expectations where appropriate. METRO provides the RidePro system for ride matching, recording participant data for vanpooling and emergency ride home services, and ridership reporting. Proposer shall describe capabilities for managing and utilizing RidePro in operating STAR. The Current Operator has established an accounting system for fare collection as described in **Attachment 2: Fare Collection**. Proposer shall describe capabilities for managing and utilizing the accounting system or implementing a replacement fare collection system in operating STAR. If Proposer recommends implementing a replacement fare collection system, the proposal shall describe Contractor's capability for deploying the replacement system within a maximum of 60 days and fully describe all staff time and other costs to METRO for said replacement.

- d) Miscellaneous - Include specific requirements noted in section 3.0 OPERATING REQUIREMENTS and attachments to this scope of services which are to be considered services elements in Contractor's proposal.
- e) Other Services - Describe any other resources and efforts not included above which are proposed in conjunction with the services role for STAR as alternatives or enhancements to the requirements described.
- f) Experience - Describe Contractor's experience and results or evaluation of new creativity with identified approaches in the services proposal.

3.0 OPERATING REQUIREMENTS

Management of STAR is subject to operating requirements associated with METRO's management oversight and funding for the project. STAR is supported by federal transportation grant funds and local funds from the Entities. Proposer shall be required to comply with all appropriate federal and state laws and regulations, including but not limited to the Americans with Disabilities Act and similar legislation and regulation.

METRO establishes operating requirements for STAR in accordance with METRO's own operating requirements and expectations, as well as for unique requirements and expectations associated with regional vanpool and the Entities assisting STAR with planning, funding and operating support.

The Contractor shall provide all resources required to perform all operating requirements for vanpool management services unless otherwise specified in this scope of services. The resources shall include, but not be limited to management, administrative, operating and support staff, supplies, equipment, applications and services to manage and administer the requirements of this scope of services.

3.1 Project Management and Coordination (METRO's Expectations of contractor)

The Contractor shall be required to cooperate with METRO's project management and coordination of STAR as a complementary service in METRO's offering to the public. METRO intends for the public to see STAR representatives as METRO representatives rather than as representatives of a separate, affiliated program.

- a) Authorization - METRO shall utilize guidelines, operating provisions, work plan approvals and task request approvals to guide STAR efforts and activities conducted by or on behalf of METRO. Contractor shall identify key topics requiring program guidelines and operating provisions, provide master work plans and budgets for review and approval, and submit task requests for authorization in conjunction with the operation of STAR. Contractor shall include allowances for the effort required to support development and adoption of necessary guidance and authorization. Through this process, Contractor shall be required to obtain METRO authorization for program approaches, types of activities, specific activities, budgets and expenditures that may reflect on METRO, STAR and the Entities, affect the available resources for operation of STAR, or affect the success of STAR in accomplishing METRO's strategic objectives and the stated goals and objectives for STAR.
- b) Coordination - METRO shall coordinate STAR activities conducted by Contractor including program administration, business development, marketing, and services through written work plan and task authorizations, as noted above, and through consistent communications and schedule coordination between METRO's project manager and Contractor's project manager. The frequency of project management meetings and reports shall be set by METRO's project manager as necessary to accomplish the expected levels of accomplishment and coordination.
- c) Work Plans and Task Requests - The Contractor shall submit written work plans and task requests for METRO's approval concerning operation of STAR, including program administration, business development, and services including all of the elements of these functions described in this scope of services, the Contractor's proposal to the extent accepted by METRO, METRO requests and Contractor's recommendations for operation of STAR. METRO shall review and respond to official work plans and task requests submitted by Contractor to reject, approve or partially approve plans or requests within 30 days of receipt from Contractor, or within 14 days of receipt from Contractor if identified as an emergency work plan or request by Contractor or METRO. Work Plans are intended to cover all operations for a designated period. Task Requests are intended to provide supplemental authorization for individual tasks that may be required in addition to the Work Plan.
- i) Work plans shall include description of activities including purpose, resources, costs, schedule and expected results for METRO authorization of the work plan and subsequent monitoring of progress under the work plan. Each work plan shall include planned utilization of SBE/DBE sub-contractors as required under the contract and proposed in the Contractor's utilization plan for sub-contractors. When taken as a whole, an approved work plan shall comprise the base budget and business plan for a given performance period. METRO anticipates requiring the following master work plans for operation of STAR:
 - An initial work plan for the first 90 days of Contractor's performance.
 - A master work plan for the remainder of the first year of Contractor's performance.
 - Master work plans for each subsequent year of the Contractor's performance.

- Modified work plans for any performance period as requested by METRO or recommended by Contractor to manage major changes in the required work.
- ii) Task requests shall include description of additional activities including purpose, resources, costs, schedule and expected results for METRO authorization of additional specific tasks and subsequent monitoring of progress under the task. Each task request shall include planned utilization of SBE/DBE sub-contractors as required under the contract and proposed in the Contractor's utilization plan for sub-contractors. When taken individually, an approved task request may provide for addition to the base budget and business plan for a given performance period. METRO anticipates requiring task requests for additional work or assignments requested by METRO or recommended by Contractor to achieve the stated goals and objectives for STAR or METRO's strategic objectives.
- d) Quarterly Review Process - METRO and Contractor shall meet quarterly to review the status of approved work plans and the stated goals and objectives for STAR, including results generated and budget performance. Contractor shall prepare a report on activities and performance for each quarter of performance to facilitate the review of the quarter ended and projected activity, results and budget for the coming period. Contractor shall provide quarterly review reports within 30 days of quarter end. In the event performance deficiencies are identified, corrective actions will be identified for eliminating the deficiencies. If appropriate, new or modified work plans and task requests will be established to implement necessary corrective actions.
- e) Interface with METRO - METRO's project manager shall be responsible for interfacing STAR activities and Contractor staff with other departments, vendors and partners of METRO to ensure a consistent, unified position for STAR within METRO's service portfolio.
- f) Staff Training and Familiarization - Contractor staff shall be trained in METRO guidelines, provisions and work plans to ensure proper action on behalf of METRO. Contractor staff shall also become familiar with other METRO services, programs, projects, policies and processes appropriate for representing METRO and STAR with the public.

3.2 Reports and Deliverables

The Contractor shall be required to support STAR with data, reports and analysis as required by METRO and the Entities, and in accordance with schedules designated by METRO and the Entities, including, but not limited to:

- a) National Transit Database (NTD) - METRO shall require Contractor to collect, validate, document, summarize and provide NTD data from riders, van providers, METRO and other sources as necessary to meet NTD monthly and annual reporting requirements, as further described in **Attachment 3: National Transit Database Reporting**. These reports may include route, vehicle and ridership data, cost data, service and schedule data, contractor and sub-contractor data, financial data, and any other data that may be required for NTD or by METRO to support NTD reporting. Contractor shall utilize processes for gathering and documenting data required for NTD on a continuous basis. Management and supervision of this function shall be provided in the program administration proposal.
- b) Vehicle Leasing Data and Reports - METRO shall require Contractor to provide documentation of STAR vehicle leasing and fleet administration activities, including, but not limited to distribution of business, vehicle inventory changes, leasing financial matters, vendor payments and vendor performance, as further described in **Attachment 1: Vehicle Leasing**. Management and supervision of this function shall be provided in the program administration proposal.
- c) Fare Collection Data and Report - METRO shall require Contractor to provide documentation of STAR fare collection activities and results, including reconciliation of accounts, revenues and expenses, as further described in **Attachment 2: Fare Collection**. Management and supervision of this function shall be provided in the program administration proposal.
- d) Activity Reports - METRO shall require Contractor to provide documentation of STAR activities, including administration, business development, services, contracting and other pertinent activities performed by Contractor. Required activity reports may include project and staff schedules, event and call reports, periodic sales reports, service activity, program administration activity reports and other plan, function and task activity records as necessary.
- e) Status Reports - METRO shall require Contractor to provide monthly status reports on STAR results, services, projects and plans pertinent to the role of the Contractor. Status reports may include status of activity, objective, budget and performance measures of STAR operations as necessary for METRO or the Entities, including, but not limited to air quality reports, grant progress reports, management reports, budget analysis reports and financial projections. Management and supervision of this function shall be provided in the program administration proposal.
- f) Billing Data and Invoices - METRO shall require Contractor to process invoices by vendors and by Contractor relative to STAR and work performed by Contractor. Billing reports may include reviews of sub-contractor, van lease and fuel provider invoices, invoices for Contractor's services to METRO, verification of invoice data and program adherence, and assisting in the preparation of grant reimbursement requests under METRO's agreements with the Entities.

Management and supervision of this function shall be provided in the program administration proposal.

- g) Ridership Reports - METRO shall require Contractor to collect and report ridership data as required for METRO Board reports, status reports to the Entities, National Transit Database reporting and other reports as may be required from time to time for STAR. Management and supervision of this function shall be provided in the program administration proposal.
- h) Analyses - METRO shall require Contractor to provide analysis of data and results associated with STAR, projects and processes performed by Contractor to assist in the assessment of performance, service value, market potential, improvement opportunities, project benefits, cost effectiveness, return on investment and forecasts of project expenditures and grant reimbursements.
- i) Ad Hoc Requests - METRO shall require Contractor to provide reports in response to ad hoc requests concerning Contractor's roles and recommendations for operation of STAR or other programs or services of METRO or the Entities.
- j) Annual Report - METRO shall require Contractor to complete a summary report on the effort and results associated with the Contractor's work on behalf of METRO for each year of performance under the contract. This report will include summary of plans, efforts to follow those plans, results of the efforts, adjustments that were made along the way, lessons learned from the effort, recommendations to improve future efforts in STAR, and a financial summary. The annual report is due within 60 days of period end. Management and supervision of this function shall be provided in the program administration proposal.
- k) Final Report - METRO shall require Contractor to complete a final report on the effort and results associated with the Contractor's work on behalf of METRO. This report will include summary of plans, efforts to follow those plans, results of the efforts, adjustments that were made along the way, lessons learned from the effort, recommendations to improve future efforts in STAR, and a financial summary. The final report will be due prior to payment of any invoices covering work performed by Contractor during the final 30 days of the contract. Management and supervision of this function shall be provided in the program administration proposal.

3.3 Performance Standards and Pay for Performance

METRO's goal is to have Contractor contributions match Contractor compensation and will utilize performance incentives and performance penalties to ensure that actual compensation does not exceed performance.

- a) Performance Standards - METRO and Contractor shall develop performance standards during contract negotiations if appropriate to cover matters such as increasing riders, retaining riders, increasing contributions to reducing vehicles miles traveled in the Service Area, timeliness and efficiency of vanpool management efforts, quality of information, cost of efforts, and attainment of other objectives.
- b) Pay for Performance Incentives - METRO shall base a portion of Contractor's compensation on incentives to ensure that expectations are met and that Contractor is rewarded if expectations are exceeded.
- c) Pay for Performance Disincentives - METRO shall include disincentives in Contractor's compensation agreement to ensure critical performance factors are met and that METRO is compensated if expectations are not met.
- d) Observation - METRO shall require access to observe Contractor activities, records and results to properly assess adherence to performance standards and pay for performance.

3.4 Miscellaneous Project Requirements

The Proposer's response shall address the following additional requirements, including methodologies and approaches for these specific requirements and contract terms:

- a) METRO requires Contractor to administer the Rider Incentives distribution process, including validating and reconciling Rider Incentives processed.
- b) METRO requires Contractor to administer the JARC Leases, when applicable, including validation, distribution and reconciliation of JARC Leases processed.
- c) METRO requires access to Contractor records for the project management purposes of reviewing invoices, reports, performance, analysis and adherence to contract and program provisions.
- d) METRO requires ownership of licenses purchased and materials produced for use in this project to be METRO's property. This includes software systems purchased, configuration of software, and records established in systems implemented by Contractor for performance of vanpool management services, including but not limited to fare collection, fleet management, customer relationship management and reporting systems.
- e) METRO requires Contractor to include in sub-contracts as appropriate the necessary provisions to require timely

collection and submittal of all data required for NTD reports, METRO Board reports, program reports and other reporting obligations of METRO.

- f) METRO requires Contractor to include in sub-contracts as appropriate the necessary provisions to ensure compliance with contracting requirements of METRO and the Entities, including, but not limited to compliance with the Americans with Disabilities Act (ADA), Title VI, and any federal contracting requirements which may apply to METRO.
- g) METRO requires Contractor to collect and report information on funds eligible for consideration as local matching funds, which are collected and applied on behalf of the program through Contractor's efforts.
- h) METRO requires Contractor to report on emission reductions resulting from STAR under Contractor's management.
- i) METRO requires Contractor to assure all data submitted by Contractor is accurate and complete, to take reasonable steps to discover errors and omissions in the validation of data quality, and to report errors when discovered in data previously reported.
- j) METRO requires Contractor to adhere to guidelines, provisions, work authorizations and task approvals applicable to STAR.
- k) METRO requires Contractor to include driver safety instruction and training designed to sustain STAR's safety record and insurability.
- l) METRO requires Contractor to provide training for Employee Transportation Coordinators, Transportation Management Organizations, vanpool coordinators and other project partners to garner support and assistance in sustaining and expanding STAR participation.
- m) METRO requires Contractor to perform duties for the regional rideshare component of STAR, including but not limited to providing ride matching assistance to persons interested in carpooling to work and to school and providing information to the public on HOV lanes.
- n) METRO requires Contractor to cross-promote other METRO services, including but not limited to Bus, Rail, METROLift services and HOV lanes, with accounts of STAR both directly and in cooperation with METRO staff.
- o) METRO requires Contractor to provide account-level reporting on employer and organization participants and prospects.
- p) METRO requires Contractor to provide safety incident reporting and performance measures, including the required safety reporting for NTD, van provider incident reporting and ad hoc requests for monitoring safety of STAR and facilities used by STAR.
- q) METRO requires Contractor to respond directly or assist in preparing responses for public comments concerning STAR operations or management provided by Contractor utilizing METRO's Public Comment Guideline, system and processes.
- r) METRO requires Contractor to assist METRO in providing access to emergency ride home services for eligible users of METRO's fixed route bus system where mid-day service is not available or limited.
- s) METRO requires Contractor to utilize METRO's name, STAR's name and names of the Entities in STAR activities, communications, marketing and materials where appropriate.
- t) METRO requires Contractor to provide audited annual financial statements, including computations of Contractor's burden, fringe and both field and home office overhead rates for establishing the billing rates of Contractor labor resources.
- u) METRO may require Contractor to provide emergency ride home services for STAR participants where METRO services used for this purpose are not available.
- v) METRO may require Contractor to acknowledge federal and METRO local funding sources in advertising, promotional materials, and similar public documents.
- w) METRO may require Contractor to perform other duties deemed necessary for the effective operation of STAR.
- x) METRO may require Contractor to perform other duties, similar to those performed for STAR, for other METRO services when such duties are complementary to duties for STAR or such services are complementary to STAR service.

Provisions to support the operations of STAR and performance of Contractor include the following:

- a) Work Space - METRO shall provide up to nine workstations within METRO's administration building for Contractor staff to perform customer service, sales, management and administration functions. Contractor resources assigned exclusively to work space in METRO's administration building and key Contractor staff with frequent requirement to visit Contractor work space in METRO's administration building will be provided with secure card key access to METRO's administration building for access to this work space. METRO includes this option to improve coordination of Contractor activities with METRO and to reduce overhead costs associated with Contractor resources assigned exclusively to work space in METRO's administration building.
- b) Transit Service - METRO shall provide Contractor resources assigned full-time to the STAR project and key staff with a contractor Q Card to provide transit access on METRO fixed route bus and rail service. METRO encourages Contractor to utilize METRO services to reduce travel costs and as a better reflection on METRO in the community.
- c) RidePro - METRO provides the RidePro system for ride matching, recording participant data for vanpooling and emergency ride home services, and ridership reporting. METRO currently provides up to 12 user licenses for RidePro use by Contractor. Presently, RidePro functionality is limited as it relates to use outside of METRO's network. Full RidePro capabilities are only available at a METRO desktop installation of RidePro.
- d) Marketing and Communications - METRO maintains internal marketing and communications capabilities, including printing, which may be utilized to support STAR. METRO's project manager will coordinate the internal marketing and public relations support with Contractor. Contractor is required to provide for marketing and public relations capabilities as part of the business development proposal, but may include suggested assistance from METRO staff.

3.6 Miscellaneous Response Requirements

The Proposer's response shall include the following additional information:

- a) Proposer shall include a requirements matrix identifying each requirement of the scope and whether Proposer's response fully satisfies the requirement, partially satisfies the requirement or does not satisfy the requirement. For partially met requirements, the matrix shall identify the ways in which the requirement is not fully satisfied.
- b) Proposer shall organize their response to match this scope document in order to facilitate review. For instances where the operating requirement response is included in the program administration, business development or services proposal, the operating requirement proposal should reference the location where the requirement is addressed, but does not need to repeat the response.
- c) Proposer shall include proposed sub-contractor firm names, activities and roles in responses related to Contractor effort identified in this scope. Proposer is encouraged to identify appropriate sub-contracting opportunities in most or all categories of work to be provided under the contract to ensure ability to meet the sub-contracting goal as authorized work activities may be adjusted from time to time in response to project requirements and budget limitations. Changes to the scope of services, work plans, task requests or budget will increase or decrease the SBE/DBE sub-contracting goal for the contract in accordance with changes in the value of applicable items.
- d) Proposer shall describe any proposed systems included in the proposal, including functionality, features, benefits and costs. If appropriate, describe the advantages relative to the RidePro ride matching and vanpool management system already deployed at METRO for any recommended alternative to RidePro.

STAR vanpool services are provided through a combination of employer vehicles and private van provider vehicles. STAR pays rider incentives to employers that directly provide vehicles (the "Employers"). The Contractor shall pass through these incentive payments from METRO to the Employers. Private provider vehicles shall be leased by the Contractor on behalf of STAR. This attachment describes the vehicle leasing arrangement for the private provider vehicles.

Enterprise and VPSI (the "Providers") are private providers for STAR and have entered into long-term lease agreements with the Current Operator on behalf of STAR. The Provider lease agreements will expire during the term of this proposed contract.

The Contractor shall enter into master lease agreements with the Providers covering the vehicles in service and providing for new vehicles to meet demand for new routes and replacements. The Providers look to the Contractor to aggregate the vanpool fares from riders and their employers together with the incentive and lease payments from METRO to make timely payment of the lease obligations under the agreements. METRO supports these payments through advance payments for METRO incentive and lease obligations, and through reimbursement of expenses associated with the roles of collecting fares and paying leases. This includes the bad debt expense associated with uncollected fares.

The Providers look to the Contractor for financial wherewithal to manage this process and place requirements on the Contractor to ensure their payments. The Contractor shall accommodate reasonable requirements of the Providers and supply them with reports, financial statements and other information or agreements as required to maintain the integrity of the Providers' assets under lease to the Contractor.

In some vehicle lease arrangements, STAR provides a fuel or purchase card for the vanpool group to pay for fuel and other operating expenses. The Contractor shall provide fuel or purchased cards on behalf of STAR. As a point of information, the Current Operator has chosen to supply the fuel or credit cards through either an agreement with one of the Providers or through a credit card issuer. In these arrangements, the fuel and other operating expenses paid through the cards are included in the fares collected from the groups. The Contractor is not required to use the Current Operator's arrangements for fuel or purchase cards.

The Contractor shall recover the costs of leasing vehicles, fare collection activities and a portion of other operating expenses for STAR through the combination of vanpool fares and METRO incentive payments. See **Attachment 2: Fare Collection** for more information on this responsibility.

METRO shall require the Contractor to be responsible for providing ongoing vehicle leasing arrangements through the term of the proposed contract.

STAR vanpool services are provided through a combination of employer vehicles and private van provider vehicles. STAR pays rider incentives to employers that directly provide vehicles (the "Employers"). The Contractor shall pass these incentive payments through from METRO to the Employers. Private provider vehicles are leased by the Contractor on behalf of STAR. The Contractor shall collect fares from the vanpool groups and the riders' employers and collect incentives and lease payments from METRO to pay the leases, fuel and other operating costs of vanpools using private provider vehicles (the "Leased Vehicles"). This attachment describes the fare collection arrangement for the Leased Vehicles.

The Contractor shall establish a fare collection system for managing the fares, METRO contributions and operating expenses of vanpool groups using Leased Vehicles. METRO looks to the Contractor to perform the billing and collection functions for STAR and to process the payments to the private providers, fuel card vendors and other suppliers for the vanpools. Excess fares collected are paid to METRO to offset other operating expenses of STAR paid by METRO.

METRO subsidizes vanpool operations through a combination of rider incentives and direct lease payments. See **Attachment 4: Rider Incentives and JARC Leases** for additional information. Additionally, METRO pays for the Contractor labor and direct expenses involved in administering and operating STAR. On a monthly basis, the Contractor shall identify the following for each individual vanpool group in the Leased Vehicles for fare collection purposes:

- Vehicle lease arrangement
- Fuel costs
- Other direct operating expenses paid through STAR
- Each rider
- Each rider's incentive status with METRO
- Each rider's employer benefit status with their employer

The Contractor shall prepare invoices for the vanpool groups, employers and METRO as follows:

- Each vanpool group shall receive an invoice containing:
 - The vehicle lease expense
 - Fuel costs (if appropriate)
 - Other direct operating expenses (if appropriate)
 - Credits for each rider's METRO incentive, if any
 - Credits for each rider's employer benefit, if any
 - Net amount due from the group
- Each employer shall receive an invoice containing:
 - The list of vans with employees of employer
 - The amount of benefit for each rider and van group
 - Net amount due from the employer
 - Supporting documentation as required for employer
- METRO shall receive an incentive invoice containing:
 - The list of riders with an incentive
 - The amount and source of incentive based on eligibility (incentives are currently paid from CMAQ or STP grants)
 - Net amount due for rider incentives
- METRO shall receive a direct lease invoice containing:
 - The list of eligible lease vans (a subset of approximately 100 vans receiving lease subsidy under a JARC grant)
 - The amount of each lease payment
 - Net amount due for leases

Presently, there are approximately 600 vanpools in Leased Vehicles. There are changes each month in the routes and riders that must be made in the fare collection system. Typical months can involve up to 20 or more new vanpools, up to 20 or more terminated vanpools and as many as 500 rider changes. Route and rider changes are coordinated through METRO's RidePro system and must also be applied in the fare collection system. The current billing and collection data is maintained in Quickbooks, an accounting software. The Contractor shall be responsible for maintaining billing and collection data on behalf of STAR. The Contractor is not required to use Quickbooks for maintaining billing and collection data.

The Contractor shall provide reports and documentation on a monthly basis to validate the amounts that should be collected and paid for vanpools in Leased Vehicles, amounts actually collected and paid for vanpools in Leased Vehicles, fare collection activities and status, and application of results to METRO's account.

Attachment 3: National Transit Database Reporting

METRO reports on STAR vanpool services to the National Transit Database ("NTD") along with all other METRO services. The Contractor is responsible for gathering data, making calculations, preparing reports, providing supporting documentation and reviewing this material with METRO for the vanpool reports to NTD.

NTD reports shall be prepared in accordance with the NTD annual reporting manual. There are both monthly and annual report submittals required during each year.

NTD reports shall be prepared on the basis of continuously collected data on vanpool routes, vehicles (fleets), passenger trips, passenger miles, and financial transactions. Data collection shall include, but is not necessarily limited to, the following statistics now recorded on the forms noted:

- **Form B-30**
 - Vehicles available for annual maximum service
 - Number of months Contractor provided service during the report year
 - Fare revenues
 - Net contract expenses
 - Total contract cost
- **Form F-30**
 - Total annual expenses by function by expense object class
- **Form A-10**
 - Maintenance facilities
- **Form A-30**
 - Revenue vehicle inventory, including the following information by fleet type:
 - Number of vehicles in total fleet
 - Dedicated fleet status
 - Vehicle type
 - Ownership code
 - Funding source
 - Year of manufacture
 - Year of rebuild
 - Manufacturer's code
 - Model number
 - Number of active vehicles in fleet
 - Number of ADA vehicles with lifts
 - Number of ADA vehicles with ramps / low floor
 - Number of emergency vehicles
 - Fuel type
 - Vehicle length
 - Seating capacity
 - Standing capacity
 - Total miles of active vehicles during the period
 - Average lifetime miles per active vehicle
 - Whether vehicles supports another mode
- **Form S-10**
 - Vehicles operating in annual maximum service
 - Vehicles available for annual maximum service
 - Vehicles in operation on average weekday, average Saturday, and average Sunday
 - Total actual vehicle miles
 - Total actual vehicle revenue miles
 - Total actual vehicle hours
 - Total actual vehicle revenue hours
 - Unlinked passenger trips
 - Passenger miles traveled
 - Days schedule operated
 - Days not operated due to strikes
 - Days not operated due to officially declared emergencies
 - Separation of all data if any of the service is in different Urbanized Areas
- **Form R-20**
 - Major mechanical system failures
 - Other mechanical system failures

Data collections are done with the aid of METRO's RidePro system, the Contractor's fare collection system, financial systems of both METRO and the Contractor, fleet records systems of the Providers, and operating expense records of the vanpool groups. Additional data requirements may be added from time to time and Contractor shall be responsible for developing and implementing data collection methods on behalf of METRO. These collection methods shall be submitted for METRO's written approval prior to implementation.

The Contractor shall be responsible for understanding the data and reporting requirements, definitions, collection methods, procedures, documentation, and review requirements of NTD reporting for vanpool services.

METRO will establish schedules for monthly and annual report submittals. Generally, monthly reports are requested by the 20th of each calendar month and are past due if not received by the 30th of each calendar month. METRO internal reviews of monthly data are performed before the end of the month. Generally, annual reports are requested within 45 days following the end of METRO's fiscal year (September 30) and are past due if not received within 60 days following the end of METRO's fiscal year. METRO internal reviews begin with the first item submitted and continue until the final report is submitted to NTD. METRO undergoes an external audit of the data prior to submitting the report to NTD. Once submitted, the FTA reviews the report. The Contractor is required to be available to support these reviews and audits and to assist in the preparation of any required corrections or responses.

Attachment 4: Rider Incentives and JARC Leases

STAR provides rider incentives to qualified van riders each month to apply to vanpool operating costs. To qualify for an incentive, a rider must be a full-time rider and meet the minimum monthly ridership standard. To be considered full-time, a rider must pay to reserve their seat for the month. In some cases, an exception is made for the primary driver if the vanpool group is organized such that the driver rides free in exchange for performing driving and coordination duties. To meet the minimum ridership standard, a rider must ride or have excused absences for a minimum of 12 round trips per month.

Rider incentives are generally \$35 per month. Original miniPOOL riders who joined before May 1, 2007 and continue to ride in a qualified minivan are eligible for \$50 per month. METRO intends to eliminate the miniPOOL differential in the future.

Rider incentives are currently funded through two FHWA grants: Congestion Mitigation/Air Quality grants (CMAQ) and Surface Transportation Program grants (STP). CMAQ grants are used to fund incentives for the first 36 months that a rider participates in STAR. STP grants are used to fund incentives for the 37th month and beyond.

METRO's goal is to reduce incentives or public subsidy of the vanpool service over time. To date, the savings from vanpool operations have not been applied as a decrease in the amounts of rider subsidies paid. Rather, the impact of operating savings has been to yield excess fare revenues to be applied to other costs of the program, including those associated with Program Administration, Business Development and Services provided by the Contractor or METRO.

The numbers of vans and riders, including those earning incentives from CMAQ and STP grants for the three recent months is as follows:

	November 2009	December 2009	January 2010
Vans	739	738	743
Total Riders	7,451	7,446	7,453
Riders at \$0 Incentive	308	317	315
Riders at \$35 Incentive	6,690	6,691	6,703
Riders at \$50 Incentive	453	438	435
Riders Eligible for CMAQ	4,551	4,580	4,475
Riders Eligible for STP	2,900	2,866	2,978

The Proposer should use this information together with Proposer's proposed growth rate for the purpose of forecasting the value of Rider Incentive payments that will be required for inclusion in the pricing proposal.

As a point of information, STAR provides lease payments on selected vans each month using FTA Job Access Reverse Commute grant funds (JARC). JARC-funded lease arrangements are for a limited time and represent an alternate approach for funding STAR. However, this approach does not alter the total funding available for operating STAR. The Proposer does not need to consider these lease payment amounts or their impact on the funding structure in preparing a pricing proposal. METRO currently anticipates the remaining JARC grant funds will be exhausted in November 2010.

WILL BE INCLUDED IN RESULTANT CONTRACT



DRUG FREE WORKPLACE ACT OF 1988

AS A RECIPIENT OF FEDERAL FUNDS, METRO REQUIRES THAT ALL EMPLOYEES AND ITS CONTRACTORS ARE SUBJECT TO THE PROVISIONS OF THE **DRUG FREE WORKPLACE ACT OF 1988**. THE FOLLOWING ACTIONS HAVE BEEN IMPLEMENTED FOR COMPLIANCE:

- IT IS UNLAWFUL AND PROHIBITED FOR ANY EMPLOYEE TO MANUFACTURE, DISTRIBUTE, DISPENSE, POSSESS OR USE CONTROLLED SUBSTANCES ON METRO PROPERTY.
- ANY EMPLOYEE VIOLATING THE PROVISIONS OF THE DRUG FREE WORKPLACE ACT WILL BE SUBJECT TO IMMEDIATE DISCHARGE AND CRIMINAL PROSECUTION.
- ANY EMPLOYEE CONVICTED OF A DRUG VIOLATION OCCURRING IN THE METRO WORKPLACE IS REQUIRED TO REPORT THE CONVICTION IN WRITING TO HIS/HER SUPERVISOR WITHIN FIVE (5) CALENDAR DAYS FOLLOWING THE CONVICTION. METRO WILL NOTIFY FEDERAL TRANSIT ADMINISTRATION (FTA) WITHIN 10 DAYS OF RECEIVING NOTIFICATION FROM THE EMPLOYEE.
- FAILURE TO REPORT ANY SUCH CONVICTION WILL RESULT IN TERMINATION OF EMPLOYMENT.
- ANY CONVICTION IN VOILATION OF A THE DRUG FREE WORKPLACE ACT WILL RESULT IN TERMINATION OF EMPLOYMENT.

THE DRUG FREE WORKPLACE ACT OF 1988 IS INCLUDED IN THE FOLLOWING BOARD ADOPTED DRUG AND ALCOHOL POLICIES: "DRUG AND ALCOHOL POLICY FOR EMPLOYEES IN SAFETY-SENSITIVE JOB FUNCTIONS" AND "DRUG AND ALCOHOL POLICY FOR EMPLOYEES IN NON-SAFETY SENSITIVE POSITIONS".

THE DRUG FREE WORKPLACE ACT OF 1988 IS A CONDITION OF EMPLOYMENT FOR ALL METRO EMPLOYEES AND CONTRACTORS.

Drug-Free Workplace Act

Department of Agriculture**7 CFR PART 3017****Department of Energy****10 CFR PART 1036****Small Business Administration****13 CFR PART 145****National Aeronautics and Space Administration****14 CFR PART 1265****Department of Commerce****15 CFR PART 26****Department of State****22 CFR PART 137****International Development Cooperation Agency****Agency for International Development****22 CFR PART 208****Peace Corps****22 CFR PART 310****United States Information Agency****22 CFR PART 513****Inter-American Foundation****22 CFR PART 1006****African Development Foundation****22 CFR PART 1908****Department of Housing and Urban Development****24 CFR PART 24****Department of Justice****28 CFR PART 67****Department of Labor****29 CFR PART 98****Federal Mediation and Conciliation Service****29 CFR PART 1471****Department of the Treasury****31 CFR PART 10****Department of Defense****32 CFR PART 280****Department of Education****34 CFR PART 88****National Archives and Records Administration****36 CFR PART 1200****Department of Veterans Affairs****38 CFR PART 44****Environmental Protection Agency****40 CFR PART 32****General Services Administration****41 CFR PART 105-60****Department of the Interior****43 CFR PART 12****Federal Emergency Management Agency****44 CFR PART 17****Department of Health and Human Services****45 CFR PART 78****National Science Foundation****45 CFR PART 620****National Foundation on the Arts and the Humanities****National Endowment for the Arts****45 CFR PART 1164****National Endowment for the Humanities****45 CFR PART 1168****Institute of Museum Services****45 CFR PART 1186****ACTION****45 CFR PART 1220****Commission on the Bicentennial of the United States Constitution****45 CFR PART 2016****Department of Transportation****49 CFR PART 20****Government-Wide Requirements for Drug-Free Workplace (Grants)**

AGENCIES: Department of Agriculture, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, Department

of Veterans Affairs, ACTION, African Development Foundation, Agency for International Development, Commission on the Bicentennial of the United States Constitution, Environmental Protection Agency, Federal Emergency Management Agency, Federal Mediation and Conciliation Service, General Services Administration, Institute of Museum Services, Inter-American Foundation, National Aeronautics and Space Administration, National Archives and Records Administration, National Endowment for the Arts, National Endowment for the Humanities, National Science Foundation, Peace Corps, Small Business Administration, United States Information Agency.

ACTION: Final rule.

SUMMARY: The Drug-Free Workplace Act of 1988 requires that all grantees receiving grants from any Federal agency certify to that agency that they will maintain a drug-free workplace, or, in the case of a grantee who is an individual, certify to the agency that his or her conduct of grant activity will be drug-free. This government-wide rule is for the purpose of implementing the statutory requirements. It directs that grantees take steps to provide a drug-free workplace in accordance with the Act. The rule amends an interim final rule published January 31, 1988, in response to public comment.

DATE: This rule is effective July 24, 1990, except for the certification requirement of § 630 (c) and (d) for States and State agencies which is effective June 25, 1990. Compliance is authorized immediately. However, the Department of Education is required to submit the final rule to Congress for review. See Education's agency-specific preamble below.

FOR FURTHER INFORMATION CONTACT: See agency-specific preambles for the contact person for each agency.

SUPPLEMENTARY INFORMATION: As part of the omnibus drug legislation enacted November 18, 1988, Congress passed the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*). This statute requires contractors and grantees of Federal agencies to certify that they will provide drug-free workplaces; or, in the case of a grantee who is an individual, certify to the agency that his or her conduct of the grant will be drug-free. Making the required certification is a precondition for receiving a contract or grant from a Federal agency.

The Federal agencies published an interim final rule on this subject January

31, 1989 (53 FR 4048), requesting public comments on it. The requirements of the interim final rule became applicable on March 18, 1989. The agencies received 85 comments, which they have reviewed. The responses to the comments are discussed below.

Drug-free workplace requirements pertaining to contractors will be found in a separate final rule amending the Federal Acquisition Regulation (FAR: 48 CFR subparts 8.4, 23.5, and 32.2). This government-wide common rulemaking concerns only grants (including cooperative agreements). This common rule will be the sole authority for implementing the Act, i.e., there will be no separate agency guidance issued. Because the statute makes use of existing suspension and debarment remedies for noncompliance with drug-free workplace requirements, the agencies have determined to implement the statute through an amendment to the existing government-wide nonprocurement suspension and debarment common rule. Using this vehicle will allow the agencies to take advantage of existing administrative procedures and definitions, minimizing regulatory duplication.

Section-By-Section Analysis

This portion of the preamble discusses the amendments made by this rule to the interim final government-wide drug-free workplace common rule as published on January 31, 1989. This section-by-section analysis does not attempt to describe the entire drug-free workplace rule, only those portions added or changed by this final rule.

Section — 805 Definitions

In the definition of "controlled substance," citations to regulations implementing the Controlled Substances Act have been corrected to refer to 21 CFR part 1308.

The definition of "employee" has been made more specific. An employee now includes all "direct charge" employees (i.e., those whose services are directly and explicitly paid for by grant funds) and "indirect charge" employees (i.e., those members of the grantee's organization who perform support or overhead functions related to the grant and for which the Federal Government pays its share of expenses under the grant program). (The terms "direct charge" and "indirect charge" come from cost principles in OMB Circular A-21, A-87, and A-122). Among indirect charge employees, those whose impact or involvement is insignificant to the performance of the grant are exempted from coverage.

Any other person who is on the grantee's payroll and works in any activity under the grant, even if not paid from grant funds, is also considered to be an employee. Temporary personnel and consultants who are on the grantee's payroll are covered. Similar workers who are not on the grantee's own payroll (e.g., who are on the payroll of contractors working for the grantee) are not covered, even if their physical place of employment is in the grantee's covered workplace. Likewise, volunteers, even if used to help meet a matching requirement, are not employees for purposes of this rule.

In the definition of "grant," editorial changes to the reference to the common rule on grants management were made. The definition of "grantee" specifies that a Federal agency that received a grant from another Federal agency is not considered a grantee for purposes of this rule. For convenience of parties that may use this rule but not the entire nonprocurement suspension and debarment rule, the definition of "State" from the suspension and debarment rule is repeated in this section. It emphasizes that State-supported institutions of higher education are not considered part of a "State" for purposes of the rule.

Section — 810 Coverage

Paragraph (b) of this section now provides that the agency head or his/her designee can determine that the application of this rule should be negated on the basis of inconsistency with U.S. international obligations or foreign law.

Section — 815 Grounds for Suspension of Payments, Suspension or Termination of Grants, or Suspension or Debarment

Since grants are often made to individuals (e.g., Pell Grants), a new paragraph (c) has been added to this section to specify the conduct by an individual grantee that constitutes a violation of the rule. (There is no similar provision in the drug-free workplace rule for contracting.) This conduct includes failing to carry out the requirements of the individual grantee's certification (e.g., by unlawful possession or use of a controlled substance during the conduct of any grant activity) or conviction of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity. The sanctions set forth in § — 820 are the same as for other grantees. Paragraph (a), now limited to making a false certification, applies both to individual and other grantees. The former subparagraphs (b) and (c), which concern grantees other

than individuals, are now subparagraphs (1) and (2) of a new paragraph (b) concerning grantees other than individuals.

Section — 830 Certification Requirements and Procedures

This new section replaces the former § — 830 (Grantees' responsibilities) in its entirety. Paragraph (a) states the general rule that grantees must make the appropriate drug-free workplace certification as a prior condition to being awarded a grant. They need not do so, however, for a grant awarded before March 18, 1989, or under a no-cost time extension for such a grant. If there is a non-automatic continuation of such a grant that occurs after March 18, 1989, a one-time certification is necessary. Non-automatic continuations are equivalent to competing continuations for many agencies.

As provided in paragraph (b), grantees must make the required certification for each grant as part of the grant application or if there is no application, prior to award. (For mandatory formula grants and entitlements with no application process, a one-time certification is needed to continue receiving awards.)

Paragraph (c) provides an opportunity for grantees that are States to make the certification to each Federal agency on an annual (Federal fiscal year) basis starting in Fiscal Year 1990, rather than on a grant-by-grant basis. Except as provided in paragraph (d), an annual State certification must cover all Federal agency grants to all State agencies. The original certification must be retained in the Governor's office. A copy must be sent with each grant to each Federal agency providing a grant to the State. A Federal agency may designate a central location for submission. For States that previously submitted an annual certification, statewide certification for Fiscal Year 1990 is required to be provided to Federal agencies no later than June 30, 1990.

Paragraph (d) establishes a variation on the statewide annual certification procedure of paragraph (c). Under this variation, the Governor may exclude certain State agencies from the statewide certification. Such certification would identify the excluded agencies. Each of the excluded agencies would then have the option to submit a single State agency certification to each Federal grant agency covering a Federal fiscal year. A State agency could also submit a single State agency certification in a case where there is no statewide certification. Otherwise, State

agencies will have to submit grant-by-grant certifications.

The original State agency certification is retained in the State agency's central office; a copy is submitted with each grant, unless the Federal agency has designated a central location for submission. The State agency certification is deemed to apply to all State agencies involved with the grant. If State agency X receives the grant, and part of the work is subgranted or subcontracted out to State agency Y, the workplaces and employees of the latter, as well as those of the former, are covered by the certification.

Paragraph (e) concerns the question of when the drug-free workplace policy statement and program promised in the certification must actually be in place. The certification promises that the policy statement and program will be in effect in the future; they do not need to be in place at the time of award. For a grant of 30 days or less in duration of performance, they must be in place as soon as possible, but in any case before performance is expected to be completed. For a grant of over 30 days in duration of performance, they must be in effect within 30 days of award. An agency may set a different compliance date where extraordinary circumstances warrant for a specific grant.

Section 835 Reporting and Employee Sanctions for Convictions of Criminal Drug Offenses

This new section concerns requirements of employers and grantees who are individuals to report criminal drug offense convictions and the actions that employers are required to take concerning employees who are convicted of a criminal drug offense occurring in the workplace.

When a grantee other than an individual is notified by an employee, or learns from another source, that the employee has been convicted of a criminal drug offense occurring in the workplace, the grantee must provide, within 10 calendar days, a written notice of the conviction (including the employee's position title and grant identification number(s)) to the appropriate person or office in the Federal agency for each grant on which the convicted employee was working.

As with certifications, it is up to each Federal agency whether such reports are made to each grant officer or other official or to a central point in the agency. A grantee who is an individual who is convicted of a criminal drug offense while conducting grant activity must also make a written report of the conviction within 10 calendar days to the appropriate Federal agency official

or office. Sanctions for the individual grantees are as provided in § 832.

When a grantee is notified that an employee has been convicted of a criminal drug offense for a violation occurring in the workplace, the grantee has 30 calendar days to take appropriate action. One type of action would be to require the employee to participate satisfactorily in an approved drug abuse assistance or rehabilitation program. Alternatively, the employer would take appropriate personnel action against the employee, up to and including termination. Terminating the employee is not mandatory under the rule; less stringent disciplinary action is permitted.

Whatever personnel action is taken must be consistent with section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794). This statute prohibits discrimination on the basis of handicap in programs receiving Federal financial assistance. As a general matter, a person may be a handicapped person protected by the Act on the basis of a "physical or mental impairment" that substantially limits a major life activity, such as working, including drug addiction or alcoholism (see for example 43 Op. Atty. Gen. 12 (1977), Department of Transportation rules at 49 CFR 27.25).

Under case law interpreting the Rehabilitation Act, a recovering substance abuser who is rehabilitated or undergoing rehabilitation would fall within the definition of a handicapped individual. It should be pointed out, however, that under the Rehabilitation Act (29 U.S.C. 706(7)(B)), the definition of a handicapped individual, for purposes of employment, does not include someone

whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

Appendix C Instructions

This rule adds three new paragraphs to the instructions for the certification for grantees other than individuals. Paragraph eight repeats certain key definitions from the regulation (controlled substance, conviction, criminal drug statute, and employee) for the convenience of grantees. Paragraphs five, six and seven relate to the identification of workplaces. Federal agencies, in order to audit grantee compliance, must have access to the addresses or locations of workplaces to which drug-free workplace requirements

apply. Consequently, grantees must identify workplaces in one of three ways: (1) On the certification document, (2) on the grant application or in signing the award if there is no application, or (3) in a document kept on file and available for inspection by Federal agencies. The choice among these options is the grantee's. The identifications must include the street address or location of the workplace, where work will take place at a specific site or sites. In other situations, it may be necessary to use a categorical identification instead. For example, a mass transit authority could identify covered workplaces as including all buses and subway trains while in operation.

Certification for Grantees Other Than Individuals

Paragraph A(b) of this certification has been amended to specify that the grantee's drug-free awareness program must be an "ongoing" program. This means that this program cannot be a one-time effort at the outset of the grant, but must continue throughout the life of the grant. In addition to editorial changes, paragraphs (A) (d), (e) and (f) have been amended to specify that notices must be provided in writing and that deadlines are determined in calendar days. Reference to the notification requirement of § 835(a)(1) has been added to paragraph A(e) and a reference to the Rehabilitation Act has been added to paragraph A(f)(1). Finally, paragraph B now says that the grantee "may" submit workplace identifications in the certification; the grantee, as explained in the instructions, may also do so at the time of grant application (or the time of award, if there is no application) or may keep the identifications on file.

Certification for Grantees Who Are Individuals

A new paragraph (b) has been added, incorporating the notice requirement of § 835(b).

Response to Comments

The following portion of the preamble lists the issues raised by public comments to the docket for the January 31, 1989, interim final rule. The statement of each issue is followed by the agencies' responses.

The Certification Process

1. All grantees (not just States) should be allowed to certify on an annual basis, rather than on a grant-by-grant basis.

Response: Under principles of Federalism, States occupy a special

position in the Federal system. Moreover, States and State agencies receive substantial funding under many Federal programs, and have many continuing grant program relationships with Federal agencies. State governments are well situated to make comprehensive certifications for their State agencies. The Federal agencies have determined that annual certifications make sense as an option for the States. It is far less clear that such a system would be appropriate for other grantees. It should be noted that State-supported institutions of higher education are not considered to be "States" or State agencies for this or other purposes under the regulation. This means, for example, that a university could not submit a one-time certification for itself or for a particular agency or the entire State government.

2. The certification options available to grantees should be clarified.

Response: Section 630 of the common rule now provides that grantees shall make the required certification for each grant at the time of initial grant application or before award if there is no application. States may make a one-time annual certification; State agencies not covered by an annual statewide certification may make a one-time annual State agency-wide certification. However, a photocopy of the statewide or State agency-wide certification must accompany each grant, unless the Federal agency has established a central point for receiving certifications.

3. Add relevant definitions to the certification.

Response: Definitions of key terms, including controlled substance, conviction, criminal drug statute, and employee have been added to the certification. The definition of a controlled substance includes Schedule I-V substances under the Controlled Substances Act.

4. Work sites should not have to be identified in each certification, in order to reduce administrative burdens.

Response: The purpose of identification of work sites is to enable Federal agencies to determine whether grantees are complying with the regulation. To reduce administrative burdens, the revised rule allows grantees to choose whether to list work sites on the certification. In the grant application or award, or in a file maintained by the grantee available for Federal inspection.

5. Clarify that certification Alternate I is for grantees other than individuals and that Alternate II is for individuals.

Response: The titles of Alternates I and II now explicitly provide that they

are for grantees other than individuals and for grantees who are individuals, respectively.

6. Conditional certifications should be allowed.

Response: The Drug-Free Workplace Act does not allow for conditional certification. All grantees must certify that they will have a drug-free workplace.

7. Certifications should not be required for students in general, and recipients of Pell Grants in particular.

Response: The statute does not provide a basis on which student grantees can be exempted from the requirement that all grantees, including individuals, make a drug-free workplace certification. Making this certification will not add a significant burden to the student grant application process, and it is consistent with the intent of Congress that students, like other grantees, maintain a drug-free workplace.

8. Clarify whether certifications are needed for changes or modifications to grants awarded before March 18, 1989.

Response: In the case of a grant awarded prior to March 18, 1989, a certification is required only when there is a nonautomatic continuation award made after that date. That certification will be in effect through the end of the project period.

Scope of the Regulation

1. Requirements should not apply to local school districts or other educational organizations.

Response: The statute does not provide a basis on which school districts or other education-related grantees can be exempted from the requirements of the regulations.

2. Clarify whether any type of entity (e.g., banks, hospitals, institutions of higher education, local governments, utilities) is exempt from drug-free workplace requirements. What kind of grants do banks get that would be subject to these requirements?

Response: There are no exemptions for any type of organization. Banks may be more likely to get contracts (e.g., for debt collection, tax collection, or financial management services) than grants. Nevertheless, should a bank receive a grant, it would be subject to grant-related drug-free workplace requirements, whether or not it was also subject to these requirements as the result of having a contract with a Federal agency.

3. Clarify whether grants from such agencies as the U.S. Postal Service (USPS), the Tennessee Valley Authority (TVA), and the Legal Services

Corporation (LSC) trigger drug-free workplace requirements.

Response: Grants from TVA would not; grants from USPS and LSC would not, because they are not executive branch agencies.

4. Clarify whether drug-free workplace requirements apply to subgrantees or contractors under grants, or to employees of contractors who work in a grantee's workplace.

Response: These requirements do not apply to subgrantees or contractors under grants, since the statute covers only parties who get grants directly from a Federal agency. For example, if a Federal agency provides grant funds to a State government, which in turn passes some of these funds to a local government, the State government is covered by these regulations and the local government is not. Employees of a subgrantee or contractor under a grant are not covered by the regulation, even if they work in a grantee's workplace. Of course, these rules do not preclude a grantee, acting on its own independent authority, from imposing additional requirements on subrecipients or contractors.

5. Clarify whether the receipt of free or subsidized space or utilities from a Federal agency is a grant subjecting the recipient to coverage under the regulation.

Response: Receipt of space or utilities (e.g., space used by enterprises operated by blind persons in Federal facilities) is not a grant subject to these regulations.

Drug-Free Policy Statement and Awareness Program

1. Grantees' drug-free awareness programs should be ongoing, not a one-time affair. Clarify whether employees need to be notified only once as part of the drug-free awareness program or with each grant.

Response: It is the intent of the regulations that the grantee's policy and program be a continuing effort. For clarity on this point, the regulation has been amended to specify that the grantee's program must be "ongoing." Consequently, while there is not a requirement that a grantee notify employees about their responsibilities each time a new grant is received, as such, the grantee's ongoing program must ensure that employees remain aware of their continuing responsibilities.

2. Clarify whether alcohol and nonprescription drug abuse must be a part of programs under this regulation.

Response: While grantees may include these subjects in their programs

at their own discretion, this regulation does not require their inclusion. For grantees' information, it is not essential to use the term "controlled substances" in the policy statement or program.

3. Clarify what responsibility employees or grantees have for reporting the use of controlled substances consistent with a legal prescription.

Response: Since the reporting requirements of the regulations pertain only to convictions for the unlawful use, possession, etc., of drugs occurring in the workplace, there is no reporting requirement in this situation.

4. The agencies should provide additional guidance or models for policy statements and drug awareness programs and sources of additional information about programs to combat drug abuse.

Response: The agencies believe that the requirements of the statute and regulation are very clear and explicit and that providing models is not necessary. It is preferable that individual grantees draft their own policies and create their own awareness programs, which can be better adapted to the needs of their workforces than any government-wide guidance. For grantees' information, the National Institute on Drug Abuse (NIDA) has a toll-free employer help-line for persons interested in programs to combat drug abuse in the workplace. The number is 800-843-4971. NIDA also has a clearinghouse for general information on controlling alcohol and drug abuse. That number is 301-488-2800. The address of the National Clearinghouse for Alcohol and Drug Information is Box 2345, Rockville, MD 20852.

5. Clarify whether grantees are required to establish an employee assistance program [EAP] or special training for supervisors.

Response: Nothing beyond the drug-free workplace policy statement and awareness program cited in the regulation is required. While grantees may voluntarily establish EAPs or special training for supervisors, doing so is not a requirement of this regulation.

6. The rules should define more specifically what constitutes a drug awareness program.

Response: The agencies believe that it is preferable to allow grantees to tailor programs to their needs. In addition, further specification could interfere with successful existing employer programs.

7. The regulation should allow the notice and policy statement to be given to a collective bargaining representative rather than to each employee individually.

Response: Under the statute and regulations, grantees are accountable for informing each employee of his or her responsibilities. This task cannot be delegated to a third party, such as a union. Nothing prevents the grantee from working cooperatively with a union to improve understanding of the grantee's policy and program among employees, however.

8. Clarify that employees are not required individually to verify receipt of the policy statement.

Response: We understand that some grantees have chosen to ask their employees to sign that they have received the statement. While grantees have the discretion to follow this practice, it is not required by the regulation.

9. Clarify whether drug testing is required or authorized under these regulations.

Response: The Act and these rules neither require nor authorize drug testing. The legislative history of the Drug-Free Workplace Act indicates that Congress did not intend to impose any additional requirements beyond those set forth in the Act. Specifically, the legislative history precludes the imposition of drug testing of employees as part of the implementation of the Act. At the same time, these rules in no way preclude employers from conducting drug testing programs in response to government requirements (e.g., Department of Transportation or Nuclear Regulatory Commission rules) or on their own independent legal authority.

10. Clarify when the drug-free awareness program required by the regulations must be in place.

Response: The statute and regulations do not require the program to be in place at the time of grant award. The certification is to the effect that such a program "will" be implemented (i.e., in the future). The agencies believe that grantees should have a reasonable time to get their program up and running. For a grant of 30 days or less duration, however, the program must be in place as soon as possible, but in any case before the performance of the grant is expected to be completed. To require less would be clearly contrary to the intent of Congress. Given that there is often some lag between the award of a grant and its performance, grantees for many short-duration grants should still have a reasonable amount of time after award to ensure that their program is in place. An agency may set a different compliance date where extraordinary circumstances warrant for a specific grant. For grants that will be performed

during a period of over 30 days, the program must be in place within 30 days of award.

Employees

1. Clarify whether all employees of a grantee are covered if only a few of the grantee's several divisions are involved with the grant.

Response: As noted above, persons on the grantee's payroll who work on any activity under the grant are covered. This includes both so-called "direct charge" (i.e., those whose services are directly and explicitly paid for from grant funds) and "indirect charge" (i.e., those persons who perform support or overhead functions related to the grant and for which the Federal agency pays its share of expenses under the grant program) employees. If a grantee has four operating divisions and a headquarters unit, and one division receives a Federal grant, then the employees of the one division receiving the grant who are directly engaged in the performance of work under the grant are covered, as well as headquarters employees that support the division's operations. However, these rules in no way preclude a grantee from electing to cover employees of other divisions.

2. Clarify whether temporary employees or volunteers are covered.

Response: Any person who works on any activity under the grant, and who is on the grantee's payroll, is considered to be a covered employee (except for an indirect charge employee whose impact or involvement is insignificant to the performance of a grant), even if not paid from grant funds. A temporary employee is covered if he or she meets these criteria. A volunteer is someone who is not on the grantee's payroll, and hence is not covered under the rule, even if used to help meet a matching requirement.

3. If convicted of a criminal drug offense resulting from a violation occurring in the workplace, employees are obligated to report the conviction to the grantee. Clarify whether employees also have an obligation to report co-workers' convictions to the grantee.

Response: Employees are required to report only their own convictions. Reporting co-workers' convictions is not required.

4. Clarify whether a grantee is required to take action with respect to an employee who is convicted of a criminal drug offense resulting from a violation occurring in the workplace, even if the information about the conviction comes from a source other than the employee's self-report.

Response: Under § 615(a), the grantee's obligation to take action (either disciplinary action or referral for rehabilitation) arises when the grantee is "notified" of the conviction. This notification can come from any source (e.g., a newspaper report, contact from a probation officer, the employee's self-report).

5. The grantee's action with respect to a convicted employee should be determined on a case-by-case basis.

Response: The regulation requires only that, in case of a conviction for a criminal drug offense resulting from a violation occurring in the workplace, the grantee take one of two types of action. The grantee may take disciplinary action (which may be termination or a less severe sanction) or may refer the employee for a rehabilitation or drug abuse assistance program. The choice of which basic course to choose, as well as the specific discipline or treatment option, is left to the grantee's discretion and may be on a case-by-case basis.

6. Clarify that names of convicted employees need not be transmitted to the Federal agency.

Response: Notice is to be provided, including grant identification number(s) and position title, to the appropriate grant officer or office of the Federal agency. Language has been added to the certification for grantees other than individuals to make this point.

7. Clarify that employer obligations to inform employees of potential action against them include only those actions specified under this rule and not other Federal, State, or local laws.

Response: This statement is correct. While an employer may include other matters as part of the drug-free awareness policy, only the potential consequences of violations under this rule are required to be covered.

Enforcement and Sanctions

1. Clarify that agencies are not authorized to impose sanctions for employee convictions occurring before certifications are made.

Response: The grounds for sanctions under § 615 include false certification, violation of a certification, and failing to make a good faith effort to provide a drug-free workplace (i.e., in response to the certification). None of these grounds for a sanction arise in the absence of a certification. Consequently, convictions occurring before a grantee ever made a certification would not be relevant to a determination concerning sanctions.

2. Clarify whether, after closeout on a grant but before final audit resolution,

grantees must report convictions of covered employees.

Response: Reporting of convictions is not required in this period.

3. The rule should allow reporting of convictions to a single agency to provide government-wide compliance with this requirement for all grants.

Response: If a given agency wishes to establish a central point for the reporting of convictions, it may do so. Requiring a central point for reporting to each agency, let alone the entire government, would be too cumbersome administratively and would not be consistent with the requirements of the Act. The same point applies to the submission of certifications to one government-wide point, which some commenters also requested.

4. Clarify to which Federal agencies grantees must report convictions of covered employees.

Response: Grantees (both individuals and others) must notify every grant officer on whose grant activity the convicted employee was working. If the employee was working on grants from more than one agency, then grant officers at all applicable agencies must be notified. Alternatively, if one or more of the agencies involved has designated a central point for the receipt of such notices, the grantee would notify the central point rather than the grant officer(s) in these agencies.

5. The rule should indicate the percentage of a grantee's employees that need to be convicted of criminal drug offenses for violations occurring in the workplace in order to trigger a finding that a grantee has failed to make a good faith effort to maintain a drug-free workplace. In any case, more guidance on what constitutes a good faith effort should be provided.

Response: The legislative history of the Act indicates that Congress did not believe that such a percentage trigger is appropriate. In determining whether the rule has been violated, an agency will look at the convictions and the efforts the grantee has made to maintain a drug-free workplace, deciding on a case-by-case basis whether the grantee has made a good faith effort. A numerical or percentage cutoff would not permit agencies to do justice to the variety of situations that may occur. Likewise, guidance on what constitutes a good faith effort would either be so general as to be of little use in particular situations or so specific as to unreasonably limit the necessary case-by-case judgments that agencies have the responsibility to make.

6. The evidentiary standard for imposing sanctions should be one of "substantial" evidence.

Response: The drug-free workplace requirements pertaining to grants do not independently state any such standard. Since the rules are part of the government-wide common rule for nonprocurement suspension and debarment, they use the same standards for imposing sanctions applicable to other nonprocurement suspension and debarment actions. The agencies do not believe that adopting a separate standard for drug-free workplace actions is appropriate or necessary.

7. Responsibility for making determinations about lack of good faith or other grounds for violations of the rule should be delegated to agency suspension and debarment officials.

Response: Section 615 authorizes agency heads or their official designees to make determinations of violations. This language permits agency heads to delegate this responsibility. The regulation should not constrain the discretion of agency heads by automatically designating certain officials to perform this task.

8. Sanctions should be limited only to the transgressing workplace, not to other parts of the grantee's organization.

Response: The agencies do not believe that the regulation should contain such a limitation. If the grantee falsely certifies, fails to carry out the requirements of the certification, or fails to make a good faith effort to maintain a drug-free workplace, the grantee's overall management could be faulted for the violation, not only lower-level management at a particular site or facility. Responsibility for compliance goes all the way up an organization's chain of command, and agencies need to be able to apply sanctions accordingly.

9. The rule should provide that sanctions, and waivers of sanctions under § 625, must be granted consistently and fairly by agencies.

Response: The agencies do not believe that there is a practical way of implementing this request. Agencies must deal with sanction and waiver issues on a case-by-case basis. Meaningful regulatory guidelines for agency action to this end would be very difficult to draft and implement, and could lead to unnecessary litigation.

10. Clarify whether benefits can be withheld from individual grantees.

Response: Section 615 now specifies that individuals can violate the rule by falsely certifying, failing to carry out the requirements of the certification, or being convicted of a criminal drug

offense resulting from a violation occurring during the conduct of any grant activity. Like other grantees, grantees who are individuals are subject to sanctions (e.g., suspension or termination of the grant, debarment) if they violate the rule. As discussed in § 603(b), veterans' benefits are not subject to sanctions under this rule.

11. Clarify that a conviction includes acceptance of a guilty plea by a judicial body.

Response: It does.

12. The rule should make distinctions for severity of criminal statute violations.

Response: The Act, which speaks of convictions of a criminal drug offense, does not provide discretion to make such distinctions. However, grantees can take this information into account when developing their drug-free awareness programs or deciding on disciplinary actions.

13. Agencies should be permitted to grant a waiver of sanctions on the ground that sanctions would disrupt the operations of the agency.

Response: The rule permits waivers in the public interest, which is a sufficient basis for considering waivers. It is unlikely that there would be many circumstances in which sanctions to a grantee would disrupt the operations of the Federal agency making the grant, in any case.

14. The rule should delete the requirement to take corrective action for reported convictions within 30 days.

Response: This requirement is statutory and the rule cannot change it.

Relationship to Other Laws, Regulations and Agreements

1. Clarify whether the requirements of the Act and regulations preempt State and local laws.

Response: The requirements of the Act and regulations coexist with State and local law. We know of no conflicts with State or local law, so the question appears moot.

2. Clarify whether the requirements of the Act and regulations preempt collective bargaining agreements and inform grantees what to do about negotiations with unions about drug-free workplace requirements.

Response: These requirements coexist with the collective bargaining process. Compliance with the requirements of the Act and regulations is a condition of receiving a Federal grant. Preemption is not an issue. The Act and regulations do not purport to compel any change in existing labor-management agreements. Of course, labor and management cannot, via a collective bargaining

agreement, nullify a grant condition based on Federal law. Federal agencies are not compelled to provide grants to organizations that fail to comply with a statutorily-imposed grant condition, for whatever reason. However, where the regulations provide discretion to grantees about the mode of compliance with the regulations (e.g., a grantee may either take disciplinary action against an employee convicted of a criminal drug offense resulting from a violation occurring in the workplace or refer the employee for rehabilitation), labor and management may determine the mode of compliance through collective bargaining.

3. Clarify the relationship of the Act and regulations to tenure policies of institutions of higher education.

Response: There is no relationship between university tenure policies and these requirements. If a tenured faculty member is convicted of a criminal drug offense resulting from a violation occurring in the workplace, the university would be required to take disciplinary action against the faculty member or refer her or him for rehabilitation. Given the range of choice which the university has under this provision, nothing in the rule requires the university to take action inconsistent with its tenure policies.

4. Either agency heads or their designees should be able to make the determination concerning whether application of these rules would be inconsistent with international law or the laws of a foreign nation.

Response: The rule has been changed so that the designee of an agency head, as well as the agency head, may make this determination.

5. Clarify whether the rule is intended to preempt laws of other nations or international law, including with respect to privacy and confidentiality matters. There should be prior consultation with foreign governments about any regulatory requirements before the rules are applied to grants that may be performed abroad.

Response: For this Act, it has been determined that Federal law does not preempt the laws of other nations or international law, including with respect to employee confidentiality. Concerning prior consultation, neither the Act nor the Administrative Procedure Act allows special treatment for foreign governments in rulemaking.

6. The rule should provide protection to grantees from employee lawsuits or provide for Federal reimbursement from costs incurred in defending against such litigation.

Response: The statute does not immunize grantees from employee litigation and the agencies could not effectually create such protection in a regulation. Nor does the statute authorize the expenditure of Federal funds to reimburse grantees for the cost of defending such lawsuits.

7. Clarify the relationship between this rule and drug testing programs of the Department of Defense, Department of Transportation, and the Nuclear Regulatory Commission.

Response: The Department of Defense requires drug testing for certain employees of some defense contractors. If such a defense contractor also receives a grant from the Department of Defense or another Federal agency, the contractor would have to comply with both the Department of Defense requirements and these drug-free workplace rules.

The Department of Transportation and the Nuclear Regulatory Commission require drug testing for certain employees of employers in the industries they regulate. If one of these employers is also a grantee of a Federal agency, the employer would have to comply with both the Department of Transportation or Nuclear Regulatory Commission requirements and these drug-free workplace rules. Finally, various Federal agencies, including the Departments of Defense, Treasury and Transportation, require some of their own Federal employees (e.g., air traffic controllers) to be tested for drug use. These requirements are unrelated to any requirements for grantees under the Drug-Free Workplace Act.

Other Issues

1. Clarify what the "place of performance" of a grant means, particularly for activities that have no fixed location e.g., buses in a mass transit system).

Response: The place of performance is wherever activity under a grant occurs. It can be in a fixed location, a variety of locations, or no fixed location. For mass transit buses, for instance, the place of performance may be the transit authority's buses, wherever they are in operation. For grants for the arts, the places of performance may be the various concert halls, theaters, galleries, etc. at which the public views the performance or art work. General categorical descriptions of such workplaces may be listed by grantees.

2. Clarify whether the number of days employees and grantees have to make various notifications are calendar days or working days.

Response: The certification now specifies calendar days.

3. The notice of conviction from an employee to a grantee and a grantee to an agency should be in writing.

Response: The certification now so specifies.

4. The regulation should have more specific language concerning which costs related to a drug-free awareness program are allowable under a grant.

Response: Grantees should refer to applicable OMB Circulars A-21, A-87, and A-122 and Federal agency regulations for information on the allowability of costs. Cost allowability principles are the same for activities under these regulations as they are for expenditures needed to meet other grant conditions.

5. Clarify whether the rehabilitation of employees is an allowable cost under grants.

Response: Only the fair Federal share of the reasonable and necessary expenses for the rehabilitation or other treatment for covered employees would be allowable, consistent with OMB Circulars A-21, A-87, and A-122 and Federal agency regulations.

6. There should be a second opportunity for public comments after more experience under the rules.

Response: This suggestion, essentially a recommendation that the agencies issue another interim final rule, has not been adopted. The comments received in response to the interim final rule covered virtually all aspects of the rule, and the agencies have considered them fully and carefully. A second round of public comment would be likely to generate little additional useful comment and would only prolong uncertainty about the final shape of the regulations.

Regulatory Process Matters

This rule is a non-major rule under Executive Order 12291. The agencies have evaluated the rule under Executive Order 12612, pertaining to Federalism. The statute requires drug-free workplace certifications to be made by all grantees, including State agencies. The rule does reduce burdens on State grantees by allowing State agencies to elect an annual certification to each Federal grantor agency in lieu of a certification for every grant. For these reasons, the agencies have determined that the rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

As a statutory matter, this rule must apply to all grantees, regardless of size. (The statute does provide a shorter, less burdensome certification to be made by

grantees who are individuals, however.) Costs incurred by grantees to implement drug-free workplace programs are directly mandated by statute; the agencies have minimal regulatory discretion in designing this regulation.

This rule contains information collection requirements subject to the Paperwork Reduction Act. The information collection requirements concern employees reporting drug offense convictions to grantees, grantees reporting these convictions to the agencies, and grantees listing the location(s) of their workplace(s) as part of the certification. These requirements have been reviewed and approved by the Office of Management and Budget, with OMB Control Number 0991-0002.

Text of the Common Rule

The text of the common rule, as adopted by the agencies in this document, appears below:

PART ____—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

- ____ 600 Purpose.
- ____ 605 Definitions.
- ____ 610 Coverage.
- ____ 615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
- ____ 620 Effect of violation.
- ____ 625 Exception provision.
- ____ 630 Certification requirements and procedures.
- ____ 635 Reporting of and employee sanctions for convictions of criminal drug offenses.

Appendix C to Part ____ Certification Regarding Drug-Free Workplace Requirements

Subpart F—Drug-Free Workplace Requirements (Grants)

1. ____ 600 Purpose.

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring first—

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not

engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR subparts 9.4, 23.5, and 53.2.

1. ____ 605 Definitions.

(a) Except as amended in this section, the definitions of 1. ____ 105 apply to this subpart.

(b) For purposes of this subpart—

(1) *Controlled substance* means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15;

(2) *Conviction* means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(3) *Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

(4) *Drug-free workplace* means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance;

(5) *Employee* means the employee of a grantee directly engaged in the performance of work under the grant, including:

(i) All "direct charge" employees;

(ii) All "indirect charge" employees, unless their impact or involvement is insignificant to the performance of the grant; and,

(iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll.

This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subcontractors or subcontractors in covered workplaces);

(6) *Federal agency or agency* means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) *Grant* means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management government-wide common rule on uniform administrative requirements for grants and cooperative agreements. The term does not include technical assistance that provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) *Grantee* means a person who applies for or receives a grant directly from a Federal agency (except another Federal agency);

(9) *Individual* means a natural person;

(10) *State* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers the instrumentality to be an agency of the State government.

§ 610 Coverage.

(a) This subpart applies to any grantees of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government. A determination of such inconsistency may be made only by the agency head or his/her designee.

(c) The provisions of subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

§ 611 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that—

(a) The grantee has made a false certification under § 630;

(b) With respect to a grantee other than an individual—

(1) The grantee has violated the certification by failing to carry out the requirements of subparagraphs (A.) (a)-(g) and/or (B.) of the certification (Alternate I to Appendix C) or

(2) Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

(c) With respect to a grantee who is an individual—

(1) The grantee has violated the certification by failing to carry out its requirements (Alternate II to Appendix C); or

(2) The grantee is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity.

§ 620 Effect of violation.

(a) In the event of a violation of this subpart as provided in § 611, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (see § 320(a)(2) of this part).

§ 625 Exception provision.

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

§ 630 Certification requirements and procedures.

(a)(1) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the Federal agency providing the grant, as provided in Appendix C to this part.

(2) Grantees are not required to make a certification in order to continue receiving funds under a grant awarded before March 18, 1989, or under a no-cost time extension of such a grant. However, the grantee shall make a one-time drug-free workplace certification for a non-automatic continuation of such a grant made on or after March 18, 1989.

(b) Except as provided in this section, all grantees shall make the required certification for each grant. For mandatory formula grants and entitlements that have no application process, grantees shall submit a one-time certification in order to continue receiving awards.

(c) A grantee that is a State may elect to make one certification in each Federal fiscal year. States that previously submitted an annual certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. Except as provided in paragraph (d) of this section, this certification shall cover all grants to all State agencies from any Federal agency. The State shall retain the original of this statewide certification in its Governor's office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency has designated a central location for submission.

(d)(1) The Governor of a State may exclude certain State agencies from the statewide certification and authorize these agencies to submit their own certifications to Federal agencies. The statewide certification shall name any State agencies so excluded.

(2) A State agency to which the statewide certification does not apply, or a State agency in a State that does not have a statewide certification, may elect to make one certification in each Federal fiscal year. State agencies that previously submitted a State agency certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. The State agency shall retain the original of this State agency-wide certification in its central office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency designates a central location for submission.

(3) When the work of a grant is done by more than one State agency, the

certification of the State agency directly receiving the grant shall be deemed to certify compliance for all workplaces, including those located in other State agencies.

(e)(1) For a grant of less than 30 days performance duration, grantees shall have this policy statement and program in place as soon as possible, but in any case by a date prior to the date on which performance is expected to be completed.

(2) For a grant of 30 days or more performance duration, grantees shall have this policy statement and program in place within 30 days after award.

(3) Where extraordinary circumstances warrant for a specific grant, the grant officer may determine a different date on which the policy statement and program shall be in place.

§ 835 Reporting of and employee sanctions for convictions of criminal drug offenses.

(a) When a grantee other than an individual is notified that an employee has been convicted for a violation of a criminal drug statute occurring in the workplace, it shall take the following actions:

(1) Within 10 calendar days of receiving notice of the conviction, the grantee shall provide written notice, including the convicted employee's position title, to every grant officer, or other designee on whose grant activity the convicted employee was working, unless a Federal agency has designated a central point for the receipt of such notifications. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(2) Within 30 calendar days of receiving notice of the conviction, the grantee shall do the following with respect to the employee who was convicted:

(i) Take appropriate personnel action against the employee, up to and including termination, consistent with requirements of the Rehabilitation Act of 1973, as amended; or

(ii) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(b) A grantee who is an individual who is convicted for a violation of a criminal drug statute occurring during the conduct of any grant activity shall report the conviction, in writing, within 10 calendar days, to his or her Federal agency grant officer, or other designee, unless the Federal agency has designated a central point for the receipt

of such notices. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(Approved by the Office of Management and Budget under control number 0991-0082.)

Appendix C to Part — Certification Regarding Drug-Free Workplace Requirements

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplace in question (see paragraph 5e).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, sale, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subcontractors or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employees of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall

include the identification number(s) of each affected grant:

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant:

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

Adoption of the Common Rule

The text of the common rule, as adopted by the agencies in this document, appears below.

DEPARTMENT OF TRANSPORTATION**49 CFR Part 29**

RIN 2105-AB44

FOR FURTHER INFORMATION CONTACT:
Robert C. Ashby, 202-386-9306.

List of Subjects in 49 CFR Part 29

Debarment and suspension
(nonprocurement), Drug abuse, Grant
programs.

Title 49 of the Code of Federal
Regulations is amended as set forth
below.

Samuel K. Skinner,
Secretary of Transportation.

Accordingly, the interim final rule
amending 49 CFR part 29 which was
published at 54 FR 4947 on January 31,
1989, is adopted as a final rule with the
following changes:

**PART 29—GOVERNMENT-WIDE
DEBARMENT AND SUSPENSION
(NONPROCUREMENT) AND
GOVERNMENT-WIDE REQUIREMENTS
FOR DRUG-FREE WORKPLACE
(GRANTS)**

1. The authority citation for part 29
continues to read as follows:

Authority: E.O. 12549; sec. 5151-5160 of the
Drug-Free Workplace Act of 1988 (Pub. L.
100-690, title V, subtitle D; 41 U.S.C. 701 et
seq.); 49 CFR part 322.

2. Subpart F and Appendix C to part
29 are revised to read as set forth at the
end of the common preamble.

**Subpart F—Drug-Free Workplace
Requirements (Grants)**

Sec.
29.600 Purpose.
29.605 Definitions.
29.610 Coverage.

Sec.

29.615 Grounds for suspension of payments,
suspension or termination of grants, or
suspension or debarment.

29.620 Effect of violation.

29.625 Exception provision.

29.630 Certification requirements and
procedures.

29.635 Reporting of and employee sanctions
for convictions of criminal drug offenses.

**Appendix C to Part 29—Certification
Regarding Drug-Free Workplace
Requirements**

Cross Reference: See also Office of
Management and Budget notice published at
55 FR —, May 23, 1990.

[FR Doc. 89-11588 Filed 5-24-90; 8:45 am]

BILLING CODES 3410-00-01; 6430-01-01; 6020-01-01;
7810-01-01; 3810-01-01; 4710-01-01; 6110-01-01; 6051-
01-01; 6220-01-01; 7020-01-01; 8117-01-01; 6210-01-01;
4410-01-01; 4810-01-01; 6373-01-01; 4610-01-01; 3810-01-
01; 4000-01-01; 7810-01-01; 6030-01-01; 6040-01-01; 6050-
01-01; 6210-01-01; 6710-01-01; 4110-01-01; 7330-01-01;
7537-01-01; 7130-01-01; 7030-01-01; 6060-01-01; 6040-01-
01; 4810-01-01

OFFICE OF MANAGEMENT AND BUDGET**Governmentwide Implementation of the Drug-Free Workplace Act of 1988****AGENCY:** Office of Management and Budget.**ACTION:** Notice.

SUMMARY: This Notice provides information, in the form of nonbinding questions and answers, to assist the public in meeting the requirements of the Drug-Free Workplace Act of 1988. The Office of Management and Budget (OMB) coordinated regulatory development with over 30 Federal agencies to ensure uniform, governmentwide implementation of this Act. As a consequence, OMB is offering this governmentwide non-regulatory guidance.

Part of the omnibus drug legislation enacted November 18, 1988 is the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, title V, subtitle D). This statute requires contractors and grantees of Federal agencies to certify that they will provide drug-free workplaces. Making the required certification is a precondition of receiving a contract or grant from a Federal agency after March 18, 1989.

Regulatory requirements pertaining to contractors are detailed in a final rule appearing in today's Federal Register. This rule amends the Federal Acquisition Regulation (FAR). Regulatory requirements pertaining to grantees are detailed in a final common rule also appearing in today's Federal Register. The preamble to the grantee common rule answers questions pertaining to grants or to contracts-and-grants, but does not address questions pertaining only to contracts.

FOR FURTHER INFORMATION CONTACT: For grants, contact Barbara F. Kahlow, Financial Management Division, OMB, (telephone 202-395-3053). For contracts, contact Robert Neal, Office of Federal Procurement Policy, OMB, (telephone 202-395-6810).

SUPPLEMENTARY INFORMATION:**Response to Questions**

See the common preamble to the grantee final common rule for detailed response to most questions on requirements on contractors and grantees.

1. Question—What is a minimum set of components for an employer program to meet the requirements of the Drug-Free Workplace Act?

Answer—Each employer must meet the specific requirements of the Act with a good faith effort, including having a

policy statement and a drug awareness program. Neither the law nor the final rules require employers to establish an Employee Assistance Program (EAP), to conduct any drug testing, or to incorporate any particular component in an employer's program.

2. Question—What are examples of other possible components of an employer drug-free workplace program for contractors and grantees?

Answer—Here is a partial list of other possible components of an employer program. The list is provided for information only; there is no intention for the Federal Government to require any particular component.

Employee Education

- Conduct education/outreach of employees/families via:
 - Discussion groups on drug abuse/company policy
 - Videotapes/pamphlets on drugs in workplace
 - Brown bag lunch discussions
 - Communication of available employee assistance
 - Communication of available health benefits for drug/alcohol treatment

Employee Assistance

- Establish an EAP
- Identify treatment resources
- Assemble resource file on providers of assistance
 - Provide problem assessments
 - Provide confidential counselling
 - Provide referral to counselling and/or treatment
 - Provide crisis intervention
 - Establish hot-line
 - Provide family support services
 - Conduct followup during and after treatment
 - Conduct evaluation of job performance pre- and post-program contact
 - Review insurance coverage (to include outpatient as well as inpatient treatment)
 - Institute mechanism to review employee complaints

Supervisory Training

- Conduct management/supervisory/union training on:
 - Drug Abuse education
 - Signs and symptoms of drug use
 - Company policy on drug use
 - Employee assistance resources
 - How to deal with an employee suspected of drug use
 - How and when to take disciplinary action

Drug Detection

- Institute a program of drug testing of:

- All employees—testing of applicants or pre-employment; testing of employees based on reasonable suspicion, post accident, during and after counselling and/or rehabilitation
- Employees in health and safety or national security sensitive positions—random unannounced testing

- Increase security

3. Question—What are examples of some model drug-free workplace programs?

Answer—Both the Department of Health and Human Services' National Institute on Drug Abuse (NIDA) and the U.S. Chamber of Commerce have identified several model programs. For further information on these or other models or on programs to combat drug abuse in the workplace, call the NIDA toll-free employer help-line on: 800-843-4971. NIDA also has a clearinghouse for general information on controlling alcohol and drug abuse. That number is 301-468-2600. The address of the National Clearinghouse for Alcohol and Drug Information is Box 2345, Rockville, MD 20852. Currently, the Federal Government does not have an example of a model program for a small employer.

Examples include the following:

A large chemical company—EAP contracted out, including: seminars, assessment, short-term counselling and referral, supervisory training, and followup monitoring; some local sites have drug testing for cause, post accident, and for safety-critical jobs.

A large automotive manufacturing company—EAP contracted out, including: crisis intervention and treatment for employees and immediate family, counselling, referral to counselors/therapists or inpatient/outpatient treatment; hotline; considering drug testing.

A major contractor—EAP for employees and their dependents, including: education, counselling, assessment, referral; hotline; management/supervisory training; alcohol/drug testing of applicants; alcohol/drug testing of employees based on reasonable suspicion or for cause; preventive alcohol/drug testing of corporate officers, employees in safety-sensitive or security-sensitive positions; inspections; trained dogs.

A mid-sized electrical company—EAP including counselling and management/supervisory training, drug testing of applicants and of employees for cause.

4. Question—Is the retail purchase of utility services by the Federal Government covered by the FAR and, therefore, subject to the Act?

Answer—Yes. Federal purchases of utility services are covered under subpart 8.3 of the FAR.

5. Question—Is an order issued pursuant to a basic ordering agreement covered by the FAR and, therefore, subject to the Act?

Answer—Yes. Basic ordering agreements are covered under subpart 16.7 of the FAR. Orders exceeding \$25,000 issued under basic ordering agreements are subject to the Act.

6. Question—What are examples of Federal contracts that are not "procurement contracts"?

Answer—Contracts not covered by the FAR, e.g., any other acquisition contract for real or personal property or services not subject to the FAR. An example is contracts for obtaining goods and services for post exchanges on military bases.

7. Question—Are oil and gas leases with the Federal Government covered by the FAR?

Answer—No. These types of contracts are not covered under the FAR.

8. Question—Are contracts to buy timber from the Federal Government covered by the FAR?

Answer—No. These types of contracts are not covered by the FAR.

9. Question—Are FSLIC and FDIC contracts for deposit insurance covered by the FAR?

Answer—No. These types of contracts are not covered by the FAR.

10. Question—Does selling U.S. savings bonds or acting as a depository for the Department of the Treasury constitute a procurement contract?

Answer—No.

11. Question—Is the receipt of funds by an individual pursuant to an imprest fund transaction covered by the FAR?

Answer—Yes; however, the Act is not applicable because imprest fund transactions do not exceed the \$25,000 threshold.

12. Question—Is an order issued against a requirements contract or an indefinite quantity contract covered by the Drug-Free Workplace Act when the order is reasonably expected to exceed \$25,000?

Answer—Yes.

13. Question—If a single firm has several contracts that when added together total \$25,000 or more, is the firm subject to the Act?

Answer—No. A firm would be subject to the Act only if the value of a single contract is \$25,000 or more.

14. Question—Does the FAR, which is issued jointly by three agencies (the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration), apply to contract awards by other executive agencies?

Answer—Yes.

15. Question—Do Drug-Free Workplace Act requirements apply to subcontracts?

Answer—No.

16. Question—Under the Act, can an agency impose any additional requirements, beyond those in the common rule, on grantees?

Answer—No. Both the January 31, 1989, grantee interim final common rule and the grantee final common rule indicate that the grantee common rule is the sole authority for implementing the Act and that no separate agency guidance is authorized under the Act.

17. Question—What is section 5301 of the omnibus drug legislation and how will it be implemented?

Answer—Section 5301 of the Anti-Drug Abuse Act of 1988, Pub. L. 100-690, 102 Stat. 4310 (codified at 21 U.S.C. section 853a) is another, separate part of the omnibus drug legislation that included the Drug-Free Workplace Act of 1988. Section 5301 deals with denial of certain Federal benefits for persons convicted of drug offenses. Denial decisions are made by Federal and State judges. The Department of Justice will be directing implementation. Questions should be addressed to: Director, Drug Offense/Denial of Federal Benefits Project, Office of Justice Programs, Department of Justice, 833 Indiana Avenue, NW, Washington, DC 20531; telephone: 202-307-0830.

18. Question—How will the Drug-Free Workplace Act be enforced?

Answer—Under the Act, certifications are required from contractors and grantees. Also, as part of normal Federal contract and grant administration, compliance will be checked. Additionally, as part of normal Federal auditing, compliance will be checked. And, lastly, as part of grantees' Single Audits, compliance checking will be required. OMB's compliance supplements for State and local governments and for other entities will include a requirement for such compliance checking.

Dated: May 23, 1990.

Frank Haddock,

Executive Associate Director.

[FR Doc. 90-12188 Filed 5-24-90; 9:45 am]

SELLING CODE 012-01-01

5 EXHIBIT " E" BUY AMERICA CERTIFICATE

See Section II, Buy America Certificate

6 EXHIBIT "F" CERTIFICATION OF RESTRICTIONS ON LOBBYING

See Section II, Certification of Restrictions On Lobbying.

7 EXHIBIT "G" CARGO PREFERENCE

See Section II, Cargo Preference

8 EXHIBIT "H" DEBARMENT AND SUSPENSION

See Section II, Debarment and Suspension.

9 EXHIBIT "I" DISPUTES RESOLUTION PROCESS

See Section X, Disputes.

10 EXHIBIT "J", CONTRACTOR'S RELEASE

Pursuant to the terms of METRO Contract No. _____, as amended, and in consideration of the sum of _____ Dollars (\$_____), which has been or is to be paid under said Contract to _____ (hereinafter called the Contractor) or its assignees, if any, the Contractor for itself and its subcontractors, upon payment of the said sum by the Metropolitan Transit Authority (hereinafter called METRO), does release and discharge METRO, their officers, agents, and employees, of and from all liabilities, obligations, claims and demand whatsoever under or arising from the said Contract, except specified claims as follows: _____ (IF _____ NONE, _____ SO STATE) _____.

IN WITNESS WHEREOF, this release has been executed this ____ day of _____, 2009.

By:

CERTIFICATE

I, _____, certify that I am _____ (Title) of the firm named as the Contractor in the foregoing release; that _____, who signed said release on behalf of the Contractor and its subcontractors, was the _____ (Title) of said firm; that said release was duly signed for and behalf of said firm; and is within the scope of its powers as so constituted.

(If Corporation, Affix the Corporate Seal)