



Invitation For Bids (Federal)

**Switch Machine (WHB) Power
Supplies Replacement**

SOLICITATION IFB No.: FQ18119/ST

BIDS OPENING: 2PM WED. AUGUST 6, 2018

FUNDING: FEDERAL

DBE: 18%

DATE: JULY 11, 2018, 2018

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Section 00010 – Letter of Invitation

July 11, 2018

ATTENTION: Prospective Bidder

SUBJECT: Invitation for Bid (IFB), Solicitation No. FQ18119/ST
Switch Machine (WHB) Power Supplies Replacement

Washington Metropolitan Area Transit Authority (WMATA) has established a contracting opportunity to furnish, replace, test and place in service fully operational Switch Machine (WHB) Power Supplies as outlined in the attached specification documents. The resultant contract, if awarded, will be federally funded.

You are hereby invited to submit to WMATA a bid to furnish all of the labor, materials, and any other related items required for the performance of Contract No. FQ18119.

Bid documents are available in pdf format can be downloaded free of charge as follows:

WMATA's website:

<https://www.wmata.com/Business/procurement/solicitations/active-procurement-opportunities.cfm>

WMATA's Project Management Software System (PROCORE):

The Solicitation documents will be made available on WMATA's Project Management Software System (Procure). Please send your request for a copy of the solicitation documents via electronic mail to Sherreen Tolliver, Contract Administrator at sntolliver@wmata.com. In the subject field, please enter, "Solicitation FQ18119/ST Request for Solicitation Documents". You must provide your email address for you to be given access. In the body of your email, please include, your name, company name, company address, telephone number, email address, and company web-site address. You will be notified via return email.

Amendments, if any, will be posted on Procure and distributed via electronic mail.

Bid are due on **August 6th, 2018**. At 2:00 PM (Local Time); **Bidders must upload an electronic copy of their bid to Procure prior to bid closing**. Immediately after bid closing, bids will be made publicly visible in the WMATA Meeting Room, Lobby Level, 600 Fifth Street, NW Washington DC 20001.

WMATA does not pay for parking or validate tickets.

WMATA reserves the right to reject any or all bids, to waive informalities or irregularities to the extent permitted by law in any bid received, and to be the sole judge of the merits of the respective bid received.

Bidders must possess the proper license(s) at the time of Contract award. All subcontractors must possess the appropriate licenses for each specialty subcontracted.

This is not an exclusive contract and WMATA expressly reserves the right to contract for services and goods such as those referenced herein through other contractors.

Issued by:

Washington Metropolitan Area Transit Authority

Sherreen Tolliver

Sherreen Tolliver
Contract Administrator

Letter of Invitation Supplement

Bidders are hereby notified that:

This project is funded in whole or in part with US Department of Transportation (DOT) funds and will comply with WMATA's Disadvantaged Business Enterprise (DBE) Program requirements as defined herein.

A. WMATA established a DBE contract goal for this project in the percentage of:

Percent (18%) of the Total Contract Price.

For a Bidder to be considered responsive at the time of award, they must document that they obtained enough DBE participation to meet the goal at time of bid due date or document that it made adequate Good Faith Efforts (GFE).

Bidders shall provide WMATA, as part of its bid, a complete list (including names and addresses) of all subcontractors (DBE and non-DBE) who will perform any portion of the required scopes of work. Bidders shall include the scope of work and dollar amount(s) committed to each subcontractor.

DBE instructions to Bidders provide guidelines on how DBE commitments will be counted toward the goal and designates the DBE forms that must be completed and submitted by all Bidders by the proposal due date.

B. WMATA has not established a DBE contract goal for this project.

It is WMATA's policy to provide equal opportunity for DBE firms to compete on it federally-assisted contracts. The successful Bidder shall utilize DBE firms when opportunities are available during the performance of the contract.

Goals in Solicitation v. Commitments in Proposals

The level of DBE participation Bidders commit to in its bid becomes the Bidder's DBE contract commitment. The DBE commitment will be listed in the Special Provisions of the contract and will be enforced by WMATA. After award, DBE commitments shall apply to contract options, changes and/or modifications. WMATA will monitor DBE commitments through the contract term, as described in the General Conditions and Special Provisions of the contract.

Solicitation Certification Page

FQ18119/ST

Switch Machine (WHB) Power Supplies Replacement

Approved for Release

Sherreen Tolliver

7/11/2018

Contracting Officer

Date

M. A. Debe

7/11/2018

Project Manager

Date

Section 00100 – Invitation for Bid

INVITATION FOR BID

This Section includes Project information for Bidders.

NOTICE TO BIDDERS

Contract No. FQ18119 includes IFB Documents for:

Project Name: Switch Machine (WHB) Power Supplies Replacement

Bids for the Work described herein shall be submitted by 2:00PM (Local time) on **August 6th, 2018**. All Bidders responding to this Solicitation must utilize Procore. Bidders must upload an electronic copy of their Bid to Procore prior to Bid closing. Immediately after bid closing, bids will be made publicly visible in the WMATA Meeting Room, Lobby Level, 600 Fifth Street, NW Washington DC 20001.

Questions may be directed to Sherreen Tolliver, Contract Administrator, telephone:(202) 962-1647; email: sntolliver@wmata.com See Section 00200, Instructions for Bidders, for Bid submittal instructions.

DIRECTIONS TO SUBMITTING BIDDER: Read and comply with the Invitation Instructions. In addition to other submission requirements set forth in this Invitation for Bid and all Amendments, the following must be properly executed, completed, and submitted as part of the Bid:

- A. BID:
1. Bid Form (properly executed)
 2. Bid Price Schedule
 3. Bid Security
 4. Completed and signed Representations and Certifications
 5. DBE Data
 6. Compliance Information

BID(S) MUST SET FORTH FULL, ACCURATE, AND COMPLETE INFORMATION AS REQUIRED BY THIS INVITATION FOR BID, INCLUDING ALL AMENDMENTS.

00101 General Statement of Work

- A. The Contractor shall furnish all labor, materials, equipment, incidentals, and other items necessary to complete the Work as required by the Contract documents.
- B. The Project shall function as an integral part of and fully compatible with the existing WMATA system.
- C. It is the responsibility of the Contractor to gather all data necessary for the performance of the Work under this Contract that are needed in addition to Authority-furnished IFB Documents.
- D. Award of the contract will be based on the lowest responsive and responsible bid.
- E. All work under this Contract shall be performed in a logical sequence as developed by the Contractor and in compliance with this IFB.

00102 General Scope of Work

The Washington Metropolitan Area Transit Authority (WMATA) also referenced herein as “the Authority”, plans to replace existing obsolete Switch Machine power supplies, also referred to as “WHB”. The majority of existing WHB power supplies throughout the rail system have exceeded reasonable expectation of maintainability. The equipment is difficult to maintain due to age, discontinued components and the dissolution of the Original Equipment Manufacturers (OEM); this makes obtaining repair parts difficult or impossible. Additionally, the original linear design is inefficient compared to current technologies. The original power supplies need to be replaced to bring the Automatic Train Control (ATC) system into compliance with the Federal Transit Administration (FTA) mandated State of Good Repair (SOGR). *NOTE: All requirements listed within this document are applicable if the delivered Power Supplies are COTS or Design-Build.*

00103 Project Bid Schedule

The Bid schedule for this Project is as follows, with some dates being tentative:

- | | |
|------------------------------|--|
| 1. Issue Invitation for Bid: | July 11 th , 2018 |
| 2. Submission of RFI’s | July 19 th , 2018 Close of Business |
| 3. Bid Due/Opening: | August 6 th , 2018 |

END OF SECTION

Section 00200 – Instruction to Bidders

This Section includes procedures with which Bidders must comply and conditions affecting award of the Contract.

00201 General Instructions

A. Definitions as used herein:

1. The term “Invitation” used in this document means this Invitation for Bid (IFB)
2. The term “Bid” used in this document means a response to this Invitation
3. For further explanation of Contract terms, refer to Section 00701, Definitions, of the General Conditions

B. Method of Procurement:

1. This is an Invitation for Bids (“IFB”) method of procurement. A single Contract for all items shall be awarded to the lowest responsive and responsible Bidder.

C. Basis for Award:

1. Award will be made to the Bidder who is the lowest responsive and responsible bidder based on price as identified in Section 00203, Bid Procedures, Evaluation Factors, and Instructions.
2. The Authority will make a single award to one Bidder as the result of this Invitation. See Notes to Bidders in Section 00434, Bid Price Schedule, for further award information.
3. A written award of acceptance of Bid mailed or otherwise furnished by the Authority to the successful Bidder within the specified Acceptance Period shall result in a binding contract without further action by either party.

D. Type of Contract: The Authority contemplates award of a Firm Fixed Price contract for all the items in the Price Schedule.

E. The Solicitation documents will be made available on WMATA’s Project Management Software System (Procore). Please send your request for a copy of the solicitation documents via electronic mail to Sherreen Tolliver, Contract Administrator at sntolliver@wmata.com. In the subject field, please enter, “Solicitation FQ18119/ST Request for Solicitation Documents”. You must provide your email address for you to be given access. In the body of your email, please include, your name, company name, company address, telephone number, email address, and company web-site address. You will be notified via return email.

F. Preparation of Bids:

1. The Bidder shall complete the Bid Forms furnished in Section 00400, Bid Forms and Supplements, or copies thereof, and submit them according to the instructions given in this IFB. If erasures or other changes appear on the forms, they must be initialed by the person signing the Bid.
2. Each Bidder shall furnish the information required by the Invitation. Bidders are expected to examine the IFB Documents. Failure to do so will be at the Bidder’s risk.

G. Explanation to Bidders:

1. All explanations desired by a Bidder regarding the meaning or interpretation of this IFB or all other Bid documents must be requested in writing by **July 19th**, 2018 to allow sufficient time for a reply to reach all Bidders before the submittal of their bids. These requests shall be forwarded to the Contract Administrator at sntolliver@wmata.com. Oral explanations or instructions given to a prospective Bidder concerning this invitation will be furnished to all prospective Bidders as an Amendment to this IFB, if the information is necessary in submitting Bids or if lack of such information would be prejudicial to other prospective Bidders.
2. The Authority reserves the right to amend the IFB prior to the date set for receipt of Bids. If any amendments are issued, they will be posted on the WMATA website along with the solicitation.
3. If, in the judgement of the Authority the revisions under the Amendments would require material changes in the Bids, the date set for the receipt of Bids may be postponed by such number Days as in the opinion of the Authority will enable Bidders to revise their Bids. In such cases, the Amendment will include an announcement of the new date for the receipt of Bids.

H Acknowledgment of Amendments:

1. Bidders are required to acknowledge receipt of all Amendments to this Invitation on copies of the Bid Forms and 00413, Bid Form, in the space provided. Failure to acknowledge all Amendments may cause the Bid to be considered non responsive to the Invitation, which would require rejection of the Bid.
2. If this Invitation is amended, all terms and conditions, which are not modified, remain unchanged.

I. Submission/Withdrawal of Bids:

1. Electronic Bid submission through Procure a mechanism which allows bidders/vendors to electronically submit bids.
2. Bidders are responsible and must ensure that its submission in procure can be accessed. Please contact Contract Administrator via email; sntolliver@wmata.com; providing the following information:

Company	Contract(s) Name/Title	Telephone Number(s)
Address	Address	Email
Web-site	NOTE: Please provide more than 1 contact	

You will receive a "Welcome to Procure" email, which will enable you to create your password (for first time users)

3. Bidders **will not** be able to upload in Procure once the bid has closed. All bids will remain sealed in Procure until the date and time specified for the opening of bids.
4. Facsimile bids, postage mailed delivered packages **will not be considered.**
5. Electronic submission:
 - a. Each bidder shall be deemed to have electronically signed documents by submitting its bid in Procure.
 - b. Original signature documents will have to be mailed to Contract Administrator.
 - c. Contractual: The contractual documents shall contain the following, fully executed;

Bid Submittal: Price schedule sheet(s), Bid bond, Addendums (if applicable), Certification and Representation, proposed project schedule.

Pre-Award: Pre-Award Evaluation Data form (completed as instructed).
Insurance Requirement(s) with Exhibit A.

Failure to follow these instructions may result in premature opening of, or failure to open a bid, for which the authority resumes no responsibility.

J. Bid Withdrawals:

A Bid may be withdrawn by written notice received by the Authority before the opening of Bids.

K. Bid Mistake

1. A Bidder who seeks to withdraw its Bid subsequent to Bid opening due to claimed mistake or error in preparation shall notify the Authority in writing immediately upon realizing the mistake and in no event later than 30 Days following Bid opening, setting forth the details of, and explanation for, the claimed mistake. The Authority shall evaluate the claimed mistake and determine whether the Bidder will be permitted to withdraw its Bid.
2. A Bidder claiming a mistake shall, if so requested by the Contracting Officer, appear before one or more designated representative(s) of the Authority to provide testimony and/or documentation, which may include the Bidder's computation sheets and calculations, to assist in the Authority's determination.
3. Nothing contained herein shall be deemed to preclude the Authority from allowing a Bidder to cure a deficiency in an otherwise responsive Bid where the Authority determines that such deficiency is in the nature of a minor informality or irregularity.

L. Bid Guarantee:

1. A Bid guarantee is required by the Invitation to Bid. Failure to furnish a Bid guarantee in the proper form and amount, by the time set for the receipt of Bids, may be cause for rejection of the Bid. Bid guarantee shall be sealed, marked, and submitted in an envelope by the Bidder and received at the Office of Procurement, Washington Metropolitan Area Transit Authority, 600 Fifth Street, N.W., Washington DC 20001 by the specified closing time on the date of closing.
2. A Bid guarantee shall be in the form of a firm commitment, such as a Bid bond (see Section 00431, Bid Security (Bid Bond Form)), postal money order, certified check, cashier's check, irrevocable letter of credit from a State or Federally chartered bank or, in accordance with Treasury Department regulations, or certain bonds or notes of the United States. Corporations executing the Bid bond as sureties must be among those appearing on the Treasury Department's list of approved sureties and must be acting within the limitations set forth therein. Bid guarantees, other than Bid bonds, will be returned as follows:
 - a. To unsuccessful Bidders: As soon as practicable after the receipts of Bids.
 - b. To the successful Bidder:
 - i. Upon execution of such further contractual documents and bonds as may be required by the Bid accepted.

- ii. If the successful Bidder, upon acceptance of its Bid by the Authority within the Acceptance Period, fails to execute such further Bid guarantees and give such bond(s) as may be required by the terms of the Contract, its Contract may be terminated for default. In such event, the successful Bidder shall be liable for any cost of procuring the Work, which exceeds the amount of its Bid, and the Bid guarantee shall be available toward offsetting such difference.

M. Minimum Bid Acceptance Period:

1. Acceptance Period, as used in this Section, means the number of Days available to the Authority for awarding a contract from the most current date specified in this Invitation for receipt of Bids.
2. The Authority requires an Acceptance Period of One-Hundred Twenty (120) Days from the due date of the Bid.

N. Contract and Bonds: The Bidder whose Bid is accepted shall, within the time established in this Invitation, enter into a written contract with the Authority and furnish performance and payment bonds on standard Authority forms in the amounts indicated in Section 00600, Bonds And Certificates.

O. Conditions Affecting the Work:

1. Bidders are required to visit the site and take such other steps as may be reasonably necessary to ascertain the nature and location of the work and the general and local conditions which can affect the work or the cost thereof.
2. Failure to do so will not relieve bidders from the responsibility for estimating properly the difficulty or associated risks and cost of successfully performing the work.

P. Opportunity for Disadvantaged Business Enterprises to Bid:

1. The Washington Metropolitan Area Transit Authority hereby notifies all Bidders that the Bidder shall ensure that in regard to any contract entered into pursuant to this Invitation, disadvantaged business enterprises will be afforded full opportunity to submit Bids in response to this Invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for award.

Q. Disadvantaged Business Enterprises: (See Section 00453,) DBE Data

1. It is the policy of the Authority (WMATA) that Disadvantaged Business Enterprises (DBEs) shall have an equal opportunity to receive and participate in performing WMATA contracts, including contracts and subcontracts at any tier, and of the Federal Transit Administration (FTA) and the U.S. Department of Transportation (US DOT) in receiving and participating in federally assisted contracts. The DBE requirements, if any, are set for in Section 00453, DBE Data, and in Section 00793, Additional Federal Regulations and Clauses and are applicable if the Bid is \$500,000 or more for construction (and construction-related) contracts and for supply and service contracts having a total dollar value of \$100,000 or greater. The DBE goal percentages, if applicable, are listed in the "Letter of Invitation Supplement" and Appendix B).
2. If the Bidder is not a DBE, then the DBE goal set forth in the "Letter of Invitation Supplement" and Appendix B, if any, shall be met by Subcontractors or joint ventures with DBEs.

3. If a DBE goal is specified in the "Letter of Invitation Supplement" and Appendix B, the Bidder shall submit with its Bid a list of WMATA-certified DBE firms that it intends to enter into subcontract agreements with for this Contract. The documentation requirements of Section 00453, DBE Data and Appendix B, shall be completed and submitted at the time of Bid. Also, if no goal is specified, but the Bidder still intends to utilize DBEs in the performance of this Contract, the Bidder shall submit with its Bid a list of those WMATA-certified DBE firms. Bidders who fail to complete and return this information, if applicable, with their Bid, will be deemed to be non-responsive and will be ineligible for contract award. The documentation requirements, if applicable, are as follows:
 - a. Schedule of DBE Participation and executed Letter(s) of Intent to Perform as a Subcontractor/Joint Venture with agreed price sufficient to meet the DBE goal set forth in Appendix B; or
 - b. A request for waiver of the DBE goal or portion of the goal, if any, and reasons therefore as stipulated in Section 00453, DBE Data and Appendix B. Request must be made on company stationery and signed by the responsible official.
 4. Bidders that fail to meet the DBE goal set forth in Appendix B, if any, and fail to demonstrate "good faith efforts" to justify waiver of the DBE goal, if any, may be deemed to be non-responsive and will be ineligible for contract award.
 5. In connection with the performance of this Contract, the Contractor agrees to cooperate with the Authority in meeting its commitments and goals with regard to the maximum utilization of Disadvantage Business Enterprises (DBE), and further agrees to exert good faith efforts to satisfy the requirements of Section 00453, DBE Data and Appendix B, if applicable, by subcontracting portions of the Work to disadvantaged firms, by entering into joint ventures with disadvantaged firms, or both.
 6. If there is not goal in this Contract, DBE participation is encouraged and pursuant to the Authority's race-neutral program, is anticipated to be as specified in Section 00793, Additional Federal Regulations and Clauses.
- R. Civil Rights: The Contractor will be required to comply with all applicable Equal Employment Opportunity laws and regulations of Section 00793, Additional Federal Regulations and Clauses, Paragraph P, Civil Rights Requirements.
- S. Debarred or Ineligible Bidders: All Bidders will be required to certify that they are not on any list of ineligible or debarred contractors (see Section 00451, Representations and Certifications Form).
- T. Notice of Protest Policy:
1. WMATA policy and procedure for the administrative resolution of protests is set forth in Chapter 17 of the Procurement and Procedures Manual (PPM). The PPM contains strict rules for filing a timely protest, for responding to a notice that a protest has been filed, and other procedural matters. The Contracting Officer can furnish a copy of Chapter 17 upon request.
 2. FTA Circular C 4220.1F, paragraph 7.I addresses Bid Protests. Review of protests by FTA is discretionary and will be limited to:
 - a. A grantee's failure to follow its protest procedures or its failure to review a complaint or protest; or
 - b. Violations of Federal law or regulation.

3. A protester must exhaust all administrative remedies with the Authority before filing an appeal to the FTA. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within 5 working days of the date the protester learned or should have learned of an adverse decision by the Authority or other basis of appeal to FTA.
 4. Alleged violations on other grounds must be submitted to the Contracting Officer who will decide to the protest.
 5. The judicial authorities having jurisdiction over court actions concerning protest decisions are the United States District Courts for the Districts of Maryland, Virginia, and the District of Columbia, and the local courts in Maryland, Virginia, and the District of Columbia.
- U. Requirements for Cost Data Prior to Contract Award: The Authority had determined that certified cost or pricing data are not required for this Invitation based on the anticipation of adequate price competition. If after receipt of Bids the Authority determines that adequate price competition no longer exists, the Authority will require the Bidder(s) to submit cost data in sufficient detail to permit analysis of the cost elements which make up the proposed price(s). The preparation, submittal, and certification of Certified Cost or Pricing Data shall be as described by FAR 15.4 and in Section 00700, General Conditions.
- V. Davis-Bacon Wage Determination Decision: The Authority's Compact requires that all mechanics and laborers employed by Contractor or Subcontractors on construction and maintenance contracts be paid wages not less than those prevailing on similar contracts in this locality as determined by the Secretary of Labor in accordance with Section 00767, Davis-Bacon and Copeland Anti-Kickback Acts. The Wage Determination Decision of the Secretary of Labor is referred to in Section 00767, Davis-Bacon and Copeland Anti-Kickback Acts, and attached as Appendix D in Section 00800, Supplementary Conditions.
- W. WMATA's Tax Exempt Status:
1. Pursuant to Article XVI, Paragraph 78, of the Washington Area Metropolitan Transit Authority Compact, as adopted by the State of Maryland, the District of Columbia, and the Commonwealth of Virginia, with the authorization and consent of the Congress of the United States, the Authority has been accorded exemption from taxes as follows:
 - a. "The Authority and the Board of Directors shall not be required to pay taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession or supervision, or upon its activities in the operation and maintenance of any transit facility or upon any revenues there from, and the property and income derived there from shall be exempted from all Federal, State, District of Columbia, municipal, and local taxation. This exemption shall include without limitation, all motor vehicle license fees, sales taxes and motor fuel taxes."
 2. It has been the practice of the District of Columbia to apply the Authority's tax-exempt status to certain purchases of materials required under Authority construction contracts and acquired by Contractor for physical incorporation into the Work. This has not been the practice in either Maryland or Virginia. The Authority does not represent or warrant that the District of Columbia practice applies to this Project or, if it does, that it will continue in effect during the term of this Project. It is the responsibility of the Contractor to determine its liability for any and all taxes applicable to this Project. Assessment or payment of taxes by the Contractor, including taxes resulting from changes in existing laws or the application thereof or of new or additional taxes, shall not constitute the basis for an increase in the Contract price, except as otherwise allowed under Section 00771, Federal, State, and Local Taxes.

3. By submission of its bid, the Bidder certifies that none of the taxes to which the Authority is exempt are included in its Bid price(s) or the final Contract Price. In the event that the Authority learns that any taxes to which the Authority is exempt are included in the final Contract Price, the Authority shall be entitled to a reduction in the Contract Price reflecting such amount and a refund of monies paid related to such taxes, plus applicable interest.
- X. Advance Cost Agreement: Within 30 Days after Notice of Award, the Contractor shall make available for audit review, information on its accounting system used to project fixed and variable overhead rates applicable to possible Contract Modifications. The Authority's Office of the Inspector General (OIG), to the extent possible, will review and approve said accounting system. When appropriate and if possible, as a result of the audit review, Advance Cost Agreements may be executed between the Contracting Officer and the Contractor. The Cost Agreements shall be a supplemental agreement to the Contract.
- Y. Proprietary Data in Bids:
1. The Authority will provide all reasonable precautions to ensure that proprietary, technical, and pricing information remains within the review process except where otherwise ordered by an administrative or judicial body or necessary to use in a judicial or administrative proceeding. Bidders shall attach to each page of all proprietary data submitted with the Invitation the following notation:
 - a. "This data furnished pursuant to this IFB shall not be disclosed outside the Authority, be duplicated, or used in whole or in part for any purpose other than to evaluate the bid; provided that, if a contract is awarded on the basis of that bidder, the Authority shall have the right to duplicate, use, and disclose this data, in any manner and for any purpose whatsoever."
 2. The Authority's right to use information contained in these data is not limited if the information is or has been obtained by the Authority from another independent legitimate source.
 3. Except for the foregoing limitation, the Authority may duplicate, use and disclose in any manner and for any purpose whatsoever and have others so do, all data furnished in response to this Invitation.
- Z. Contract Performance Evaluation: The Bidder is advised that a Performance Evaluation will be completed at the end of the Contract. Factors to be included in the Performance Evaluation are as follows: Quality of Work, Timely Performance, Effectiveness of Management, Compliance with Labor Standards, Compliance with Safety Standards, and an Overall Evaluation. The Performance Evaluation may be used in determinations of responsibility for future WMATA contracts.

00202 Bid Format

- A. Bid Page and Character Size: The page size shall not exceed 8-1/2 by 11 inches, except for foldouts, which may not exceed 11 by 17 inches. The page margins shall not be smaller than 1 inch on all four sides. The type size for text shall not be smaller than 10 point, with at least a line spacing of one. The type size for figures and tables shall be not smaller than 8 point.
- B. Completeness: Include all forms as required in this Section. Failure to provide forms or any other information required in the response to this Invitation may cause the Bid to be deemed non-responsive, and the Bid may be subsequently rejected.
- C. Envelopes

The Bid Guarantee and related required documents must be sealed, marked and address as follows:

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
ATTN: SHERREEN TOLLIVER
OFFICE OF PROCUREMENT & MATERIALS – CONSTRUCTION
600 FIFTH STREET, N.W., ROOM 403A
WASHINGTON, D.C. 20001**

Envelopes shall be marked in the lower left-hand corner as follows:

BID NO.: IFB FQ18119/ST

00203 Bid Price Procedures, Evaluation Factors, and Instructions

A. Bid Price Evaluation Factors:

1. The Authority will evaluate Bid Price for completeness, clarity, conciseness, realism, and responsiveness to the IFB-requested information
2. Submittal of Bid prices for both the Base and the Options, if any. Failure to do so will necessitate rejection of the Bid.
3. Materially unbalanced prices: Bids that are materially unbalanced as to prices for the various categories of work items may be rejected as non-responsive.
4. The Authority will compare the Bid Prices to the Authority estimate and otherwise determine reasonableness by performing a price analysis if adequate competition exists. A cost analysis will be performed, if adequate price competition does not exist, to ascertain whether or not the proposed price is fair and reasonable. The Authority may request that Bidders provide a cost breakdown, which identifies major cost drivers and request supporting documentation, such as Supplier and Subcontractor quotes in support of the Bid.

B. Bid Price Instructions: The information provided should be complete and clearly presented. If the information requested under a factor is presented elsewhere in the Bid, the Bidder should cross reference this information that is provided elsewhere rather than duplicate it.

1. Complete, sign, and submit Section 00413, Bid Form. Additionally, submit the following:
 - a. Signed and completed Section 00451, Representations and Certifications Form.
 - b. A completed Section 00434, Bid Price Schedule, with an amount on each lite item where one is requested and a total amount representing the sum of individual amounts requested.
 - 1) Bid Price Schedule prices shall include all services, labor, material, equipment, overhead, incidentals, and profit, unless otherwise specified.
 - 2) In case of a discrepancy between a unit price and an extended price, the unit price will be presumed to be correct, subject however, to correction to the same extent and in the same manner as any other mistake.
 - 3) Where the Bid Price Schedule explicitly requires the Bidder bid on all items; failure to do so will disqualify the Bid. When submittal of a price on all items is not required, Bidders shall insert the words NO BID in the space provided for an item on which no price is submitted.

- 4) Bids for construction services other than those specified will not be considered unless authorized by the Invitation. Unless specifically called for, alternate Bids will not be considered.
 - c. List of DBE-certified firms that is intends to enter into subcontract agreements with (if a DBE goal is specified in Appendix B, or if no goal is specified in Section 00865, Disadvantage Business Enterprise (DBE), but the Bidder still intends to utilize DBEs in the performance of this Contract).
 - d. An executed Bid Guarantee with Surety Certificate (Section 00431, Bid Security (Bid Bond Form)). The Bid Guarantee shall be based on the Total Bid Price. The Performance and Payment Bonds shall be based on the award amount.
- C. Clarifications: Anytime during the evaluation process of the Bid Prices, the Authority may engage in limited exchanges with the Bidder to request clarifications of any of the points, which are unclear, and to resolve minor or clerical errors. Any such exchange will be for clarification only, and will not constitute Discussions within the meaning of FAR 15.306.

00210 Supplementary Instructions to Bidders

- A. Procedures for Product Substitutions During the Bidding Period – Use of brand names within the technical requirements (as used in this clause, the term “brand name” includes identification of products by make and model in IFB Documents):
1. If items called for by the IFB Specifications have been identified by a “brand name or equal” description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bidders offering “equal” products including products of the brand name manufacturer other than the one described by brand name, will be considered by the Authority if such products are clearly identified in the Band and are determined by the Authority to meet fully the salient characteristic requirements in the IFB Specification.
 2. Unless the Bidder clearly indicates that it is offering an “equal” product by submitting Section 00433, Brand Name or Equal Form, the Bidder shall be considered as offering a brand name products referenced in the IFB Documents.
 3. If the Bidder proposes to furnish an “equal” product, the brand name, if any, of the product to be furnished shall be otherwise clearly identified and the determination as to equality of the product offered shall be the responsibility of the Authority and will be based on information reasonably available to the Authority.
 4. If the Bidder proposes to modify a product so as to make it conform to the requirements of the IFB Specification, it shall (i) include a clear description of such proposed modifications, and (ii) clearly mark descriptive material to show the proposed modifications.
 5. Caution to Bidders: The Authority is not responsible for locating or securing any information, which is not identified and reasonably available to the Authority. Accordingly, to ensure that sufficient information is available, the Bidder must furnish all descriptive material (such as catalogue cuts, illustrations, drawings, or other information) necessary for the Authority to (i) determine whether the product offered meets the salient characteristic requirements of the IFB Specification and (ii) establish exactly what the Bidder proposes to furnish and what the Authority would be binding itself to purchase by approval by the Authority. The information furnished

Washington Metropolitan Area Transit Authority
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may include specific references to information previously furnished or to information otherwise available to the Authority.

00250 Pre-Bid Conference and Site Visit Schedule – Not Applicable

00260 Pre-Award Meeting

A. The Authority reserves the right to require that a pre-award meeting be held with the apparent low bidder prior to Contract award in order to further assist the Authority in determining the bidder's responsibility for purposes of award.

END OF SECTION

Section 00300 – Information Available to Bidders

This Section includes information made available to the Bidders.

00301 Invitation for Bid (IFB) Documents

The IFB Documents, including General Conditions, Supplementary Conditions, General Requirements, Specifications, Drawings, reports, safety and security requirements, and quality requirements of this Invitation FQ18119 as referenced in this Section establish requirements for the construction of the Project. These IFB Documents shall be used by the Bidder to prepare the Bid.

00302 General Conditions, Supplementary Conditions, and General Requirements

The General Conditions, Supplementary Conditions, and General Requirements (Division 1 of the Contract Specifications) contain requirements for the administration and construction of the Project.

00303 Contract Specifications

- A. Specifications (Division 2 through 16 of the Contract Specifications) are the parts of the Contract Documents containing written directions or requirements that specify the requirements, which must be fulfilled for the completion of the Work.
- B. The WMATA Manual of Design Criteria establishes general design criteria for the Project that shall govern the design of temporary works as defined in the Specifications unless jurisdictional codes and regulations are more stringent, in which case the codes and regulations shall govern.

00304 Contract Drawings

- A. Contract Drawings are the plans, profiles, typical cross sections, general cross sections, elevations, schedules, and details listed or included in the Contract Documents, which represent requirements for the Project.
- B. The WMATA CAD Manual shall be adhered to for preparation of As-built Drawings by the Contractor.

00310 Existing Conditions

- A. Bidders should visit and take other steps as may be reasonably necessary to ascertain the nature and location of the work and the general and local conditions which can affect the work or cost thereof.
- B. Failure to do so will not relieve Bidders from the responsibility for estimating properly the difficulty or associated risks and cost of successfully performing the work.
- C. The Authority assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations are expressly stated in the Contract.

00320 Geotechnical Report [Not Used]

00330 Environmental Report [Not Used]

00340 WMATA Safety and Security Requirements

- A. This Section lists the safety and security related documents that establish the safety requirements for the Project.
 - 1. WMATA Construction Safety and Environmental Manual Requirements: A compilation of the safety and reporting requirements for this Project.
 - 2. WMATA Safety and Security Certification Program Plan: A compilation of the safety and security certification requirements for the Project.

00350 Quality Assurance and Quality Control

Section 01470, QUALITY MANAGEMENT SYSTEM, establishes the quality requirements for the development of the Quality Management Plan by the Contractor for execution of the Project.

END OF SECTION

Section 00400 – Bid Forms and Supplements

This Section includes forms and supplements for submitting Bids.

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IFB No. FQ18119/ST
00410 Bid Forms

Contract Number: FQ18119
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This Section includes the Bid Forms that are required to be submitted with Bid.

Telephone Number

DUNS Number

Name of Bidder and Bidders Title

Bidders Signature

Directions for Submitting Bid

00431 Bid Security (Bid Bond Form)
(Submit with Bid)

This Section includes the Supplementary Bid Forms that are required to be submitted with the Bid.

BID BOND

Invitation for Bid No.: FQ18119/ST

Bid Closing Date: August 6th, 2018

Penal Sum of Bond: _____
Insert \$ or %

5% of Bid Price or Amount: _____
Insert Amount

Date Bond Executed: _____
Insert Date

KNOW ALL MEN BY THESE PRESENTS, that we, the Principal and Surety(ies) hereto, are firmly bond to the Washington Metropolitan Area Transit Authority in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally: provided, that, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the Bid identified above:

NOW, THEREFORE, if the Principal, upon acceptance by the Authority of this Bid identified above, within the period specified therein for acceptance (60 Days if no period is specified), shall execute such further contractual documents, if any, and give such bond(s) as may be required by the terms of the Bid as accepted within the time specified 10 Days if no period is specified) after receipt of the forms by him, or in the event of failure so to execute such further contractual documents and give such bonds, if the Principal shall pay the Authority for any cost of procuring the work which exceeds the amount of its Bid, then the above obligation shall be void and of not effect.

Each Surety executing this instrument hereby agrees that its obligation shall not be impaired by any extension(s) of the time for acceptance of the Bid that the Principal may grant to the Authority notice of which extension(s) to the Surety(ies) being hereby waived provided that such waiver shall apply only with

respect to extensions aggregating not more than 60 Days in addition to the period originally allowed for acceptance of the Bid.

Principals

1. Firm Name: *Corporate Seal*

Firm Address:

Title and Signature

State of Incorporation: _____

2. Firm Name: *Corporate Seal*

Firm Address:

Title and Signature

State of Incorporation: _____

3. Firm Name: *Corporate Seal*

Firm Address:

Title and Signature

State of Incorporation: _____

Corporate Surety(ies)

Surety A Firm Name: *Corporate Seal*

Firm Address:

Liability Limit:

Name, Title and Signature

State of Incorporation: _____

Surety B Firm Name: *Corporate Seal*

Firm Address:

Liability Limit:

Name, Title and Signature

State of Incorporation: _____

Surety C Firm Name: *Corporate Seal*

Firm Address:

Liability Limit:

Name, Title and Signature

State of Incorporation: _____

Attach additional pages as needed.

Instructions

1. This form is authorized for use whenever a Bid guaranty is required in connection with construction work.
2. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of this form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved, evidence of his authority must be furnished.
3. The penal sum of the bond may be expressed as a percentage of the proposal price (e.g., 5% of the Bid Price) if desired or may be expressed in dollars and cents.
4. Corporation executing the bond as sureties must be among those appearing on the Treasury Department's list of approved sureties and must be acting within the limitations set forth therein. Where more than a single corporate surety is involved, their names and addresses (city and state) shall be inserted in the spaces (Surety A, Surety B, etc.) headed "Corporate Surety(ies)".
5. Corporations executing the bond shall affix their corporate seals.
6. The name of each person signing this bid bond should be typed in the space provided.

(Submit with Bid)

Bidder is required to state in the spaces below the Manufacturer's Name, Part/Product Number, Description, and to provide relevant specifications, including technical data and Material Safety Data Sheets. Be advised that these items, if any, are only set apart for identification. If products, other than those specified, are not listed here, the Bid will be viewed as providing the as-specified products.

Specification Section/Product Specified: _____
Manufacturer: _____
Product Proposed: _____

Specification Section/Product Specified: _____
Manufacturer: _____
Product Proposed: _____

Specification Section/Product Specified: _____
Manufacturer: _____
Product Proposed: _____

Specification Section/Product Specified: _____
Manufacturer: _____
Product Proposed: _____

Note: If applicable, attach additional sheets as necessary in this format. This form is included to establish a format for submission by the Bidder of an "or Equal" and will be utilized for the Bid submittal to the Authority for equal products by the Contract. This form may also be used during the construction of the Contract.

(Submit with Bid)

A. Description of Work

The Contractor shall perform the rehabilitation Work in the manner and at the locations set forth in the IFB Documents of this Invitation, and in accordance with the Bid as finally accepted by the Authority. The Contractor shall perform the rehabilitation Work in strict accordance with the Contract Documents and in full compliance with the Rules and Regulations of the Jurisdictional Authorities.

B. Bid Schedule

The Contractor shall furnish all necessary labor, materials, tools, equipment and supervision to perform the work as described herein.

Item #	Description	Est. Qty	Unit	Unit Price	Amount
1	A02 Farragut North Power Supplies				
1.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
1.B	Field Test results submittal and approval	1	LS	\$	\$
1.C	As-Built Drawings (BOP update)	1	LS	\$	\$
2	A03 Dupont Circle Power Supplies				
2.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
2.B	Field Test results submittal and approval	1	LS	\$	\$
2.C	As-Built Drawings (BOP update)	1	LS	\$	\$
3	A06 Van Ness-UDC Power Supplies				
3.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
3.B	Field Test results submittal and approval	1	LS	\$	\$
3.C	As-Built Drawings (BOP update)	1	LS	\$	\$
4	A08 Friendship Heights Power Supplies				
4.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
4.B	Field Test results submittal and approval	1	LS	\$	\$
4.C	As-Built Drawings (BOP update)	1	LS	\$	\$
5	A10 Medical Center Power Supplies				
5.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
5.B	Field Test results submittal and approval	1	LS	\$	\$
5.C	As-Built Drawings (BOP update)	1	LS	\$	\$
6	A11 Grosvenor Strathmore Power Supplies				
6.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
6.B	Field Test results submittal and approval	1	LS	\$	\$
6.C	As-Built Drawings (BOP update)	1	LS	\$	\$

7	A13 Twin brook Power Supplies				
7.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
7.B	Field Test results submittal and approval	1	LS	\$	\$
7.C	As-Built Drawings (BOP update)	1	LS	\$	\$
8	A15 Shady Grove Power Supplies				
8.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
8.B	Field Test results submittal and approval	1	LS	\$	\$
8.C	As-Built Drawings (BOP update)	1	LS	\$	\$
9	A99 Shady Grove Yard Power Supplies				
9.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
9.B	Field Test results submittal and approval	1	LS	\$	\$
9.C	As-Built Drawings (BOP update)	1	LS	\$	\$
10	B02 Judiciary Square Power Supplies				
10.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
10.B	Field Test results submittal and approval	1	LS	\$	\$
10.C	As-Built Drawings (BOP update)	1	LS	\$	\$
11	B03 Union Station Power Supplies				
11.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
11.B	Field Test results submittal and approval	1	LS	\$	\$
11.C	As-Built Drawings (BOP update)	1	LS	\$	\$
12	B04 Rhode Island Ave Power Supplies				
12.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
12.B	Field Test results submittal and approval	1	LS	\$	\$
12.C	As-Built Drawings (BOP update)	1	LS	\$	\$
13	B06 Fort Totten Power Supplies				
13.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
13.B	Field Test results submittal and approval	1	LS	\$	\$
13.C	As-Built Drawings (BOP update)	1	LS	\$	\$
14	B07 Takoma Power Supplies				
14.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
14.B	Field Test results submittal and approval	1	LS	\$	\$
14.C	As-Built Drawings (BOP update)	1	LS	\$	\$
15	B09 Forest Glen Power Supplies				
15.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
15.B	Field Test results submittal and approval	1	LS	\$	\$
15.C	As-Built Drawings (BOP update)	1	LS	\$	\$
16	B10 Wheaton Power Supplies				
16.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$

16.B	Field Test results submittal and approval	1	LS	\$	\$
16.C	As-Built Drawings (BOP update)	1	LS	\$	\$
17	B11 Glenmont Power Supplies				
17.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
17.B	Field Test results submittal and approval	1	LS	\$	\$
17.C	As-Built Drawings (BOP update)	1	LS	\$	\$
18	B98 Glenmont Yard Power Supplies				
18.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
18.B	Field Test results submittal and approval	1	LS	\$	\$
18.C	As-Built Drawings (BOP update)	1	LS	\$	\$
19	B99 Brentwood Yard Power Supplies				
19.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
19.B	Field Test results submittal and approval	1	LS	\$	\$
19.C	As-Built Drawings (BOP update)	1	LS	\$	\$
20	C02 McPherson Sq. Power Supplies				
20.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
20.B	Field Test results submittal and approval	1	LS	\$	\$
20.C	As-Built Drawings (BOP update)	1	LS	\$	\$
21	C04 Foggy Bottom Power Supplies				
21.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
21.B	Field Test results submittal and approval	1	LS	\$	\$
21.C	As-Built Drawings (BOP update)	1	LS	\$	\$
22	C05 Rosslyn Power Supplies				
22.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
22.B	Field Test results submittal and approval	1	LS	\$	\$
22.C	As-Built Drawings (BOP update)	1	LS	\$	\$
23	C06 Arlington Cemetery Power Supplies				
23.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
23.B	Field Test results submittal and approval	1	LS	\$	\$
23.C	As-Built Drawings (BOP update)	1	LS	\$	\$
24	C07 Pentagon Power Supplies				
24.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
24.B	Field Test results submittal and approval	1	LS	\$	\$
24.C	As-Built Drawings (BOP update)	1	LS	\$	\$
25	C08 Pentagon City Power Supplies				
25.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
25.B	Field Test results submittal and approval	1	LS	\$	\$
25.C	As-Built Drawings (BOP update)	1	LS	\$	\$

26	C10 National Airport Power Supplies				
26.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
26.B	Field Test results submittal and approval	1	LS	\$	\$
26.C	As-Built Drawings (BOP update)	1	LS	\$	\$
27	C12 Braddock Road Power Supplies				
27.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
27.B	Field Test results submittal and approval	1	LS	\$	\$
27.C	As-Built Drawings (BOP update)	1	LS	\$	\$
28	C14 Eisenhower Ave Power Supplies				
28.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
28.B	Field Test results submittal and approval	1	LS	\$	\$
28.C	As-Built Drawings (BOP update)	1	LS	\$	\$
29	C15 Huntington Power Supplies				
29.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
29.B	Field Test results submittal and approval	1	LS	\$	\$
29.C	As-Built Drawings (BOP update)	1	LS	\$	\$
30	C97 Duke Street Power Supplies				
30.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
30.B	Field Test results submittal and approval	1	LS	\$	\$
30.C	As-Built Drawings (BOP update)	1	LS	\$	\$
31	C98 Telegraph Road Power Supplies				
31.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
31.B	Field Test results submittal and approval	1	LS	\$	\$
31.C	As-Built Drawings (BOP update)	1	LS	\$	\$
32	D02 Smithsonian Power Supplies				
32.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
32.B	Field Test results submittal and approval	1	LS	\$	\$
32.C	As-Built Drawings (BOP update)	1	LS	\$	\$
33	D04 Federal Center SW Power Supplies				
33.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
33.B	Field Test results submittal and approval	1	LS	\$	\$
33.C	As-Built Drawings (BOP update)	1	LS	\$	\$
34	D06 Eastern Market Power Supplies				
34.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
34.B	Field Test results submittal and approval	1	LS	\$	\$
34.C	As-Built Drawings (BOP update)	1	LS	\$	\$
35	D11 Cheverly Power Supplies				
35.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$

35.B	Field Test results submittal and approval	1	LS	\$	\$
35.C	As-Built Drawings (BOP update)	1	LS	\$	\$
36	D13 New Carrollton Power Supplies				
36.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
36.B	Field Test results submittal and approval	1	LS	\$	\$
36.C	As-Built Drawings (BOP update)	1	LS	\$	\$
37	D98 D & G Junction Power Supplies				
37.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
37.B	Field Test results submittal and approval	1	LS	\$	\$
37.C	As-Built Drawings (BOP update)	1	LS	\$	\$
38	D99 New Carrollton Yard Power Supplies				
38.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
38.B	Field Test results submittal and approval	1	LS	\$	\$
38.C	As-Built Drawings (BOP update)	1	LS	\$	\$
39	E01 Mt Vernon Sq. Power Supplies				
39.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
39.B	Field Test results submittal and approval	1	LS	\$	\$
39.C	As-Built Drawings (BOP update)	1	LS	\$	\$
40	E03 U Street Power Supplies				
40.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
40.B	Field Test results submittal and approval	1	LS	\$	\$
40.C	As-Built Drawings (BOP update)	1	LS	\$	\$
41	E05 Georgia Ave-Petworth Power Supplies				
41.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
41.B	Field Test results submittal and approval	1	LS	\$	\$
41.C	As-Built Drawings (BOP update)	1	LS	\$	\$
42	E06 Fort Totten Power Supplies				
42.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
42.B	Field Test results submittal and approval	1	LS	\$	\$
42.C	As-Built Drawings (BOP update)	1	LS	\$	\$
43	E08 & E08 TCER Prince George's Plaza Power Supplies				
43.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
43.B	Field Test results submittal and approval	1	LS	\$	\$
43.C	As-Built Drawings (BOP update)	1	LS	\$	\$
44	E09 College Park-U of MD Power Supplies				
45.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
45.B	Field Test results submittal and approval	1	LS	\$	\$

45.C	As-Built Drawings (BOP update)	1	LS	\$	\$
45	E10 Greenbelt Power Supplies				
46.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
46.B	Field Test results submittal and approval	1	LS	\$	\$
46.C	As-Built Drawings (BOP update)	1	LS	\$	\$
46	F03 L'Enfant Plaza Power Supplies				
47.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
47.B	Field Test results submittal and approval	1	LS	\$	\$
47.C	As-Built Drawings (BOP update)	1	LS	\$	\$
47	F05 Navy Yard Greenbelt Power Supplies				
48.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
48.B	Field Test results submittal and approval	1	LS	\$	\$
48.C	As-Built Drawings (BOP update)	1	LS	\$	\$
48	F06 Anacostia Power Supplies				
49.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
49.B	Field Test results submittal and approval	1	LS	\$	\$
49.C	As-Built Drawings (BOP update)	1	LS	\$	\$
49	F08 Southern Ave Power Supplies				
50.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
50.B	Field Test results submittal and approval	1	LS	\$	\$
50.C	As-Built Drawings (BOP update)	1	LS	\$	\$
50	F09 Naylor Road Power Supplies				
51.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
51.B	Field Test results submittal and approval	1	LS	\$	\$
51.C	As-Built Drawings (BOP update)	1	LS	\$	\$
51	F11 Branch Ave Power Supplies				
52.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
52.B	Field Test results submittal and approval	1	LS	\$	\$
52.C	As-Built Drawings (BOP update)	1	LS	\$	\$
52	F98 Power Supplies				
53.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
53.B	Field Test results submittal and approval	1	LS	\$	\$
53.C	As-Built Drawings (BOP update)	1	LS	\$	\$
53	F99 Branch Ave Yard Power Supplies (TCR-1, TCR-2, TCR-3 & TCR-4)				
54.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
54.B	Field Test results submittal and approval	1	LS	\$	\$
54.C	As-Built Drawings (BOP update)	1	LS	\$	\$

54	G03 Addison Road Power Supplies				
55.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
55.B	Field Test results submittal and approval	1	LS	\$	\$
55.C	As-Built Drawings (BOP update)	1	LS	\$	\$
55	J01 Quaker Lane Power Supplies				
56.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
56.B	Field Test results submittal and approval	1	LS	\$	\$
56.C	As-Built Drawings (BOP update)	1	LS	\$	\$
56	J02 Van Dorn Street Power Supplies				
57.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
57.B	Field Test results submittal and approval	1	LS	\$	\$
57.C	As-Built Drawings (BOP update)	1	LS	\$	\$
57	J03 Franconia- Springfield Power Supplies				
58.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
58.B	Field Test results submittal and approval	1	LS	\$	\$
58.C	As-Built Drawings (BOP update)	1	LS	\$	\$
58	K02 Clarendon Power Supplies				
59.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
59.B	Field Test results submittal and approval	1	LS	\$	\$
59.C	As-Built Drawings (BOP update)	1	LS	\$	\$
59	K04 Ballston-MU Power Supplies				
60.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
60.B	Field Test results submittal and approval	1	LS	\$	\$
60.C	As-Built Drawings (BOP update)	1	LS	\$	\$
60	K05 East Falls Church Power Supplies				
61.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
61.B	Field Test results submittal and approval	1	LS	\$	\$
61.C	As-Built Drawings (BOP update)	1	LS	\$	\$
61	K06 West Falls Church Power Supplies				
62.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
62.B	Field Test results submittal and approval	1	LS	\$	\$
62.C	As-Built Drawings (BOP update)	1	LS	\$	\$
62	K08 Vienna Power Supplies				
63.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$
63.B	Field Test results submittal and approval	1	LS	\$	\$
63.C	As-Built Drawings (BOP update)	1	LS	\$	\$
63	K99-1 West Falls Church Yard Power Supplies				
64.A	Delivery & Installation of New Power Supplies	1	LS	\$	\$

64.B	Field Test results submittal and approval	1	LS	\$	\$
64.C	As-Built Drawings (BOP update)	1	LS	\$	\$
COMMON ITEMS					
65	Mobilization	1	LS	\$	\$
66	Project Management MONTHLY INVOICING	36	Each	\$	\$
67	Engineering and Design				
67.A	Approved SSWP	1	LS	\$	\$
67.B	Preliminary Engineers Presentation Approval	1	LS	\$	\$
67.C	TCRs Power Supply Survey and Report Approval	1	LS	\$	\$
67.D	Preliminary Design Review Approval	1	LS	\$	\$
67.E	Final Design Review Approval	1	LS	\$	\$
68	Delivery & Acceptance of Test Platforms	1	LS	\$	\$
68.A	Design/Product Submittal Approval	1	LS	\$	\$
68.B	Delivery and Acceptance of Test Platforms	1	LS	\$	\$
69	First Article Type Acceptance Testing	1	LS	\$	\$
70	Test Plan/Results				
70.A	Factory Test Procedure Approval	1	LS	\$	\$
70.B	Factory Test Results Acceptance/Approval	1	LS	\$	\$
70.C	WMATA Acceptance Test Procedure Approval	1	LS	\$	\$
70.D	Field Test and Adjustment Procedure Approval	1	LS	\$	\$
71	Failure Mode and Effects Analysis (FMEA) Approval	1	LS	\$	\$
72	Schedule and Progress Reports				
72.A	Approved Base line Schedule	1	LS	\$	\$
72.B	Approved Monthly Progress Reports and Schedules	36	Each	\$	\$
72.C	Approved Final Schedule and Final report	1	LS	\$	\$
73	QA / QC Plan				
73.A	Approved QA/QC Plan	1	LS	\$	\$
73.B	Approved Monthly QA/QC Reports	36	Each	\$	\$
73.C	Approved Final Report	1	LS	\$	\$
74	Manuals				
74.A	Approval and Delivery of Operation & Maintenance manuals	1	LS	\$	\$
74.B	Approval and Delivery of Shop Manuals	1	LS	\$	\$

74.C	Approval and Delivery of Test Platform/Programming Manuals	1	LS	\$	\$
75	Training				
75.A	Approval and Delivery of Training Manuals	1	LS	\$	\$
75.B	Power supply training	1	LS	\$	\$
75.C	Shop Maintenance Training (to include training on Test Platform)	1	LS	\$	\$
76	Delivery of Spare and Shop/Training Power Supplies				
76.A	120 VAC Single Phase Input	10	Each	\$	\$
76.B	120 VAC Three Phase Input	14	Each	\$	\$
TOTAL					\$
					-

1. The Contract will be awarded on the basis of the lowest responsive Total Bid Price from a responsible Bidder. A single Contract will be awarded
2. The Bidder must bid on all sites. Failure to bid on all sites shall result in bid rejection.
3. Any bid which is materially unbalanced as to prices for the various items may be rejected as non-responsible. A materially unbalanced bid is one which is based on prices which are materially overstated for other work.
4. Prices – The prices shall constitute full compensation for all cost of performance under this contract, including but not limited to labor, materials, equipment, supervision, quality control, testing, safety including without limitation Safety Superintendent costs, transportation, project, tax, bonds and other items necessary to complete the work.
5. Prices shall be firm fixed and shall not be subjected to any change during the Period of Performance of the Contract.
6. The Bidder must furnish a Bid Guarantee in accordance with the Invitation for Bid for the Total Bid Price.
7. Performance and Payment Bonds - The Performance and Payment Bonds shall be based upon the initial Notice of Award amount in accordance with Section 00600 Bonds and Certificates.
8. WMATA Railroad Protective Liability Program Option – See Section 00777 Indemnification and Insurance. The Authority may offer to waive the requirement for the Contractor to procure RRP if 1) the work can be covered under the Authority’s blanket RRP program, and 2) the Contractor prepays the waiver fee which shall be determined by the rate schedule promulgated by the insurer in effect as of the effective date of this Contract. Contractor shall be advised of and pay the applicable waiver, or procure a standalone RRP policy on the Authority’s behalf.

If the contractor chooses to not utilize the WMATA RRPL, then WMATA will reimburse the Contractor for the actual cost with no markups up to the amount (not allowance) that would have been paid for the WMATA waiver fee. For Bidding purposes the Railroad Protective Liability Insurance Allowance amount listed in the Unit Price Schedule shall not be changed by the Bidder.

9. The Bidder is advised that this Contract contains Davis-Bacon provisions. The Contractor will be required to submit certified payrolls on a weekly basis. Also, the Authority will monitor compliance by performing Labor Standards Interviews of the labor force. The Authority will hold retainage in a sufficient amount as may be considered necessary for any underpayment of wages and/or fringes until they are fully resolved in accordance with the Labor Provisions of the contract. The Contractor is obligated to pay the minimum wage rates as listed in Appendix D Wage Rates of this Contract throughout the Period of Performance including any or all Options, and are not entitled to change orders for increased costs associated with any change in the wage rate requirements made after Notice of Award effective date.
10. DBE data (See Appendix B) shall be submitted with the bid; applies only if total bid price is \$500,000 or more

Name of Bidder or Contractor: _____

00451 Representations and Certifications Form

(Submit with Bid)

(Federally Funded Supply/Service/Construction Contracts)

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

1. TYPE OF BUSINESS ORGANIZATION

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

Name	Signature
Title	Company
Date	

2. AFFILIATION AND IDENTIFYING DATA

Each offeror shall complete 2.1, 2.2 if applicable, and 2.3 below, representing that:

- 2.1 It is, is not, owned or controlled by a parent company. For this purpose, a parent company is defined as one that either owns or controls the activities and basic business policies of the offeror. To own another company, means that the parent company must own at least a majority, i.e., more than fifty percent (50%), of the voting rights in that company. To control another company, such ownership is not required. If another

company is able to formulate, determine or veto the offeror's basic business policy decisions, such other company is considered the parent of the offeror. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, Contractual arrangements or otherwise.

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

 Name of Parent Company

 Main Office Address (including ZIP Code)

- 2.3** If the offeror has no parent company, it shall provide in the applicable space below its own employer's identification number (E.I.N.), (i.e., number used on Federal tax returns or, if it has a parent company, the E.I. N. of its parent company).

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

Name	Signature
Title	Company
Date	

3. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS

This representation is applicable to federally assisted contracts. By submission of this offer, the offeror represents that:

- 3.1** It [] has, [] has not, participated in a previous contract or subcontract subject to either the Equal Opportunity Clause of this solicitation, or the clause contained in Parts II and IV of Executive Order 11246, as amended; that prohibits discrimination on the basis of race, color, creed, national origin, sex, age; and
- 3.2** It [] has, [] has not, filed all required compliance reports; and
- 3.3** Representations indicating submittal of required compliance reports signed by proposed subcontractors will be obtained prior to subcontract awards.

Name	Signature
Title	Company
Date	

4. DISADVANTAGED BUSINESS ENTERPRISE

This representation is applicable to federally assisted contracts. By submission of this offer, the offeror represents that:

4.1 It [] is, [] is not, a disadvantaged business enterprise.

"Disadvantaged Business Enterprise" means a for-profit small business concern that is at least fifty one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged individuals or, in the case of a corporation, in which fifty one percent (51%) of the stock is owned by one or more such individuals; and whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals who own it.

"Socially and Economically Disadvantaged Individual" is defined in Appendix B. Notice of Requirements for Disadvantaged Business Enterprise (DBE). By submission of this offer, the offeror represents that:

4.2 It [] is, [] is not, currently certified by Metropolitan Washington Unified Certification Program (MWUCP) as a disadvantaged business enterprise.

4.3 **Special Certification Requirements for Transit Vehicle Manufacturers. N/A**

5. **SMALL BUSINESS ENTERPRISE (MAY 2015)**

"Small Business Enterprise" means a for profit small business concern that is at least fifty one percent (51%) owned by one (1) or more individual(s) who are economically disadvantaged. "Economically Disadvantaged Individual" is defined in Appendix B-1, Definitions, in Notice of Requirements for Small Business Enterprise (SBE) Program.

5.1 It [] is, [] is not, a small business enterprise. A firm must be a small business as defined by the U.S. Small Business Administration (SBA) by applying current SBA business size standards found in 13 C.F.R. Part 121 that are applicable to the type of work the firm seeks to perform in USDOT assisted contracts. The fifty one percent (51%) owner must be a U.S. citizen or permanent resident. A firm must be organized for profit in order to be eligible for SBE certification. The firm's average gross receipts cannot exceed the overall USDOT size standard for a small business [\$23.98 million averaged over the three (3) previous fiscal years or part of year that the business has been in existence.] Set forth in 49 C.F.R. § 26.65, at least fifty one percent (51%) of the firm's ownership must be held by individuals who meet the personal net worth (PNW) cap of \$1.32 million as prescribed by 49 C.F.R. § 26.67.

5.2 It [] is, [] is not, currently certified by WMATA as a small business enterprise.

Name	Signature
Title	Company
Date	

6. **AFFIRMATIVE ACTION COMPLIANCE**

This representation is applicable to federally assisted contracts of \$50,000 or more that are awarded to contractors with fifty (50) or more employees. By submission of this offer, the offeror represents that:

- 6.1 It has a workforce of _____ employees.
- 6.2 It has developed and has on file, or has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 C.F.R. §§ 60.1 and 60.2), or
- 6.3 It has not previously had contracts subject to the written affirmative action program requirements of the rules and regulations of the U.S. Secretary of Labor.

Name	Signature
Title	Company
Date	

7. COVENANT AGAINST GRATUITIES

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

Neither it nor any of its employees, representatives or agents have offered or given gratuities (in the form of entertainment, gifts or otherwise) to any Board member, employee or agent of the Authority with the view toward securing favorable treatment in the awarding, or administration of this Contract.

Name	Signature
Title	Company
Date	

8. CONTINGENT FEES

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

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

Name	Signature
Title	Company

Date	

9. CLEAN AIR ACT AND CLEAN WATER ACT CERTIFICATION

This certification is applicable if the Contract will be federally assisted and the offer exceeds \$150,000, or the Contracting Officer believes that orders under an indefinite type Contract in any year will exceed \$150,000 or a facility to be used has been the subject of a conviction under the Clean Air Act [42 U.S.C. § 7413(c)(1)] or the Clean Water Act [33 U.S.C. § 1319(c)], is listed by the U.S. Environmental Protection Agency (EPA) as a violating facility, and the acquisition is not otherwise exempt:

- 9.1 Any facility to be utilized in the performance of this Contract [] is, or [] is not listed on the EPA's List of Violating Facilities;
- 9.2 Offeror will immediately notify the Contracting Officer, before award, of the receipt of any communications from the Administrator, or a designee of the EPA, indicating that any facility that it proposes to use in the performance of this Contract is under consideration to be listed on the EPA's List of Violating Facilities; and
- 9.3 Offeror will include a certification substantially the same as this certification, including this paragraph, in every non-exempt subcontract.

Name	Signature
Title	Company
Date	

10. DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

This certification is applicable to federally assisted contracts over \$25,000.

- 10.1 Primary Covered Transactions. This certification applies to the offer submitted in response to this solicitation and will be a continuing requirement throughout the term of any resultant Contract.
 - 10.1.1 In accordance with the provisions of 2 C.F.R. Part 1200 and 2 C.F.R. Part 180, Subpart C, the offeror certifies to the best of its knowledge and belief that it and its principals:
 - 10.1.1.1 are not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or state department or agency;
 - 10.1.1.2 have not, within a three (3) year period preceding this offer, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal,

state, or local) transaction or contract under a public transaction; violation of Federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

10.1.1.3 are not currently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses enumerated in paragraph (1) (ii) of this certification; and have not, within a three (3) year period preceding this offer, had one (1) or more public transactions (Federal, state, or local) terminated for cause or default.

10.1.2 Where the offeror is unable to certify to any of the statements in this certification, the offeror shall attach an explanation to this offer.

10.2 Lower Tier Covered Transactions. This certification applies to a subcontract at any tier expected to equal or exceed \$25,000 and will be a continuing requirement throughout the term of this Contract.

10.2.1 The prospective lower tier subcontractor certifies, by submission of this offer, that neither it nor its principals is currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal or state department or agency.

10.2.2 Where the prospective lower tier subcontractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

10.3 The Certification required by 10.2, above, shall be included in all applicable subcontracts and the Contractor shall keep a copy on file. The Contractor shall be required to furnish copies of certifications to the Contracting Officer upon his or her request.

Name	Signature
Title	Company
Date	

11. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

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

11.1.1 The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or with any other competitor;

11.1.2 Unless otherwise required by law, the prices that are quoted in this offer have not been knowingly disclosed by the offeror and will not be knowingly disclosed by the offeror prior to award (in the case of a negotiated procurement), directly or indirectly, to any other offeror or to any competitor; and

11.1.3 No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit an offer, for the purpose of restricting competition.

11.2 Each person signing this offer certifies that:

11.2.1 He or she is the person in the offeror's organization responsible for the decision regarding the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to 11.1.1 through 11.1.3 above; or

11.2.2 He or she is not the person in the offeror's organization responsible for the decision regarding the prices being offered herein, but that he/she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated; and will not participate, in any action contrary to 11.1.1 through 11.1.3 above; or and as their agent he or she does hereby so certify.

Name	Signature
Title	Company
Date	

12. CERTIFICATION OF NONSEGREGATED FACILITIES

This certification is applicable to federally assisted contracts over \$10,000.

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

12.1.1 It does not and will not maintain or provide for its employees, any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control, where segregated facilities are maintained.

12.1.2 The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in this Contract.

12.1.3 As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom or otherwise.

12.1.4 It further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will:

- 12.2 Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;
- 12.3 Retain such certifications in its files; and
- 12.4 Forward the following notice to such subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities must be submitted prior to award of a subcontract exceeding \$10,000 that is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for such subcontract or for all subcontracts during a period (i.e., quarterly, semiannually or annually).

Name	Signature
Title	Company
Date	

13. NONDISCRIMINATION ASSURANCE

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

Name	Signature
Title	Company
Date	

14. CERTIFICATION OF RESTRICTIONS ON LOBBYING

This certification is applicable to federally assisted contracts if the offer exceeds \$100,000.

- 14.1 By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that to the best of his or her knowledge or belief:

- 14.1.1** No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member 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.
- 14.1.2** If any funds other than federally appropriated funds have been paid or will be paid to any person for making lobbying contacts to 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 Contract, the undersigned shall complete and submit Standard Form--LLL, "Disclosure of Lobbying Activities."
- 14.1.3** The undersigned shall require that the language of this certification be included in all sub-awards (including subcontracts, sub-grants and contracts under grants, loans and cooperative agreements) at all tiers and that all sub-recipients shall certify and disclose accordingly.
- 14.2** This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352, as amended. 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.
- 14.3** The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C.A. § 3801, *et. seq.* apply to this certification and disclosure, if any.

Name	Signature
Title	Company
Date	

15. BUY AMERICA ACT CERTIFICATION

The Buy America Act requirements apply to federally assisted construction contracts, and acquisition of goods or rolling stock contracts valued at more than \$150,000.¹

- 15.1** By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement it will comply with 49 U.S.C. § 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R.

§ 661.7 Separate requirements for rolling stock are set out at 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11.

- 15.2** An offeror must submit to the Authority, the appropriate Buy America Act certification (below) with all offers on FTA funded contracts, except those subject to a general waiver. Offers that are not accompanied by a completed Buy America Act certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors. Mark the applicable certifications below:

15.2.1 Certification requirement for procurement of steel, iron, or manufactured products:

Certificate of Compliance with 49 U.S.C. § 5323(j)(1)

The offeror hereby certifies that it will meet the requirements of 49 U.S.C. § 5323(j)(1) and the applicable regulations in 49 C.F.R. § 661.5.

Certificate of Non-Compliance with 49 U.S.C. § 5323(j)(1)

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

15.2.2 Certification requirement for procurement of buses, other rolling stock and associated equipment:

Certificate of Compliance with 49 U.S.C. § 5323(j)(2)(C)

The offeror hereby certifies that it will comply with the requirements of 49 U.S.C. § 5323(j)(2)(C) and the regulations at 49 C.F.R. § 661.11.

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11, but may qualify for an exception pursuant to 49 U.S.C. §§ 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. § 661.7.

Name	Signature
Title	Company
Date	

16. CERTIFICATION OF NON-DELINQUENT TAXES

This certification is applicable to federally assisted contracts.

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

16.1.1 It has not been convicted over the past three (3) years of violating any Federal criminal tax law or failed to pay any tax.

16.1.2 It has certified if it has been notified of an unresolved tax lien or any unsatisfied Federal tax delinquency in excess of \$3,000 and that it is paying

tax debts through an installment agreement or has requested a collections due process hearing.

- 16.1.3 The offeror agrees that a breach of this certification is a violation of the Federal Acquisition Regulation (FAR).
- 16.1.4 As used in this certification, the term "tax delinquency" means an outstanding debt for which a notice of lien has been filed in public records.
- 16.1.5 It further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will:
- 16.2 Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the FAR.;
- 16.3 Retain such certifications in its files; and
- 16.4 Forward the following notice to such subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATION OF NON-DELINQUENT TAXES

A Certification of Non-Delinquent Taxes must be submitted prior to award of a subcontract exceeding \$100,000 that is not exempt from the provisions of the FAR. The certification may be submitted either for such subcontract or for all subcontracts during a period (i.e., quarterly, semiannually or annually).

Name	Signature
Title	Company
Date	

17. DISCLOSURES OF INTERESTS OF WMATA BOARD MEMBERS

For purposes of this disclosure, terms in bold are defined by the Code of Ethics for Members of the WMATA Board of Directors a copy of which is available at www.wmata.com. Financial interests include ownership interests and prospective and actual income. Firm includes parents, subsidiaries and affiliates.

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

- 17.1 No WMATA **Board member, household member or business associate** has a financial interest in this firm, in a **financial transaction** with the Authority to which this firm is a party or prospective party, or in an **actual or prospective business relationship with the Authority** to which this firm is a party.
- 17.2 The following WMATA **Board member(s), household member(s) or business associate(s)** has a financial interest in this firm, in a **financial transaction** with the Authority to which this firm is a party or prospective party, or in an **actual or prospective business relationship with the Authority** to which this firm is a party. Include in

“Nature of Interest” below, a description of the financial interest and (1) for ownership interests, the value of the interest, the name and address of the firm in which the interest is held, and the total equity or equivalent interest of the firm; and (2) for income, the amount of all income received by the **Board member, household member or business associate** in the current and preceding fiscal year for services provided, and the name and address of the firm from which the income was received.

Name of Board Member Household Member or Business Associate	Nature of Interest
_____	_____
_____	_____
_____	_____

17.3 The certification required by 17.1 and 17.2 above shall be included in all subcontracts. The prime contractor shall furnish copies of certifications to the Contracting Officer and retain a copy for inspection upon his or her request.

Name	Signature
Title	Company
Date	

18. CRIMINAL BACKGROUND SCREENING CERTIFICATION (QUARTERLY)

By submission of this offer, the offeror certifies that:

- 18.1** It will contract with or engage a reputable third-party vendor to conduct, criminal background screenings of all Contractor personnel who will have access to WMATA’s customers, WMATA’s property, or WMATA’s information in connection with this Contract. This requirement also applies to Contractors who engage with the general public on WMATA’s behalf.
- 18.2** It will screen for criminal convictions, taking into consideration (1) the nature of the services or work being performed under the contract with particular regard for the individual’s access to, and interaction with, WMATA’s customers, property, and confidential information; (2) the nature or gravity of the offense or conduct resulting in a criminal conviction; and (3) the time that has lapsed since the conviction and/or completion of the sentence, all Contractor personnel who will have access to WMATA’s customers, the general public, WMATA’s property, or WMATA’s information and who work on this Contract during each calendar year within this Contract’s period of performance. The Offeror will provide certification that it conducted these screenings to the Contracting Officer’s Technical Representative (COTR) on a quarterly basis, on a form provided.
- 18.3** The Contractor shall submit to the COTR, a list of all employees and agents who will require Contractors’ access badges not less than 7 days prior to the date on which access will be required.

- 18.4** The Offeror will determine that all Contractor personnel working on this Contract during the calendar year passed the Contractor's criminal background screening and will be in good standing and otherwise fit to work on this Contract.
- 18.5** The Offeror has not obtained or otherwise been made aware of any information about any Contractor personnel working on this Contract that contradicts or otherwise impacts the Contractor's determination that such persons passed the Contractor's criminal background screening and/or are fit to work on this Contract.
- 18.6** The Contractor will flow this requirement down to all of its subcontractors who will have access to WMATA's customers, the general public, WMATA's property, or WMATA's information within this Contract's period of performance.

Name	Signature
Title	Company
Date	

19. CERTIFICATION REQUIRED FOR ALL SAFETY-SENSITIVE² CONTRACTS.

- 19.1** By submission of this offer, the offeror represents and certifies that it will comply with the Federal Transit Administration (FTA) regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 655, and applicable provisions of the U.S. Department of Transportation (DOT) regulations, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," 49 C.F.R. Part 40.
- 19.2** Offeror agrees that its employees and agents, including but not limited to, safety-sensitive subcontractors will be enrolled in a drug and alcohol testing program that meets the policy and procedural requirements listed in Appendix A of this document.
- 19.3** Offeror understands that Washington Metropolitan Area Transit Authority (WMATA) will perform oversight during the contract's period of performance to ensure that the successful offeror complies with the DOT/FTA regulations.
- 19.4** Failure to comply with this certification may result in WMATA issuing sanctions and pursuing available contractual remedies.

Name	Signature
Title	Company
Date	

² See the Combined Glossary for a definition of "safety-sensitive."

Signature Block for all Representations and Certifications

BIDDER: _____

Firm Name

Address

City, State, Zip Code

Telephone Number

Representative authorized to act on
Bidder's behalf:

Name & Title

Date: _____
Date

Print Name of Bidder

Bidder's Title

Signature of Bidder

1. BUY AMERICA ACT CERTIFICATION

The Buy America Act requirements apply to federally assisted construction contracts, and acquisition of goods or rolling stock contracts valued at more than \$150,000.³

1.1 By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement it will comply with 49 U.S.C. § 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11.

1.2 An offeror must submit to the Authority, the appropriate Buy America Act certification (below) with all offers on FTA funded contracts, except those subject to a general waiver. Offers that are not accompanied by a completed Buy America Act certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors. Mark the applicable certifications below:

1.2.1 Certification requirement for procurement of steel, iron, or manufactured products:

Certificate of Compliance with 49 U.S.C. § 5323(j)(1)

The offeror hereby certifies that it will meet the requirements of 49 U.S.C. § 5323(j)(1) and the applicable regulations in 49 C.F.R. § 661.5.

Certificate of Non-Compliance with 49 U.S.C. § 5323(j)(1)

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

1.2.2 Certification requirement for procurement of buses, other rolling stock and associated equipment:

Certificate of Compliance with 49 U.S.C. § 5323(j)(2)(C)

The offeror hereby certifies that it will comply with the requirements of 49 U.S.C. § 5323(j)(2)(C) and the regulations at 49 C.F.R. § 661.11.

Certificate of Non-Compliance with 49 U.S.C. 5323§ (j)(2)(C)

The offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11, but may qualify for an exception pursuant to 49 U.S.C. §§ 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. § 661.7.

³ If the funding for this Contract comes from an FTA grant issued before December 26, 2014, then the limit is \$150,000.

Signature Block for Buy America Act Certifications

BIDDER:

Firm Name

Address

City, State, Zip Code

Telephone Number

Print Name of Bidder

Bidder's Title

Representative authorized to act on
Bidder's behalf:

Name & Title

Date: _____
Date

Contract Number: FQ18119

Date of Request: July 11, 2018

Project Name: Switch Machine (WHB) Power Supplies Replacement

Project Location: As specified in the Solicitation Documents

1. Name of Firm:
2. Legal Address:
3. Legal Entity: Individual Partnership Joint Venture Corporation
4. Date Organized:
5. State in which incorporated:
6. Names and Addresses of Officers or Partners:

- a. _____
- b. _____
- c. _____
- d. _____
- e. _____
- f. _____

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

Number of Years

8. Attach as SCHEDULE 8 a list of current contracts, each with contract amount, owner, architect-engineer, and character or type of work and percentage of completion. Also, include those projects on which you are apparent low bidder, but for which you have not received an award of contract.
9. Attach as SCHEDULE 9 a list of contracts, each with contract amount, owner, architect engineer, and character or type of work, for contracts completed in the last 5 years.
10. What is the estimated work placement value required per year to complete the work described in SCHEDULE 8? 2016: \$_____ 2017: \$_____ 2018: \$_____
11. Have you ever been denied an award on which you were low bidder? Yes No If the answer is YES, attach as SCHEDULE 11 the full particulars regarding each occurrence.
12. Have you ever failed to complete any contract, other than current, on which you were the low bidder? Yes No If the answer is YES, attach as SCHEDULE 12, the full particulars regarding each occurrence.
13. Have you ever been assessed liquidated damages or actual damages for late completion within the last five years? Yes No If the answer is YES, attach as SCHEDULE 13 the full particulars regarding each occurrence.

14. Financial resources available as working capital for this Contract:

Case on hand: \$ _____ Date: _____

Sources of credit: _____

15. Attach as SCHEDULE 15 certified financial statements and letters from banks regarding credit as required by Section 00200, INSTRUCTIONS TO BIDDERS, of this Contract.

16. Attach as SCHEDULE 16 the construction experience of each officer and principal individual of your organization; including present position, years of construction experience, magnitude and type of work, and in what capacity.

17. What percentage of the Work (Contract amount) do you intend performing with your own personnel? _____%

18. Attach as SCHEDULE 18 a list of all Subcontractors and the percentage and character of work (Contract amount) which each will perform.

19. Attach as exhibits completed Bid Data Forms for each of the Subcontractors listed in SCHEDULE 18 above.

20. If the Contractor or Subcontractor is a joint venture, submit Bid Data Form for each member of the joint venture.

The above information is confidential and will not be divulged to any unauthorized person or persons. The signatory of this questionnaire certifies to the truth and accuracy of all statements, answers, and attachments.

For: _____

DUNS # _____

Date: _____

Signatory's Name

Signatory's Title

Signatory's Signature

Location: _____

Washington Metropolitan Area Transit Authority
IFB No. FQ18119/ST
00453 Disadvantaged Business Enterprise (DBE) Data

Contract Number: FQ18119
July 11th, 2018

(Submit with Bid)

For Disadvantaged Business Enterprise (DBE) Data and forms, refer to Appendix B

NOTICE TO BIDDERS:

- A. This Section includes the Contract Form to be submitted by the successful Bidder and represents the legal instrument binding the two parties to the Work once the document is signed by the Authority and the Contractor.
- B. The following form is included for the Contractor's information and use in the event the Bidder is awarded the Contract. It is not required to be submitted with the Bid.

Washington Metropolitan Area Transit Authority
IFB No. FQ18119/ST
00510 Construction Contract Form

Contract Number: FQ18119
July 11th, 2018

Contractor:

Contract Number: FQ18119

Date:

Contract For: SWITCH MACHINE (WHB) POWER SUPPLIES REPLACEMENT
Contract Price: \$

Period of Performance: 1100 calendar days

In consideration of the covenants contained herein, the Washington Metropolitan Area Transit Authority (hereinafter called the Authority), represented by the Contracting Officer executing this Contract, and the individual, partnership, joint venture, or corporation named above (hereinafter, the Contractor), mutually agree to perform this Contract in strict accordance with its provisions. The Contract consists of: the IFB Documents and all documents referenced or attached to the IFB Documents including the following:

1. Bid as finally accepted.
2. Other publications referenced in the IFB Documents.
3. Amendment Number(s):

ALTERATIONS: The following alterations were made to this Contract before it was signed by the parties hereto:

Washington Metropolitan Area Transit Authority
IFB No. FQ18119/ST

Contract Number: FQ18119
July 11th, 2018

In Witness Whereof, the parties hereto have executed this Contract as of the date entered above.

Attest _____ *By: _____

Attest _____ *By: _____

Attest _____ *By: _____

Washington Metropolitan Area Transit Authority

By: _____

***NOTE:** Execution for the Contractor that is an individual, corporation or partnership shall be accompanied by the Power of Execution (Section 00542) that follows. A Joint Venture Contractor must complete the Power of Attorney (Section 00541) that follows. All persons executing this Contract must complete the appropriate Certification of the person's authority to act on behalf of the Contractor.

Washington Metropolitan Area Transit Authority
IFB No. FQ18119/ST
00540 Attachments to the Contract

Contract Number: FQ18119
July 11th, 2018

Attachments to supplement the Agreement Form are included for the Bidder's information and use in the event Bidder is awarded the Contract. They are not required to be submitted with the Bid.

KNOW ALL PERSONS BY THESE PRESENTS,

That _____
Insert names of all venturers of the joint venture

constituting all of the venturers of the joint venture known as

Insert name of the joint venture

which is desirous of entering into a contract with the

Washington Metropolitan Area Transit Authority,

do hereby designate and appoint

Insert name of appointed venturer

one of the venturers hereinafter called the "Managing Sponsor," as their true and lawful attorney with the power, on their behalf and in the name and on behalf of the joint venture, to represent and bind the undersigned and the joint venture in all matters in connection with Contract, to make, execute, seal, and deliver on behalf of the joint venture and as its act and deed, any and all contracts, change orders, monthly and final payments certificates, and other like instruments. The undersigned specifically acknowledge and agree that the execution of such Bid or Contract by the Managing Sponsor shall constitute the agreement of each venturer to be jointly and severally liable for any and all of the duties and obligations of the joint venture arising such Bid or Contract.

IN WITNESS WHEREOF, the undersigned have executed this Power of Attorney

This _____ day of _____, 2017

Contractor Name:

Attest _____

By: _____

Contractor Name:

Attest _____

By: _____

Contractor Name:

Attest _____

By: _____

The undersigned, a _____
corporation, partnership, individual
under the laws of the State of _____, having principal office or
registered agent at _____
hereby nominates, constitutes and appoints _____
_____ with full power to act _____
alone or in conjunction
_____, on behalf of
with another person name of company

to make, execute, seal and deliver on its behalf as contractor and as its act and deed, any
and all contracts, change orders, monthly and final payment certificates and other like
instruments.

Such contracts, change orders, monthly and final payment certificates and other like
instruments shall be binding upon said company as fully and to all intents and purposes as
if such instruments had been duly executed and acknowledged and delivered by the
authorized officers of the company when duly executed, as indicated above, by either one
of the aforementioned persons.

Contractor

By:

Signature

Address

ATTEST: _____

Date

Attachment to Contract IFB FQ18119

Complete certification on reverse.

Washington Metropolitan Area Transit Authority
IFB No. FQ18119/ST

Contract Number: FQ18119
July 11th, 2018

Contractor Name:

Attest _____

By: _____

Contractor Name:

Attest _____

By: _____

Contractor Name:

Attest _____

By: _____

Washington Metropolitan Area Transit Authority
IFB No. FQ18119/ST
00550 Notice to Proceed (NTP)

Contract Number: FQ18119
July 11th, 2018

Section 00600 – Bonds and Certificates

This Section includes bond forms required to be submitted by the Contractor.

- A. Requirements: Within 10 Days after the prescribed forms are presented for signature to the Bidder to whom award is made, a written Contract and Attachments (Power of Attorney and Power of Execution) on the forms provided in Section 00500, Agreement, shall be executed and delivered to the Contracting Officer, together with a performance bond and payment bond if the Contract Price is \$100,000 or more, each with good and sufficient surety or sureties acceptable to the Authority. Corporations executing the bonds as sureties must be among those appearing on the U.S. Treasury Department's list of approved sureties and must be acting within the limitations set forth therein. The penal sums of such bonds shall be as follows:
1. Performance Bond: The penal sum of the performance bond shall equal 100 percent of the Contract Price.
 2. Payment Bond: The penal sum of the payment bond shall equal 100 percent of the Contract Price.
- B. Failure to Furnish: In the event the required bonds are not furnished as specified, the Contracting Officer may issue the Notice to Proceed, however, no payment will be made to the Contractor until the required bonds are furnished.

Washington Metropolitan Area Transit Authority
IFB No. FQ18119/ST
00611 Performance Bond

Contract Number: FQ18119
July 11th, 2018

BIDDER'S INFORMATION NOTICE: The following is included for the Bidder's information and use in the event Bidder is awarded the Contract. It is not required to be submitted with the Bid.

Contract Number: FQ18119

Date: _____

Penal Sum of Bond: \$_____

Date Bond Executed: _____

KNOW ALL PERSONS BY THESE PRESENTS, that we, the Principle and Surety(ies) hereto, are firmly bound to the Washington Metropolitan Area Transit Authority (hereinafter called the Authority) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally: Provided, that, where the Sureties and corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal entered into the Contract identified above:

NOW, THEREFORE, if the Principal shall perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term of said Contract and any extensions thereof that may be granted by the Authority, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety(ies) being hereby waived, then the above obligation shall be void and of no effect. Surety acknowledges Authority can advance the date of payments to Contractor, and by so doing the Surety remains liable under the terms of the bond.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this performance bond and have affixed their seals on the date set forth above.

Principals

1. Firm Name:	Corporate Seal
Firm Address:	

Signature & Title	
State of Incorporation:	
2. Firm Name:	Corporate Seal
Firm Address:	

Signature & Title	
State of Incorporation:	
3. Firm Name:	Corporate Seal
Firm Address:	

Signature & Title	
State of Incorporation:	

Corporate Surety(ies)

Surety A	Firm Name:	Liability Limit: \$	Corporate Seal
	Firm Address:		

	Signature & Title		
	State of Incorporation:		
Surety B	Firm Name:	Liability Limit: \$	Corporate Seal
	Firm Address:		

	Signature & Title		
	State of Incorporation:		
Surety C	Firm Name:	Liability Limit: \$	Corporate Seal
	Firm Address:		

	Signature & Title		
	State of Incorporation:		

Attach additional pages as needed.

Bond		
Premium	Total Premium	\$
Schedule		

Performance Bond Instructions

This form is authorized for use in connection with contracts for construction work or the furnishing of labor, materials, equipment, supplies, and services.

The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of this form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership or joint venture, or an officer of the corporation involved, evidence of their authority must be furnished.

Corporation executing the bond as sureties must be among those appearing on the Treasury Department's therein. Where more than a single corporate surety is involved, their names and addresses (city and State) shall be inserted in the spaces (Surety A, Surety B, etc.) headed "Corporate Surety(ies)".

Contract Number: FQ18119

Date: _____

Penal Sum of Bond: \$ _____

Date Bond Executed: _____

KNOW ALL MEN BY THESE PRESENTS, that we, the Principal and Surety(ies) hereto, are firmly bound to the Washington Metropolitan Area Transit Authority (hereinafter called the Authority) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally: Provided, that, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

THE CONDITION OF THIS OBLIGATION IS SUCH that, whereas the Principal entered into the Contract identified above:

NOW, THEREFORE, if the Principal shall promptly make payment to all claimants as hereinafter defined supplying services, labor, material, and/or equipment in the prosecution of the Work provided for in said Contract, and any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety(ies) being hereby waived, then the above obligation shall be void and of no effect, otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental of equipment directly applicable to the Contract.
2. The above-named Principal and Surety hereby jointly and severally agree with the Authority that every claimant as herein defined, who has not been paid in full before the expiration of a period of 90 Days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due the claimant, and have execution thereon. The Authority shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
 - a. Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to the Principal within 90 Days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal at any place where it maintains an office or conducts business, or its residence or such notice shall be served in any manner in which legal process may be served in the state or District of Columbia in which the aforesaid Project is located, save that such service need not be made by a public officer.
 - b. After the expiration of one year following the date of final settlement of said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

Washington Metropolitan Area Transit Authority
IFB No. FQ18119/ST

Contract Number: FQ18119
July 11th, 2018

- c. Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this payment bond and have affixed their seals on the date set forth above.

Principals

1. Firm Name:	Corporate Seal
Firm Address:	

Signature & Title	
State of Incorporation:	
2. Firm Name:	Corporate Seal
Firm Address:	

Signature & Title	
State of Incorporation:	
3. Firm Name:	Corporate Seal
Firm Address:	

Signature & Title	
State of Incorporation:	

Corporate Surety(ies)

Surety A	Firm Name:	Liability Limit: \$	Corporate Seal
	Firm Address:		

	Signature & Title		
	State of Incorporation:		
Surety B	Firm Name:	Liability Limit: \$	Corporate Seal
	Firm Address:		

	Signature & Title		
	State of Incorporation:		
Surety C	Firm Name:	Liability Limit: \$	Corporate Seal
	Firm Address:		

	Signature & Title		
	State of Incorporation:		

Attach additional pages as needed.

Payment Bond Instructions

1. This form is authorized for use in connection with contracts for construction work or the furnishing of labor, materials, equipment, supplies, and services.
2. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of this form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership or joint venture, or an officer of the corporation involved, evidence of their authority must be furnished.
3. Corporation executing the bond as sureties must be among those appearing on the Treasury Department's list of approved sureties and must be acting within the limitations set forth therein. Where more than a single corporate surety is involved, their names and addresses (city and State) shall be inserted in the spaces (Surety A, Surety B, etc.) headed "Corporate Surety(ies)".
4. Corporations executing the bond shall affix their corporate seals.
5. The name of each person signing this performance bond should be typed in the space provided.
6. The date this bond is executed must be later than the Contract execution date.

00613 Performance and Payment Bonds (Additional Bond Security)

If any surety upon any performance bond furnished in connection with this Contract becomes unacceptable to the Contracting Officer, or if any such surety fails to furnish reports as to its financial condition from time to time as requested by the Contracting Officer, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interest of the Authority and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

If any surety upon any payment bond furnished in connection with this Contract becomes unacceptable to the Contracting Officer, or if any such surety fails to furnish reports as to its financial condition from time to time as requested by the Contracting Officer, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interest of the Authority and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

- A. This Section provides an area for conforming the IFB Documents with required Affidavits and Certificates provided by the Contractor; i.e., Certificates of Acceptance, Application for Payment, Insurance, Compliance including ADAAG Design and Construction Compliance and Checklists, Substantial Completion, Acceptance, and Final Payment.
- B. Instructions: Insert here all required Certificates to conform to the Contract Documents.

Section 00700 – General Conditions

This Section includes a compilation of contractual and legal requirements that list the rights, responsibilities, and relationships of the parties to a Contract and defines duties and limits of authority for design professionals and construction management in performance of contract administration. This Section shall be read in conjunction with Section 00800, Supplementary Conditions, which specifies modifications to these General Conditions, and which will be cited using the same last 2 digits of the Section number; i.e., a modification to Section 00724 will be indicated as Section 00824.

00701 Definitions

- A. As used throughout the Contract Documents, the following terms shall have the meanings set forth below:
1. **Acceptance:** Acknowledgement by the Authority of full and satisfactory physical completion and commissioning of all Work including Punch List items, all in accordance with the Contract Documents.
 2. **Agreement:** The Authority's form titled "Construction Contract Form" in this Invitation for Bid (IFB) that, upon execution by the Contractor and the Authority, creates the Contract between the two parties.
 3. **Amendment:** Written or graphic instructions issued to clarify, revise, add, or delete IFB requirements that are issued before the execution of the Agreement.
 4. **Approval of a Submittal or any other item** shall be solely for the purpose of establishing conformance to the Contract Documents.
 5. **As-Built Drawings:** Drawings prepared by or through the Contractor, which reflect final as-built condition of the Project and includes all known changes to the Issued for Construction Drawings.
 6. **As-Built Specifications:** Those specifications prepared by or through the Contractor in CSI format to reflect final as-built information only and showing revisions for the Issued for Construction Specifications.
 7. **As shown, as indicated, as detailed or works of similar import:** Shall be understood to mean that the reference is made to the Solicitation Documents.
 8. **As specified, as described, or works of similar import:** Shall be understood to mean that the referenced is made to the Solicitation Documents.
 9. **Authority:** The Washington Metropolitan Area Transit Authority, created effective February 20, 1967, by Interstate Compact by and between Maryland, Virginia, and the District of Columbia, pursuant to Public Law 89-774, approved November 6, 1966.
 10. **Basis of Design:** The Solicitation Documents that shall be used by the Contractor for the preparation of the Issued for Construction Specifications and Drawings.
 11. **Board of Directors:** The Board of Directors of the Washington Metropolitan Area Transit Authority.
 12. **Claim:** A written demand or assertion by the Contractor seeking, as a legal right, the payment of money, adjustment or interpretation of Contract terms, or other relief, arising under or relating to this Contract.
 13. **Contract:** The written Agreement between the Authority and the Contractor covering the Work as set forth in the Contract Documents.
 14. **Contract Documents:** The documents consist of the IFB Documents, all Amendments issued before the effective date of the Agreement, and all Modifications issued after the effective date of the Contract; the Notice to Proceed; including the Contractor's Price and Technical Proposal, as finally accepted by the Authority.
 15. **Contracting Officer:** An employee with authority duly delegated from the powers of the Chief Procurement Officer to legally bind the Authority by signing a contractual instrument. The Contracting Officer is the Authority's primary point of contact for pre-award administration, Modifications above the limits of the Contracting Officer Representative, and Final Settlement.

16. Contracting Officer Representative: The person to whom the Contracting Officer delegates the authority and responsibility for post award execution of the Contract. The Contracting Officer Representative is the Authority's primary point of contact with the Contractor.
17. Contract Price: The amount payable to the Contractor under the terms and conditions of the Contract based on lump sum prices, unit prices, fixed prices or combination thereof, with adjustments made in accordance with the Contract.
18. Day: Calendar day except where the term work day or like term is used.
19. Contractor: The individual, partnership, firm, corporation, or other business entity that is contractually obligated to the Authority to furnish, through itself or others, the construction services described in the Contract, including all incidentals which are necessary to complete the Work in accordance with the Contract.
20. Designer: The individual, partnership, firm, corporation or other business entity that is either the Contractor, or employed or retained by the Contractor, to manage and perform the design services for the Project.
21. Design Drawings: Not Used.
22. Design Specifications: Not Used.
23. Equivalent: Equal or better quality and performance to that specified in the IFB Documents.
24. Final Payment: The last payment made to the Contractor following Acceptance of the Work. For full description, refer to Section 00755, FINAL PAYMENT.
25. General Conditions: A compilation of contractual and legal requirements that lists the rights, responsibilities, and relationships of the parties to a contract and defines duties and limits of authority for design professionals and construction management in performance of contract administration.
26. General Requirements: A compilation of the conditions and performance requirements (Division 1) peculiar to the specific contract that govern the execution of the design and construction work.
27. Industry Standards: Drawings, documents, and specifications or portions thereof published by industry organizations. Industry Standards are not Contract Documents unless specifically listed as such in a WMATA Standard Specification or WMATA Guide Specification.
28. Issued for Construction Drawings/Specifications: Not Used.
29. Jurisdictional Authority: Refers to Federal, State and local authorities or agencies having approval authority over work to which reference is made.
30. Legal Requirements: All federal, state and local laws, ordinances, rules, orders, decrees, and regulatory requirements such as: building codes, mechanical codes, electrical codes, fire codes, Americans with Disabilities Act Accessibility Guidelines (ADAAG) regulations and other regulations of any government or quasi-government entity that are applicable to the Project.
31. Milestone: A specified date in the Contract by which the Contractor is required to complete a designated portion or segment of the Work
32. Modification: A written document issued pursuant to Section 00748, CHANGES, which alters the scope of the Work, the Schedule, the Contract Price, the Period of Performance, or makes any other change to the Contract after award or execution of the Contract.

33. Notice to Proceed: Written notice issued by the Authority establishing the date on which the Contractor may commence Work and directing the Contractor to proceed with all or a portion of the Work.
34. Operations Readiness Date (ORD): The date upon which WMATA certifies that the system and equipment are complete and capable of supporting revenue rail service.
35. Option: A unilateral right in the Contract by which, for a specified time, the Authority may elect to purchase, at a predetermined price specified in the Contract, additional equipment, supplies, services, or work called for by the Contract.
36. Period of Performance: The time allotted in the Contract Documents for required work to be completed in accordance with the Contract completion of the Work. The Period of Performance begins upon the effective date of the Notice to Proceed and ends on the date of Acceptance. Period of Performance incorporates the Milestones established for the Contract.
37. Product Data: Information furnished by the Contractor to describe materials used for some portion of the Work, such as written or printed descriptions, illustrations, standard schedules, performance charts, instructions, brochures, and diagrams.
38. Project: The design and construction of the facility described in the IFB Documents.
39. Project Schedule: The time allotted in the contract to complete the work without assessment of Liquidated Damages without the Authority's written extension of the work completion date.
40. Bid: The written bid of a Bidder submitted to the Authority as required by the IFB.
41. Bidder: The prospective Bidder who submits Bids to perform the Work of the Contract.
42. Punch List: Work that remains to be completed after Substantial Completion. This Work must be completed as a condition of Final Completion and Acceptance.
43. Request for Information (RFI): The document by which the Bidders request clarification, verification, or information concerning a portion of the IFB or the Work.
44. IFB (Invitation for Bid) Documents: The documents as defined in Section 00301, INVITATION FOR BID (IFB) DOCUMENTS.
45. IFB Drawings: The drawings as defined in Section 00304, CONTRACT DRAWINGS.
46. Shop Drawings: Not Used.
47. Similar: Generally the same but not necessarily identical; details shall be worked out in relation to location and relation to other parts of the Work.
48. Site: The areas that are occupied by or used by the Contractor and Subcontractors during performance of the construction of the Project as indicated in the IFB Documents.
49. Subcontract: Any Contract between the Contractor and a Subcontractor, or between Subcontractors of any tier, to perform a portion of the Work.
50. Subcontractor: An individual, firm, partnership, or corporation that has a contractual obligation with the Contractor or other Subcontractor or Supplier.
51. Submittal: Written or graphic document or Sample prepared for the Work by the Contractor or a Subcontractor or Supplier and submitted to the Authority by the Contractor, including Shop Drawings, Product Data, Samples, certificates, schedules of material, or other data.

52. Substantial Completion: Work or a portion thereof that has progressed to the point where it is sufficiently complete in accordance with the Contract Documents (including receipt of test and inspection reports) so that the Work, or a specified portion thereof, can be utilized for the purpose for which it is intended, and only incidental work remains for physical completion of the Work in accordance with the Contract Documents.
53. Substitution: An item offered by the Contractor of significant difference in material, equipment, or configuration, which functionally meets the requirements of the IFB Documents but is submitted in lieu of item specified therein.
54. Supplementary Conditions: The term Supplementary Conditions means modifications to the General Conditions for requirements unique to a specific project.
55. Supplier: A Subcontractor who is a manufacturer, fabricator, supplier, distributor, or vendor having a contract with the Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work of the Contractor or any Subcontractor.
56. Utility: A public and private facility or installation, other than a WMATA system facility, which relates to (1) the conveyance and supply of water, sewage, gas, chemicals, steam, petroleum products, and other piped installations, or (2) electrical energy, telephone, telegraph communications, radio, television, and cellular or wireless communications.
57. Utility Standards: Drawings and specifications for Utilities published or issued by municipalities or Utility companies.
58. WMATA CAD Manual: Document that establishes drafting criteria for drawings and electronic files that provide templates for drawing/plotter configuration to Proposers and Bidders.
59. WMATA Manual of Design Criteria: Document that outlines the design criteria and process requirements that must be followed for the submittal of project information to WMATA, and measures that are required when constructing a project in the vicinity of, or impacting WMATA systems and facilities.
60. WMATA Safety Manual: A compilation of the appropriate safety and reporting requirements for the project as specified in Section 00340, WMATA Safety and Security Requirements.
61. WMATA Safety and Security Certification Program Plan: A compilation of the appropriate System safety and security certification requirements for the Project.
62. WMATA Standard Drawings: The drawings as defined in Section 00304, Contract Drawings.
63. WMATA Standard Specifications: The specifications as defined in Section 00303, Contract Specifications.
64. Work: All design and construction services, including supervision, quality control and quality assurance, labor, materials, machinery, equipment, tools, supplies and facilities required to complete the Project, or the various separately identifiable parts thereof including but not limited to Safety, Security, System Safety Certification and Commissioning requirements, in accordance with the terms of the Contract.
65. Working Drawings: Plans prepared by the Contractor for temporary structures such as decking, temporary bulkheads, support of excavation, support of utilities, groundwater control systems, and forming and false-work; for underpinning; and for such other work as may be required for construction but which do not become an integral part of the completed project as specified in Section 01330, Submittal Procedures.

00702 Order of Precedence

- A. Any inconsistency in this invitation or Contract shall be resolved by giving precedence in the following order:
1. Contract Modifications (only) in Section 00904, AMENDMENTS AND MODIFICATIONS.
 2. The Agreement Form and Attachments in Section 00500, AGREEMENT, Section 00600, BONDS AND CERTIFICATES, and Amendments (only) in Section 00900, AMENDMENTS AND MODIFICATIONS.
 3. Representations and Certifications in Section 00451, REPRESENTATIONS AND CERTIFICATIONS FORM.
 4. Supplementary Conditions in Section 00800, SUPPLEMENTARY CONDITIONS.
 5. General Conditions in Section 00700, GENERAL CONDITIONS.
 6. General Requirements - Division 1.
 7. Project Specific Documents – IFB Drawings, Reports and Studies.
 8. WMATA's Manual of Design Criteria
 9. WMATA's Standard Specifications
 10. WMATA's Standard Drawings.
 11. Issued "For Construction" Specifications.
 12. Issued "For Construction" Drawings.
- B. In the event of a conflict within, between, or among the above listed order of precedence, the more stringent requirement shall apply. In addition, in the event this Contract is funded in whole or in part through funding provided by a Federal agency, such as the Federal Transit Administration (FTA), United States Department of Transportation (USDOT), Department of Homeland Security (DHS), etc., all contract terms mandated for inclusion by said federal agency shall be deemed to supersede any other conflicting or inconsistent provision of the Contract Documents, as applicable.

00703 General Requirements, Drawings, and Specifications

- A. During the construction of the Project, the Contractor shall keep at the jobsite a copy of the Contract Documents. The Contractor shall at all times give the Contracting Officer Representative access thereto.
- B. The Sections of Division 1, General Requirements, and procedures shall govern the execution of the Work of the Contract.
- C. Anything mentioned in the Contract Specifications and not shown on the Contract Drawings, or shown on the Contract Drawings and not mentioned in the Contract Specifications, shall be of like effect as if shown or mentioned in both.
- D. In case of discrepancy between the Contract Specifications and Contract Drawings, the Contract Specifications shall govern. In case of discrepancy among the figures within the Contract Drawings, the matter shall be promptly submitted in writing to the Contracting Officer Representative in accordance with Section 01330, Submittal Procedures, who will promptly make a determination in writing. Notification of conflicts among the requirements and criteria either indicated in the Contract Specifications, Contract Drawings, or required by local, State, or Federal jurisdictions or Utilities, that affect the scope, cost, or quality of the Work, shall be promptly submitted in writing to the Contracting Officer Representative for a written determination in accordance with Section 01330, Submittal Procedures. Any adjustment by the Contractor without such a determination shall be at the Contractor's own risk and expense.
- E. Wherever in the Specifications the imperative form is used such as the words "directed," "ordered," "designated," "prescribed," or words of like import, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription" of the Contracting Officer Representative is intended, and similarly the words "approved," "acceptable," "satisfactory," or words of like import, shall mean "approved by," "acceptable to," or "satisfactory to" the Contracting Officer Representative.
- F. Should it appear that the Work to be performed is not sufficiently detailed or explained in the Contract Documents, then the Contractor shall promptly apply to the Contracting Officer Representative in writing in accordance with Section 01330, Submittal Procedures, for such written explanations as may be necessary and shall conform to the explanation provided. The Contractor shall promptly notify the Contracting Officer Representative in accordance with Section 01330, Submittal Procedures, of all errors, omissions, inconsistencies, or other defects including inaccuracies, which it may discover in the Contract Documents, and shall provide options to the Contracting Officer Representative to remedy such errors, omissions, or other defects, and shall obtain in writing from the Contracting Officer Representative specific instruction regarding any such error, omission, or defect before proceeding with the design work affected thereby. Omission of details of the Work from the Contract Documents or the mis-description of details of work, which are necessary to carry out the intent of the Contract Documents, or which are customarily preformed, shall not relieve the Contractor from performing such omitted work, no matter how extensive, or mis-described details of the Work, and they shall be performed as if fully and correctly set forth and described in the Contract Documents, without entitlement to a Modification hereunder.

00704 Intent of Contract

- A. The Contractor shall, upon execution of this Contract and receipt of the Notice to Proceed (NTP), perform all work as defined herein to complete the Project as described in this Contract.
- B. It is the intent of the Contract Documents to describe a functionally complete Project to be constructed in accordance with the Contract Documents. All work, materials, or equipment that may reasonably be inferred from the Contract Documents, from prevailing custom, or from trade usage as being required to produce the intended results will be furnished and performed whether or not specifically called for. Unless otherwise defined in the Contract, when words or phrases having a well-known technical, construction industry, or trade meaning are used to describe work, labor, services, materials, tools, or equipment, such words or phrases shall be interpreted in accordance with that meaning.
- C. The Contractor accepts the relationship of trust and confidence established between it and the Authority by the Contract. The Contractor agrees to furnish the architectural, engineering, and construction services set forth herein, and agrees to furnish efficient business administration and superintendence, including quality control and quality assurance, and use its best efforts to complete the Project in the best and soundest way and in the most expeditious and economical manner consistent with the requirements of the Contract Documents.
- D. The Contractor shall be responsible for performing or furnishing construction services and related services and require its Subcontractors to perform the services in accordance with the best general practice as specified in Section 01111, Key Contractor Staff. Only new materials and workmanship of best standard quality shall be used. Unless otherwise specified, the Contractor shall furnish all work, services, labor, materials, tools, equipment, and incidentals, which are necessary to complete the Work in a proper, substantial, and workmanlike manner in accordance with the Contract Documents.
- E. Nothing contained in these Contract Documents shall create a contractual relationship between the Authority and any party other than the Contractor. However, it is understood and agreed that the Authority is an intended third party beneficiary of all contracts for design, engineering, or construction services and all such Subcontracts, purchase orders, and other agreements between the Contractor and third parties related to those services. The Contractor shall incorporate the obligations of this Contract into its respective Subcontracts, supply agreements, and purchase orders.

00705 Legal Requirements

- A. The Contractor shall perform the Work in accordance with all Legal Requirements including but not limited to Section 01420, References, and in Section 00706, Permits and Responsibilities. The Contract Price and Period of Performance will be adjusted to compensate the Contractor for the effects of changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work. Such effects may include, without limitation, revisions the Contractor is required to make to the Contract Documents because of changes in Legal Requirements.
- B. The Contractor's failure to construct the Work in conformance with all applicable Legal Requirements in force as of the Notice to Proceed shall not be the basis for a change to either the Contract Price or Period of Performance. The Contractor shall remedy all such failures construct the Work in conformance with all such Legal Requirements at its own expense.
- C. The Contractor shall be responsible for remaining informed of all changes in the Legal Requirements that may occur after the Notice to Proceed and shall perform the Work in accordance with such changed Legal Requirements.

00706 Permits and Responsibilities

- A. The Contractor shall, without additional expense to the Authority, be responsible for obtaining necessary licenses, permits not provided by the Authority, and easements and for complying with applicable International, Federal, State, local, or municipal laws, codes, or regulations in connection with the prosecution of the Work.
- B. The Contractor shall be responsible for understanding the requirements, review, and approval processes of the Project's related governmental and regulatory agencies. The Contractor acknowledges that governmental and regulatory agencies may require a significant amount of time to review, process, and approve permit applications. Consequently, the Contractor's Project Schedule shall include adequate time to address review of permits, and even then adjustments to the Contractor's work plan may be needed due to the actual requirements, review, processing, and inspection times.
- C. The Contractor further recognizes the necessity to schedule permit-related inspections well in advance and make all reasonable accommodation necessary to facilitate said inspections so as to avoid delay in progressing or completing the Work. Any delay resulting from the Contractor's failure or tardiness in scheduling permit-related inspections of any kind will not be a basis for a delay Claim.
- D. For delays in obtaining the necessary permits, which exceed scheduled durations, are beyond the control and without the fault or negligence of the Contractor and will result in a delay of the commencement of work, the Contractor may be granted an extension of time for the performance of the Contract corresponding to the delay, provided the Contractor notifies the Contracting Officer Representative immediately upon first encountering the delay. The Contractor shall keep the Contracting Officer Representative informed as to the estimated length of the requested delay.
- E. The Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence or that of its Subcontractors or anyone directly or indirectly employed by the Contractor, or anyone for whose acts the Contractor may be liable, subject to an allocation or proportion of any such liability, loss, cost, or expense if caused in part by a party indemnified hereunder. The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and work performed until completion and Acceptance of the entire Work, except for any completed unit of construction thereof, which theretofore may have been accepted in writing by the Authority.

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00707 Not Used

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00708 Requirements for Professional Registration

All architecture, engineering, and other design services rendered by or through the Contractor under this Contract shall be accomplished, reviewed, and approved by Designers licensed to practice in the particular professional field involved in the jurisdiction in which the Project being designed will be constructed. The Contractor shall comply with local laws regarding the licensing of design firms and personnel providing services for the Project.

00709 Project Management and Superintendence and Key Staff

- A. The Contractor shall provide project management and direct superintendence of the Work.
- B. The Contractor shall provide personnel for the positions specifically identified by the Authority in this Contract as required Key Staff, and for any other positions the Contractor deems necessary for the successful execution during performance of the Work. Also, see Section 01111, Contractor Key Staff, for responsibilities of key personnel. All positions shall be filled by competent personnel satisfactory to the Contracting Officer Representative. Each position shall be held by a separate full-time employee unless otherwise specifically approved by the Authority. Individuals holding these, or any key position, shall not be changed without permission of the Contracting Officer Representative. The Contractor shall acquire written Authority approval for substitutions of key personnel as specified in Section 01111, Contractor Key Staff. The Contractor shall provide the Authority with all information as may be reasonably requested regarding substitutions and proposed substitutions. The substitutions and proposed substitutions shall share similar or better qualities than the personnel being substituted. The Authority shall be entitled to satisfactory performance of all services described in this Contract, and the Contractor shall promptly remove from the Project any employee or other person performing services hereunder in an unsatisfactory manner.
- C. The Contractor shall present, as specified in Section 00725, Commencing the Work, and Section 01111, Contractor Key Staff, credentials of the Key Staff to the Contracting Officer Representative for the Contracting Officer Representative's review and acceptance in accordance with Section 01330, Submittal Procedures.

00710 Work by Contractor

- A. The Contractor shall perform, with its own organization, work equivalent to at least the percentage specified in Section 00810, Work by Contractor, for the construction work.
- B. The percentage shall be determined by the dollar value of the construction work done by its own organization in comparison to total value of construction work in the Contract. The cost of the work performed by skilled and unskilled labor carried on the Contractor's own payroll, together with the cost of materials installed, may be included in the above percentage. The Contractor's markup for overhead and profit on work performed by Subcontractors shall not be included in determining the percentage.
- C. If, during the progress of the Work, the Contractor requests a reduction in such percentage, and if the Contracting Officer Representative determines that it would be to the Authority's advantage, the Contracting Officer Representative may approve such a reduction at its sole discretion.

00711 Subcontractor Agreements

- A. After Contract award, the Contractor will be required to submit copies of a conformed and signed Subcontract agreements with all Subcontractors to be used on the Contract to the Contracting Officer or designee with the price deleted. The terms of payment shall be in conformance with Section 00744, Method of Payment. The Divisions or Sections of the Specifications are not intended to control the Contractor in dividing the Work among Subcontractors or to limit the Work performed by a trade.
1. The Contractor shall not enter into Subcontracts totaling in amount more than the percentage of the total Contract Price permissible under Section 00710, Work by Contractor, without the written permission of the Contracting Officer.
 2. No Subcontractor will be permitted to perform work at the Site until the Subcontractor, or the Contractor, in compliance with the provisions of Section 00777, Indemnification and Insurance Requirements, has furnished satisfactory evidence of insurance as required.
 3. The Authority or its representatives will not undertake to settle any difference between the Contractor and its Subcontractor or between Subcontractors.

00712 Other Contracts

- A. The Authority may undertake or award other contracts for additional work, and the Contractor shall fully cooperate with such other contractors and Authority employees and carefully fit its own work to such additional work as may be directed by the Contracting Officer Representative. The Contractor shall not commit or permit any act, which will interfere with the performance of work by any other contractor or by Authority employees.
- B. The Contractor shall conduct all work in a manner that will minimize interference with the operations of other contractors and Authority employees, if any, involved in the performance of related work. All work shall be brought to a stage of completion that will conform to the Contract Documents.

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00713 Confidentiality

The Contractor or its Subcontractors shall not divulge any confidential information, which is so designated by the Authority to Contractor or its Subcontractors or acquired in the course of performance of the Work under this Contract.

00714 Conditions Affecting the Work

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work, and the general and local conditions, which can affect the Work or the cost thereof as described in Section 01711, Acceptance of Conditions. Any failure by the Contractor to do so will not relieve the Contractor from responsibility for successfully performing work without additional expense to the Authority. The Authority assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations are expressly stated in the Contract.

00715 Site Investigation

The Contractor acknowledges that it has investigated and satisfied itself as to the conditions affecting the Work including, but not restricted to, those bearing upon transportation, disposal, handling, and storage of materials; availability of labor, water, electric power, and roads; and uncertainties of weather, river stages, tides, or similar physical conditions at the Site, the conformation and conditions of the ground, and the character of equipment and facilities needed preliminary to and during prosecution of the Work as described in Section 01711, Acceptance of Conditions. The Contractor further acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Site, including all exploratory work done by the Authority, as well as from information provided by the Authority and made a part of this Contract, the character and extent of existing work within or adjacent thereto, and any other work being performed thereon at the time of the submission of its Bid as described in Section 01711, Acceptance of Conditions. Nothing in this requirement shall be construed as being determinative of the character, scope, or extent of the Work required under this Contract. Any failure by the Contractor to acquaint itself with the available information will not relieve it from responsibility for estimating properly the difficulty or cost of successfully performing the Work. The Authority assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the Authority.

00716 Preconstruction Inspection

- A. Conditional inspection of buildings or structures in the immediate vicinity of the Project, which may reasonably be expected to be affected by the Work, will be performed by and be the responsibility of the Contractor.
- B. Prior to beginning excavation or any other work, the Contractor shall inform the Authority of buildings or structures on which it intends to perform work or which performance of the Work will affect.
- C. The Authority shall be provided sufficient notice of this inspection and afforded an opportunity to participate in the inspection. The Contractor shall submit for Approval the preconstruction inspection records as specified in Section 01711, Acceptance of Conditions, to the Authority prior to beginning work.

00717 Differing Site Conditions

- A. The Contractor shall promptly, and before such conditions are disturbed, notify in writing as described in Section 01711, Acceptance of Conditions, the Contracting Officer, through the Contracting Officer Representative, of subsurface or latent physical conditions at the Site differing materially from those indicated in this Contract or unknown physical conditions at the Site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for this Contract .
- B. The Contracting Officer Representative will promptly investigate the conditions, and if the Contracting Officer Representative finds that such conditions do materially so differ and cause an increase or decrease, in the Contractor's cost of, or the time required for, performance of any part of the Work under this Contract, whether or not changed as a result of such conditions, an equitable adjustment will be made and the Contract modified in writing accordingly.
- C. No claim of the Contractor under this Section will be allowed unless the Contractor has given the notice required in Paragraph A above; provided, however, the time prescribed therefore may be extended by the Contracting Officer Representative.
- D. No claim by the Contractor for an equitable adjustment hereunder will be allowed if asserted after Final Payment under this Contract.

00718 Role of the Authority

- A. The character and extent of the Work to be performed by the Contractor shall be subject to the general oversight and general approval of the Authority.
- B. The Authority will not supervise, direct, or have control over, or be responsible for, the Contractor's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incidental to the Work, or for any failure of the Contractor to comply with Legal Requirements as specified in Section 00705, Legal Requirements. The Authority will not be responsible for the Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.

00719 Authority Reviews

- A. The Authority will review information submitted by the Contractor, furnish required information and required approvals, and render decisions pertaining thereto, all in a timely manner in order to facilitate the orderly progress of the Work in cooperation with the Contractor and in accordance with the planning, scheduling, and budgetary requirements and constraints of the Project.
- B. The Authority will review and Approve Submittals solely for the purpose of establishing their conformance to the Contract Documents. Such review and Approval shall not be deemed to transfer any liability from the Contractor to the Authority.
- C. The Authority will review and Approve identified construction Submittals solely to determine if the items covered by the Submittal will, after installation or incorporation in the construction, conform to the requirements set forth in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Construction Submittals requiring Authority review and Approval are specified in Contract Specifications. Construction Submittals not so specified shall be submitted to the Authority for information only. The Authority's review and Approval of construction Submittals will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by these Contract Documents) or to safety precautions or programs incidental thereto. The Authority's Approval will be general and shall not be construed as: (1) permitting any departure from the Contract Documents; (2) relieving the Contractor of the responsibility for any errors including details, dimensions, and materials; or, (3) approving departures from details furnished by the Contractor or the Authority except as otherwise specified.
- D. The Authority reserves the right to review Submittals and to disapprove any Submittal when, in its sole judgment, the Submittal deviates from the requirements of the Contract Documents and compromises the integrity of the construction element. The Authority's review, Approval, or acceptance of any Submittal required under this Contract shall not be construed to operate as a waiver of the Contractor's responsibility for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, construction, and other services provided by the Contractor under this Contract.
- E. For the Authority's procedures for reviewing and approving Submittals, refer to Section 01330, Submittal Procedures, and Section 01775, Closeout.

00720 Submittals

- A. The Contractor shall submit for review and approval a preliminary Schedule of Required Submittals, as described in Section 01330, Submittal Procedures, that the Authority reserves the right to review and Approve, and the times for submitting, reviewing, and processing each Submittal.
- B. The Contractor shall maintain a Contract Document Submittal Log as described in Section 01330, Submittal Procedures, to show the status of all Submittals. The submittal log and all Approved Submittals shall be kept at the Project Site and shall at all times be made available for Authority inspection. Approved Submittals and certificates shall be turned over to the Authority at the completion of the Project as part of the Project records in accordance with Section 01775, Closeout.
- C. The Authority will, in a timely manner, review and Approve those Submittals that it deems necessary and as described in Section 01330, Submittal Procedures, and Section 01775 Closeout, during the construction and closeout of the Project. The Authority's review of Submittals shall be solely for the purposes stated in Section 00719, Authority Reviews. The Authority's review and Approval of separate items, as such, will not indicate Approval of the assembly in which the item functions. The Contractor shall make corrections to Submittals as required and shall return corrected copy for additional review and Approval.
- D. The Authority's review and Approval of any Submittal that it deems necessary to review and Approve will not relieve the Contractor from responsibility for any variations from the requirements of the Contract Documents unless the Contractor has in writing called the Authority's attention to each such variation at the time of submission in the Submittal letter of transmittal, and the Authority has given written Approval of each such variation by specific written notation thereof incorporated in or accompanying the Submittal.
- E. Where a Submittal is required by the Contract Documents, any related work provided prior to the appropriate review and Approval of a Submittal shall be at the sole risk, expense, and responsibility of Contractor.

00721 Value Engineering Incentive

- A. This Section applies to those Value Engineering Change Proposals (VECPs), which are initiated and developed by the Contractor during the performance of the Contract to modify requirements of this Contract. In order to be accepted under this Section, each VECP shall:
1. Be identified by the Contractor at the time of submittal to the Contracting Officer Representative as submitted pursuant to this Section using the prescribed Authority VECP Proposal form;
 2. Require a significant change to this Contract;
 3. Decrease the Contract Price;
 4. Maintain the Contract requirements such as safety, service life, reliability, economy of operation, ease of maintenance, and necessary standardized and architectural features of the facility or system;
 5. Not require an unacceptable extension of original Period of Performance; and
 6. Be reviewed and evaluated by way of a two-phase process.
- B. Phase One - Conditional Approval: In addition to the use of the Authority VECP Proposal form, all VECPs the Contractor submits shall be in sufficient detail to clearly define the proposed change including the following items:
1. A description of the difference between the existing and the proposed Contract requirements and the comparative advantages and disadvantages of each;
 2. Contract requirements recommended by the Contractor to be changed;
 3. Separate detailed cost estimates for both the basic Contract requirement and the proposed change, and an estimate of the change in Contract Price including an accounting of the costs of development and implementation and Authority review of the VECP and the sharing arrangement as set forth in the following Paragraph E;
 4. A statement from the Contractor predicting all effects the proposed VECP will have on the life-cycle cost of the Work to include and identify separately the cost for increased or decreased maintenance and operations;
 5. A statement of the time by which the proposal must be accepted so as to obtain the maximum price reduction affect and not delay the original Period of Performance. The time required for VECP review shall be considered and included in this statement and in a separate bar chart;
 6. A list of codes and the Authority standards applicable to the work to be carried out by the VECP and a statement that the proposed VECP will be in compliance with the requirements set forth in listed codes and standards;
 7. The identification of a project where the materials, methods of construction, and special equipment where required, and have been previously and successfully performed on construction similar to that which is being proposed for implementation on this Contract;
 8. Preliminary architectural and engineering analysis, including calculations and 11 x 17 inch drawings in sufficient detail for each requirement of the Contract, which must be changed if the VECP is accepted, with recommendations for accomplishing each change and its affect on unchanged work.
- C. The Contracting Officer Representative may at any time during the two-phase review and evaluation process reject part or all of the VECP by giving the Contractor written notice thereof. Until final approval is issued, the

Contractor shall remain obligated to perform in accordance with the terms of the original Contract. VECPs will be processed expeditiously, however, the Authority shall not be liable for any delay in acting upon any proposal submitted pursuant to this Section. The decision of the Contracting Officer Representative about acceptance or rejection of any such proposal shall be final and shall not be subject to Section 00730, Dispute Resolution.

1. The Contractor has the right to withdraw part or all of the VECP at any time prior to acceptance or rejection by the Authority. Such withdrawal shall be made in writing to the Contracting Officer through the Contracting Officer Representative. If the Contractor desires to withdraw the proposal, it shall be liable for the cost incurred by the Authority in reviewing the proposal.
- D. Upon notice of conditional approval of the concept of the VECP, the Contractor shall proceed with final VECP design in accordance with the agreed schedule.
- E. Phase Two - Final Approval: Final Approval of the VECP by the Authority will be contingent upon the following items:
1. The Contractor shall address, to the Authority's satisfaction, all design issues and review comments and submit the VECP to the Authority for Approval.
 2. An equitable adjustment in the Contract Price and appropriate changes in all other affected provisions of the Contract shall be made, and the Contract will be modified in accordance with Section 00748, Changes, or other applicable Sections of this Contract.
 3. The net savings resulting from the change shall be shared between the Contractor and the Authority on the basis of 50 percent for the Contractor and 50 percent for the Authority. Net savings shall be determined by deducting from the estimated gross savings, the Contractor's costs of developing and implementing the proposal, including any amount attributable to a Subcontractor and the estimated amount of increased costs to the Authority resulting from the change, such as costs for review, implementation, inspection, related items, and Authority-furnished property. Estimated gross savings shall include Contractor's labor, material, equipment, overhead, profit, and bond. The Contract Price shall be reduced by the sum of the Authority's costs and share of the net savings.
 4. The Contractor is entitled to share in instant contract savings only, to the full extent provided for in this Section. For purposes of sharing, the term 'instant contract' shall not include any supplemental agreements to or other Modifications of this Contract, executed subsequent to acceptance of the particular VECP, by which the Authority increases the quantity of any item or adds any item.
 5. Notwithstanding any review, Approval, or acceptance of any VECP by the Authority, the Contractor agrees to be liable to the Authority for all costs of any kind whatsoever caused by or resulting from any error, omission, deficiency, negligence, or combination thereof, of any kind in the design, drawings, or specifications submitted to the Authority in connection with any VECP proposal under this Contract. The rights and remedies of the Authority provided in this Section are in addition to any other rights or remedies provided by law or under this Contract.
- F. The Contractor shall use its best efforts to include Value Engineering arrangements in any Subcontract, which in its judgment, appears to offer sufficient value engineering potential.
- G. A VECP identical to one submitted under any other contract, by this or any other contractor, may also be submitted under this Contract.
- H. The Contractor may restrict the Authority's right to use any VECP data by marking it with the following statement:
1. "This data, furnished pursuant to the Value Engineering Incentive Section of this Contract, shall not be duplicated, used, or disclosed, in whole or in part, for any purpose except to evaluate the VECP, unless

the proposal is accepted by the Authority. This restriction does not limit the Authority's right to use information contained in this data if it is or has been obtained, or is otherwise available, from the Contractor or from other source, without limitations. When this proposal is accepted by the Authority, the Authority shall have the right to duplicate, use, and disclose any data in any manner and for any purpose whatsoever, and have others do so whether under this or any other Authority contract."

00722 Quality Assurance / Quality Control

- A. The Contractor shall be responsible for conducting an ongoing Quality Plan as described in Section 01470, Quality Management System, during the entire term of the Contract based on the approved detailed Quality Plan. The purpose of the Quality Plan is to effectively and economically ensure technical quality in deliverables and construction of the Work, thus reducing the potential for:
1. Adverse construction schedule and cost impacts;
 2. Personal and public safety problems and incidents and their attendant costs;
 3. Those operational and maintenance problems, disruptions, and costs that result from design errors and omissions;
 4. Poor construction quality, and
 5. Deliverables and completed work, which do not comply with applicable codes and regulations.
- B. Submit for Approval in accordance with Section 01330, Submittal Procedures, all required quality Submittals as specified in Section 01470, Quality Management System.
- C. An effective Quality Program is fundamental to all work performed by the Contractor and will be considered by the Authority in assessing the Contractor's progress, performance, and earnings entitlement.

00723 Progress Schedule and Requirements for Maintaining Progress Records

- A. Progress Schedules. Prepare and submit to the Contracting Officer Representative for Approval schedules showing the order in which the Contractor proposes to carry on the Work, the dates on which it will start the several major features of the Work, including procurement of materials, plant, and equipment, and the contemplated dates for completing the same for construction. The schedules shall be in a form acceptable to the Authority, and as described in Section 01322, Contract Progress Reporting, and shall be in such detail that, in conjunction with the progress reports hereinafter required, the Authority will be able to chart the status and progress of the Work while it is being performed. If actual progress deviates from the schedule, update the schedule to show the accurate progress. Failure to comply with the terms of this Section may affect the processing of progress payment requests submitted by the Contractor as provided for in this Contract.
- B. If, in the opinion of the Contracting Officer Representative, the Contractor falls significantly behind the Approved progress schedule for construction, take any and all steps necessary to improve the progress of the Work. In this event, without cost to the Authority, the Contracting Officer Representative may require the Contractor to submit for Approval supplemental progress schedules detailing the specific operational changes to be instituted to regain the Approved schedule. Additionally, the Contracting Officer Representative may require the Contractor to increase the number of shifts, initiate or increase overtime operations, increase days of work in the work week, or increase the amount of construction plant. Such requirements by the Authority shall not be construed or interpreted in such a way as to infer that the Authority is in any way responsible for the means, methods, or sequencing of the Work. The additional cost of such requirements shall be borne solely by the Contractor.
- C. Failure of the Contractor to comply with the requirements of the Contracting Officer Representative under this Section shall be grounds for determination that the Contractor is not prosecuting the Work with such diligence as will ensure completion within the time specified. Upon such determination, the Authority may terminate the Contractor's right to proceed with the Work, or any separate part thereof, in accordance with Section 00727, Termination for Default, Damages for Delay, and Time Extensions.

00724 Project Schedule

- A. Perform, complete, and advance all work under this Contract in accordance with the schedule set out in Section 00824, Project Schedule.
- B. The Authority may modify the Contract, pursuant to Section 00748, Changes, to extend the Project Schedule as often and in periods as deemed necessary until completion of the Work under this Contract.
- C. Early Completion: If the Contractor submits a schedule or expresses an intention to complete the Work earlier than any required milestone, interim, or final completion date, the Authority shall not be liable for any costs incurred because of delay or hindrance should the Contractor be unable to complete the Work before such milestone, interim, or final completion date. The duties, obligations, and warranties of the Authority to the Contractor shall be consistent with and applicable only to the completion of the Work and completion dates set forth in this Contract.

00725 Commencing the Work

- A. Commence the Work within 10 Days after the date of receipt of the Notice to Proceed (NTP) and prosecute the Work diligently to complete it within the time specified in the Contract to meet all specified interim milestone dates.
- B. A Pre-Construction Conference attended by the Authority and the Contractor and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules, procedures for handling Submittals, processing Applications for Payment, maintaining required records, quality control, and other matters. For a more complete agenda, refer to Section 01312, Project Meetings.
- C. The following items require approval prior to commencement of construction activities, or offsite fabrication associated with the Project. Submit in accordance with Section 01330, Submittal Procedures:
 - 1. Executed Contract as specified in Section 00521, Construction Contract FORM, with Power of Attorney as specified in Section 00541, Power Of Attorney, and Power of Execution as specified in Section 00542, Power Of Execution; Required Performance Bond as specified in Section 00611, Performance Bond, and Payment Bond, as specified in Section 00612, Payment Bond; Insurance Certificates as specified in Section 00777 and Section 00877, Indemnification And Insurance Requirements, within 10 Days after Award of Contract.
 - 2. Major Subcontractors and Key Project Personnel Confirmation as specified in Section 00709, Project Management and Superintendence and Key Personnel, and Section 01111, Contractor Key Staff, within 10 Days after Award of Contract.

00726 Suspension of Work

- A. The Authority may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period as it may determine to be appropriate for the convenience of the Authority.
- B. If the performance of all or any part of the Work is, for an unreasonable period, suspended, delayed, or interrupted by an act of the Contracting Officer or other delegated Contracting Officer's Representative in the administration of this Contract, or by its failure to act within the time specified in this Contract, or if no time is specified, within a reasonable time, an adjustment will be made for any increase in the cost of performance of this Contract, excluding profit, necessarily caused by such unreasonable suspension, delay, or interruption and the Contract modified in writing accordingly. However, no adjustment will be made under this Section for any suspension, delay, or interruption to the extent:
 - 1. that performance would have been so suspended, delayed, or interrupted by any other cause including the fault or negligence of the Contractor, or
 - 2. for which an equitable adjustment is provided for or excluded under any other provision of this Contract.
- C. No Claim under this Section will be allowed:
 - 1. For any costs incurred more than 20 Days before the Contractor shall have notified the Contracting Officer or other delegated Contracting Officer's Representative in writing of the act or failure to act involved, but this requirement will not apply as to a Claim resulting from a suspension order, and
 - 2. Unless the Claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but no later than the date of Final Payment under this Contract.
- D. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of Section 00730, Dispute Resolution.

00727 Termination for Default, Damages for Delay, and Time Extensions

- A. The Contractor shall be in default if it breaches any of its obligations under this Contract deemed material by the Contracting Officer, including, but not limited to it the Contractor refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, or fails to complete said Work within such time. In addition to those instances specifically referred to in this Contract, the Contractor shall be in default in the following circumstances:
1. It fails to begin, or abandons, the work of the Contract in accordance with Contractual requirements;
 2. If fails to deliver the supplies or perform the services within the time specified in the Contract or any extension approved by the Contracting Officer;
 3. It fails to make progress in a manner deemed unreasonable by the Contracting Officer so as to endanger performance of the Contract; or
 4. IN the view of the Contracting Officer, the Contractor is willfully violating this Contract or is not executing it reasonably and in good faith.
- B. In the event of the Contractor's material breach pursuant to paragraph a. above, the Contracting Officer is authorized to direct a written notice to the Contractor, specifying the nature of the breach and stating that the Contractor has ten (10) days (or such additional time as the Contracting Officer authorizes, to cure the breach ("Notice to Cure"). If the Contractor fails to cure the breach in the time specified in the Notice to Cure, the Authority shall terminate the Contract, in whole or designated part, for default in accordance with the provisions of this Contract, by a written "Notice of Default" to the Contractor.
- C. Upon receipt of a "Notice of Default," the Contractor shall immediately cease performance of the work so terminated. The Authority shall have the right to take any action necessary to complete the work, including performing the work itself, or contracting with another party to do so. In the event the work is completed directly by the Authority or by a third party, the Contractor shall be liable for the additional costs and expenses necessary to complete the work, including, without limitation, labor, material costs, plant costs, tooling expenses, equipment costs, and property costs. The Authority may deduct the costs and expenses so charged from any monies otherwise payable to the Contractor. Nothing contained herein shall be deemed to relieve the Contractor of its continuing obligation to perform any portion of the Contract that was not terminated.
- D. The Authority may, in its sole discretion, waive a default by the Contractor, but such waiver shall not be deemed a waiver of any subsequent default.
- E. Upon any termination for default, the Authority may require the Contractor to transfer title and deliver to the Authority, as directed by the Contracting Officer (1) any completed or partially completed Supplies, and (2) , components (including data and intellectual property) and contract rights that the Contractor has specifically produced or acquired for the terminated portion of this Contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Authority may have an interest.
- F. Upon any termination for default, the Authority shall pay for supplies or services accepted in accordance with this Contract. The Authority may also compensate the Contractor for any actions it reasonably takes at the Contracting Officer's direction, for the protection and preservation of property. The Authority may withhold from these amounts, any sum that the Contracting Officer determines to be necessary to protect the Authority against loss because of outstanding or claimed liens, or pending or anticipated claims under the Contract.
- G. If, at any time following the Authority's issuance of a termination for default hereunder, it is determined that the Contractor was not in default or that the default was excusable, the termination shall thereupon be

converted to a termination for convenience and the rights and obligations of the parties shall be determined in accordance with the "Termination for Convenience" clause of this Contract.

- H. Any dispute with respect to any issue arising under this clause shall be subject to adjudication in accordance with the "Disputes" clause of this Contract. In no event shall the Authority's issuance of a "Notice to Cure" pursuant to paragraph (b) be the basis of a dispute pursuant this Contract or otherwise. The pendency of any dispute shall not constitute a basis for the delay of, or otherwise affect, the Authority's right to proceed in accordance with this clause, including without limitation, its right to complete the work, or the Contractor's obligation to complete any portion of the work that was not terminated.
- I. The rights and remedies of the Authority in this clause are in addition to any other rights and remedies provided under this Contract, at law or in equity.
- J. The Contracting Officer may, by written notice to the Contractor, terminate its right to proceed with the Work or such part of the Work as to which there has been delay. In such event, the Contracting Officer may take over the Work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the Work such design product, materials, appliances, plant, and other work product as may be on the Site of the Work and necessary therefore, all of which shall become the property of the Authority. Whether or not the Contractor's right to proceed with the Work is terminated, the Contractor and its sureties shall be liable for all damage to the Authority resulting from its refusal or failure to complete the Work in the specified time.
- K. If fixed and agreed liquidated damages are provided in the Contract, and if the Contracting Officer so terminates the Contractor's right to proceed, the resulting damage shall consist of such liquidated damages until such reasonable time as may be required for final completion of the Work together with any increased costs occasioned the Authority in completing the Work.
- L. If fixed and agreed liquidated damages are provided in the Contract, and if the Contracting Officer does not so terminate the Contractor's right to proceed, the resulting damage shall consist of such liquidated damages until the Work is completed or accepted. Even if the Contracting Officer does not terminate the contract, liquidated damages may be assessed daily for any delay, until the work is accepted.
- M. The Contractor's right to proceed shall not be so terminated or the Contractor charged with resulting damage under the following circumstances:
 - 1. If the delay in the completion of the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the Authority in its contractual capacity, acts of another contractor in the performance of a contract with the Authority, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of Subcontractors or Suppliers at any tier arising from causes other than normal weather beyond the control and without the fault or negligence of both the Contractor and such Subcontractors or Suppliers.
 - a. Unusually severe weather conditions:
 - 1) Pursuant to Paragraph M.1 above, the Authority will use the following table as the basis for determining allowable time extensions to the Contract for unusually severe weather conditions and the impact of such weather at the construction Site.
 - 2) The column below labeled "Working Days" represents working-day delays, which may be expected in each month named within the Washington Metropolitan Area, based on a 5-day work week:

Month	Working Days
January	4
February	4
March	4
April	5
May	5
June	2
July	2
August	3
September	2
October	3
November	4
December	4

- 3) Time extensions for weather delays during a given month will be allowed only for actual working days in excess of the numbers listed above and only when those excess days of delay affect the current critical path(s) leading to specified Contract completion or milestone dates.

b. Authority Operations and Emergencies:

- 1) The possibility exists that access to work may be impeded or that interruption to the work may occur, both scheduled and unscheduled, at the Authority's convenience, or specific direction, for operational or emergency reasons during contract performance ("delays from authority operations and emergencies"). It is the intent of this clause to ease the administration of delays from authority operations and emergencies.
- 2) Allowable time extensions to the contract for delays from Authority operations and emergencies shall be determined as follows:
 - i. There shall be no allowable time extension nor equitable adjustment for any delay from Authority operations and emergencies causing work stoppage of less than 15 minutes.
 - ii. The contractor shall immediately bring to the AR's attention any delay from authority operations and emergencies causing continuous work stoppage of 15 minutes or more. Any delay from authority operations and emergencies not brought to the AR's attention on the day of the delay or the following work day will not be recognized.
 - iii. If the contractor and AR agree that a delay in part (b) (2) has delayed the completion of the work, the delay shall be considered a recognized delay.
 - iv. The contractor shall submit to the AR on a weekly basis a report of recognized delays occurring during the previous week, as a precondition to the Authority considering any claim for delays from authority operations and emergencies.
 - v. Upon the contractor submitting a claim for delays from authority operations and emergencies, the AR shall grant a non-compensable time extension of one day for any working day in which the contractor accumulates 60 or more minutes of timely submitted recognized delays, unless granting the time extension would result in providing the contractor with more than a one day time extension relating to any working day. Simultaneously, the AR shall respond to the contractor's claim, if any, for costs associated with any working day in which the contractor accumulates 60 or more minutes of timely submitted recognized delays.
2. If, after notice of termination of the Contractor's right to proceed under the provisions of this Section, it is determined for any reason that the Contractor was not in default under the provisions of this Section, or that the delay was excusable under the provisions of this Section, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 00728, Termination for Convenience of the Authority.

3. The rights and remedies of the Authority provided in this Section are in addition to any other rights and remedies provided by law or under this Contract.

00728 Termination for the Convenience of the Authority

- A. The Authority may terminate this Contract in whole or, from time to time, in part, for the convenience of the Authority. The performance of work under this Contract may be terminated by the Authority in accordance with this subsection, in whole, or from time to time in part, whenever the Contracting Officer determines that such termination is in the best interest of the Authority. Any such termination will be effected by delivery to the Contractor of a Notice of Termination specifying the nature, extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.
- B. After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:
1. Immediately stop work under the Contract on the date and to the extent specified in the Notice of Termination;
 2. Complete performance of the work not terminated;
 3. Place no further orders or Subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
 4. Terminate all orders and Subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
 5. Assign to the Authority, in the manner, at the times, and to the extent directed by the Contracting Officer, all of its rights, title, and interest under the orders and Subcontracts so terminated, in which case the Contracting Officer shall have the right to settle or authorize payments on any or all Claims arising out of the termination of such orders and Subcontracts;
 6. Settle all outstanding liabilities and all Claims arising out of such termination of orders and Subcontracts, with the approval or ratification of the Contracting Officer, to the extent he or she may require, which approval or ratification shall be final for all the purposes of this Section;
 7. Transfer title and deliver the following to the Authority in the manner, at the times, and to the extent, if any, directed by the Contracting Officer:
 - a. The fabricated or un-fabricated parts, work in process, completed work, supplies, and other material procured as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination.
 - b. The completed or partially completed plans, drawings, information and other property that would have been required to be furnished to the Authority, if the Contract had been completed.
 8. Use best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in Paragraph B.7 above, provided, however, that the Contractor:
 - a. Will not be required to extend credit to any purchaser, and
 - b. May acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Authority to the Contractor under this Contract or shall otherwise be credited to the price or cost of the Work covered by this Contract or paid in such other manner as the Contracting Officer may direct.
 9. Complete performance of such part of the Work as shall not have been terminated by the Notice of Termination; and

10. Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Contract, which is in the possession of the Contractor and in which the Authority has or may acquire an interest.
- C. After receipt of a Notice of Termination, submit to the Contracting Officer through the Contracting Officer Representative its termination Claim in the form and with certification prescribed by the Contracting Officer. Such Claim shall be submitted promptly but in no event later than 1 year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such 1-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, the Contracting Officer may receive and act upon any such termination Claim at any time after such 1-year period or any extension thereof. Upon failure of the Contractor to submit its termination Claim within the time allowed, the Contracting Officer may determine, on the basis of information available to the Contracting Officer, the amount, if any, due to the Contractor by reason of the termination and shall thereupon authorize payment to the Contractor the amount so determined.
 - D. Subject to the provisions of Paragraph C above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this Section, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract Price as reduced by the amount of payments otherwise made and as further reduced by the Contract Price of work not terminated. The foregoing notwithstanding, the Contracting Officer will not allow anticipated profit on services not performed by the Contractor.
 - E. The Contract shall be amended accordingly, and the Contractor will be paid the agreed amount. Nothing in Paragraph F below, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Section, will be deemed to limit, restrict, or otherwise determine or affect the amount or amounts, which may be agreed upon to be paid to the Contractor pursuant to Section 00728.
 - F. In the event of the failure of the Contractor and the Contracting Officer to agree, as provided in Paragraph D above, upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Section, the Contracting Officer will authorize payment to the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed upon in accordance with Paragraph D:
 1. With respect to all Contract Work performed prior to the effective date of the Notice of Termination, the total, without duplication of any items, of the following:
 - a. The cost of such Work;
 - b. The cost of settling and paying Claims arising out of the termination of work under Subcontracts or orders as provided in Paragraph B above, exclusive of the amount paid or payable on account of supplies or materials delivered or services furnished by the Subcontractors or Suppliers prior to the effective date of Notice of Termination of work under this Contract, which amounts shall be included in the cost on account of which payment is made under Paragraph D above; and
 - c. A sum, as profit on Paragraph D above, determined by the Contracting Officer pursuant to Section 49.202 of the Federal Acquisition Regulation (FAR), in effect on the date of this Contract, and determined to be fair and reasonable, provided, however, that the Contracting Officer allows no anticipated profit on design services not performed by the Contractor, and, further, if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit will be included or allowed, and an appropriate adjustment will be made reducing the amount of the settlement to reflect the indicated rate of loss; and

2. The reasonable cost of the preservation and protection of property incurred pursuant to Paragraph B.10 above; and any other reasonable cost incidental to termination of work under this Contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this Contract.
- G. The total sum to be paid to the Contractor under Paragraph F above shall not exceed the total Contract Price as reduced by the amount of payments made and as further reduced by the Contract Price of work not terminated. Except for normal spoilage, and except to the extent that the Contracting Officer shall have otherwise expressly assumed the risk of loss, there will be excluded from the amounts payable to the Contractor under this Section 00728, Termination for the Convenience of the Authority, the fair value, as determined by the Contracting Officer, of property, which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Authority, or to a buyer pursuant to Paragraph B above.
- H. The cost principles and procedures of FAR Part 31 effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this clause, except that the Authority shall not be obligated to pay interest, however represented, on any claimed costs.
- I. The Contractor shall have the right of appeal, under Section 00730, Dispute Resolution, from any determination made by the Contracting Officer under Paragraphs C or E above, except that if the Contractor has failed to Submit its Claim within the time provided in Paragraph C above and has failed to request extension of such time, it shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under Paragraphs C or E above, the Authority will pay to the Contractor the following:
1. If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer; or
 2. If an appeal has been taken, the amount finally determined on such appeal.
- J. In determining any amount due to the Contractor under this Section, the following will be deducted:
1. All un-liquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this Contract.
 2. Any claim, which the Authority may have against the Contractor in connection with this Contract.
 3. The agreed price for, or the proceeds from sale of any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this Section, and not otherwise recovered by or credited to the Authority.
- K. If the termination hereunder is partial, prior to the settlement of the terminated portion of this Contract, the Contractor may file with the Contracting Officer, a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract, i.e., the portion not terminated by the Notice of Termination, and such equitable adjustment as may be agreed upon shall be made in such price or prices in accordance with Section 01330, Submittal Procedures. Such proposal shall be submitted within ninety (90) days from the effective date of termination, unless the Contracting Officer extends it in writing, and shall be accompanied by appropriate supporting documentation.
- L. The Authority may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Section, such excess shall be payable by the Contractor to the Authority upon demand for the period from the date such excess payment is received by the Contractor to the date on which such excess payment is repaid to the Authority upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess

payment is received by the Contractor to the date on which such excess payment is repaid to the Authority; provided, however, that no interest shall be charged with respect to any such excess, payment attributable to a reduction or other disposition of termination inventory until 10 Days after date of such retention or disposition, or such later date as determined by the Contracting Officer.

- M. Unless otherwise provided for in this Contract, or by applicable statute, the Contractor, and all subcontractors, from the effective date of termination and for a period of three (3) years after final settlement under this Contract, shall preserve and make available to the Authority at all reasonable times at the office of the Contractor but without direct charge to the Authority, all its books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the Work terminated hereunder, or to the extent determined by the Contracting Officer, photographs, microphotographs, or other authentic reproduction thereof. The Contractor shall make these records and documents available to the Authority, its governing jurisdictions and any other federal, state, or local entities providing funding for this Contract, and to the Comptroller General of the United States, or the agents or representatives of any of them, at the Contractor's office, at all reasonable times, without any direct charge.

00729 Assignment

- A. The Contractor shall not transfer or assign this Agreement or any portion thereof or any of the rights and obligations of the Contract to any other party. The Contracting Officer may recognize a third party as successor in interest to the Contract where the third party's interest is incidental to the transfer of all the assets of the Contractor, i.e., sales of assets, transfer of assets pursuant to merger or consolidation, or incorporation of a proprietorship or partnership. Such recognition of the transfer shall be within the sole discretion of the Authority after review of the facts and circumstances surrounding each request submitted in accordance with Section 01330, Submittal Procedures, but the assignment will not be approved unless the surety, in writing, agrees to that assignment and accepts the assignee as the Contractor and principal on the payment and performance bonds.
- B. If this Contract provides for payments aggregating \$1,000 or more, Claims for moneys due or to become due the Contractor from the Authority, this Contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Notice of such assignment shall be made to the Contracting Officer and submitted through the Contracting Officer Representative in accordance with Section 01330, Submittal Procedures, but the assignment will not be approved unless the surety, in writing, agrees to that assignment and accepts the assignee as the Contractor and principal on the payment and performance bonds. Such assignment or reassignment shall cover all amounts payable under this Contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made one party as agent or trustee for two or more parties participating in such financing. It is the Authority's intent to recognize assignments only to bona fide lending institutions; therefore, assignment to any private corporation, business, or individual, which does not qualify as such, is specifically prohibited.
- C. Any attempt to transfer by assignment not authorized by this Section shall constitute a breach of the Contract, and the Contracting Officer may for such cause terminate the right of the Contractor to proceed as provided in Section 00726, Termination for Default, Damages for Delay and Time Extensions, and the Contractor and its sureties shall be liable to the Authority for excess costs incurred by the Authority.

00730 Dispute Resolution

- A. Except as otherwise provided in this Contract, any dispute arising under or related to this Contract including allegations of breach of contract or similar allegations, which are not disposed of by agreement, will be decided by the Contracting Officer, who will reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer is final and conclusive unless, within 30 Days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written notice of appeal in accordance with Section 01330, Submittal Procedures, addressed to the Authority Board of Directors. Such notice shall indicate that an appeal is intended and shall reference the decision and Contract number. The decision of the Board of Directors or its duly authorized representative for the determination of such appeals shall be final and conclusive unless in proceedings initiated by either party for review of such decision in a court of competent jurisdiction, the court determines the decision to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or is not supported by substantial evidence. In connection with any appeal proceeding under this Section, the Contractor will be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Contracting Officer's decision. The Armed Services Board of Contract Appeals is the authorized representative of the Board of Directors for finally deciding appeals to the same extent as could the Board of Directors.
- B. This Section does not preclude consideration of questions of law in connection with decisions provided for in Paragraph A above. Nothing in this Contract, however, shall be construed as making final the decisions of the Board of Directors or its representative on a question of law.

00731 Use and Possession prior to Completion

The Authority shall have the right to take possession of or use any completed or partially completed part of the work. Such possession or use shall not be deemed an acceptance of any work not completed in accordance with the Contract. While the Authority is in such possession, the Contractor, notwithstanding the provisions of Section 00706, Permits and Responsibilities, will be relieved of the responsibility for loss or damage to the Work other than that resulting from the Contractor's fault or negligence or that of its Subcontractors or agents. If such prior possession or use by the Authority delays the progress of the Work or causes additional expense to the Contractor, an equitable adjustment in the Contract Price or the time of completion will be made and the Contract shall be modified in writing accordingly.

00732 Acceptance and Inspection of Work

- A. "Acceptance," as used in this Section, means the act of the Contracting Officer Representative by which the Authority approves specific services as partial or complete performance of the Contract. As used in this Section, "Correction" means the elimination of a defect.
- B. Unless otherwise provided in this Contract, Acceptance by the Authority will be made as promptly as practicable after completion and inspection of all Work required by this Contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards to the Authority's right under any warranty or guarantee. All Punch List items identified during final inspections and noted at the time of Acceptance shall be corrected by the Contractor as soon as is practicable as specified in Section 01775, Closeout.
- C. The Contracting Officer Representative will give written notices of defects or non-conformances to the Contractor if and when discovered, but no later than Acceptance of the construction work designed under this Contract as specified in Section 01775, Closeout, except for latent defects, which may be discovered following such Acceptance. This notice will state either:
1. That the Contractor shall correct or re-perform defective or nonconforming services; or,
 2. That the Authority does not require correction or re-performance. The Contractor shall be liable to the Authority for all costs incurred of any kind caused by or resulting from the Contractor's defective workmanship or noncompliance with the Contract Documents.
- D. Should it be considered necessary or advisable by the Contractor or Authority at any time before Acceptance of the entire Work to make an examination of work already completed, by removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect, the Contractor shall defray all the expenses of such examination and of satisfactory reconstruction and pay all delay damages. If, however, such work is found to meet the requirements of the Contract Documents, an equitable adjustment will be made in the Contract Price to compensate the Contractor for the additional services involved in such examination and reconstruction and, if completion of the Work has been delayed thereby, the Contractor will, in addition, be granted a suitable extension of time.
- E. All Work, which term includes but is not restricted to materials, workmanship, and manufacture and fabrication of components, shall be subject to inspection and test by the Authority, if it so deems, at all reasonable times prior to Acceptance as specified in Section 01470, Quality Management System, and Section 01820, Demonstration and Training. Any such inspection and testing is for the sole benefit of the Authority and shall not relieve the Contractor of the responsibility of providing quality control measures to ensure that the Work strictly complies with the Contract Documents. No inspection or test by the Authority shall be construed as constituting or implying Acceptance. Inspection or testing shall not relieve the Contractor of responsibility for damage to or loss of the material prior to Acceptance, or in any way affect the continuing rights of the Authority after Acceptance of the completed Work.
- F. The Contractor shall furnish promptly, without additional charge, all services, work, labor, materials, tools, equipment, and facilities reasonably needed for performing such safe and convenient inspections and tests as may be required. All inspections and tests will be performed in such manner as not to unnecessarily delay the Work. The Authority shall receive adequate advance notice submitted in accordance with Section 01330, Submittal Procedures, to conduct inspections and witness all tests as part of its overall quality oversight of the Project as specified in Section 01470, Quality Management System, and Section 01820, Demonstration And Training. Tests performed that the Authority does not witness, due to the Contractor's failure to provide timely notice to the Authority of such tests, shall have no effect. Special, full scale and performance tests shall be performed as described in the Contract Documents.
- G. If the Contractor is required to correct or re-perform, it shall be without additional cost or fee to the Authority, and services corrected or re-performed by the Contractor shall be subject to this Section to the same extent

as work initially performed. If the Contractor fails or refuses to correct or revise errors or deficiencies in its performance within 30 Days of the Authority's request, the Authority may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost incurred by the Authority thereby, or make an equitable adjustment to the Contract Price.

- H. Failure to agree to the responsibility for costs, either those incurred by the Contractor or by the Authority, for corrective actions required by this Section, shall constitute a dispute and shall be subject to the provisions of Section 00730, Dispute Resolution.
- I. The rights and remedies of the Authority provided in this Section are in addition to any other rights or remedies provided by law or under this Contract.
- J. The Contractor shall give the Contracting Officer Representative at least 14 Days advance notice of the date the Work, or separate portion thereof, will be fully completed and ready for final inspection, testing, and Acceptance as specified in Section 01470, Quality Management System, Section 01775, Closeout, and Section 01820, Demonstration and Training.

00733 Authority-Furnished Property

- A. The Authority will make available to the Contractor, for use only in connection with this Contract, the property, if any, described in the Section 00833, Authority-Furnished Property, hereinafter referred to as Authority-furnished property, at the times and locations stated therein. If the Authority-furnished property, suitable for its intended use, is not made available to the Contractor, the Contracting Officer will, upon timely written request from the Contractor to the Contracting Officer Representative, if the facts warrant such action, equitably adjust any affected provision of this Contract pursuant to any procedures of Section 00748, Changes.
- B. Title to Authority-furnished property shall remain with the Authority. The Contractor shall maintain adequate property control records of Authority-furnished property in accordance with sound industrial practice.
- C. Unless otherwise provided in this Contract, the Contractor, upon acceptance of Authority-furnished property, assumes the risk of and shall be responsible for loss thereof or damage thereto except for reasonable wear and tear and except to the extent that such property is consumed in the performance of this Contract.
- D. The Contractor shall, upon completion of this Contract, prepare for shipment, deliver FOB origin, or dispose of all Authority-furnished property not consumed in the performance of this Contract or not theretofore delivered to the Authority as directed. The net proceeds of such disposal will be credited to the Contractor price or paid in such other manner as may be directed.

00734 Material, Workmanship, and Equipment

- A. Unless otherwise specifically provided in this Contract, all equipment, material, and articles incorporated in the Project covered by this Contract shall be new and of the most suitable grade for the purpose intended. Notwithstanding the Authority's review and Approval of any substitution, nothing herein relieves the Contractor of its obligations to satisfy its requirements under the Contract.
- B. Unless otherwise specifically provided in this Contract, reference to any equipment, material, or article to be incorporated in the Project and any patented process, by trade name, make, or catalog number in the Contract Documents shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and the Contractor may, at its option, use any equipment, material, article, or process which, in the judgment of the Authority, is equal to that named. When required by this Contract or when called for by the Authority, the Contractor shall furnish to the Authority for Approval in accordance with Section 01330, Submittal Procedures, the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature, and rating of the machinery and mechanical and other equipment, which the Contractor contemplates incorporating in the Work. The Contractor shall furnish the Authority for Approval in accordance with Section 01330, Submittal Procedures, full information concerning the material or articles, which are contemplated to be incorporated into the Work. When required by the Contract or when so directed by the Authority, Samples shall be submitted for approval in accordance with Section 01330, Submittal Procedures, at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles installed or used without required Approval shall be at the risk of subsequent rejection.
- C. The Contractor shall provide construction equipment in first class working order and safe condition, of sufficient quantities and sizes to complete the Work as specified and detailed in the Contract Documents within the Period of Performance, and shall provide adequate maintenance of this equipment throughout the duration of the Project.
- D. Items of equipment that, at any time, prove ineffectual or hazardous to personnel or property, shall be promptly brought to acceptable condition or shall be removed from the Site as directed by the Authority or by any Jurisdictional Authority.

00735 Hazardous Materials

The Authority will be responsible for the presence of and any associated consequences of asbestos, PCBs, petroleum, and other hazardous waste or like materials and radioactive materials (Hazardous Materials) on the Project if such presence is unknown, unexpected, or not identified in information provided by the Authority, or not otherwise known to the Contractor prior to the preparation of its Bid. The Contractor shall, upon encountering or recognizing such Hazardous Materials, immediately stop work in the affected area and report the condition to the Contracting Officer Representative in writing. The Contractor shall submit a hazardous material report in accordance with Section 01330, Submittal Procedures. The Authority shall have no responsibility or liability for any Hazardous Material that is brought to the Project or handled by the Contractor or any Subcontractor.

00736 Protection of Existing Vegetation, Structures, Utilities, and Improvements

- A. The Contractor shall preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the Site of the Work, which is not to be removed and which does not unreasonably interfere with the Work. Care shall be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place. The Contractor shall be obligated to replace or restore all existing vegetation that is destroyed, removed, or damaged in the performance of the Work to the condition that existed before work commenced.
- B. The Contractor shall protect from damage all adjacent property including, but not limited to, land, existing structures, improvements, and utilities at or near the Site of the Work and shall repair or restore damage to such facilities resulting from failure to comply with the requirements of this Contract or the failure to exercise reasonable care in the performance of the Work. If the Contractor fails or refuses to repair any such damage promptly, the Contracting Officer Representative may have the necessary work performed and charge the cost thereof to the Contractor.
- C. Protection is more fully described in Section 01723, Protection of Adjacent Construction.

00737 Operations and Storage Areas

- A. All operations of the Contractor, including storage of materials, shall be confined to areas authorized or approved by the Contracting Officer Representative. Temporary buildings such as storage sheds, shops, and offices may be erected by the Contractor only with the Approval of the Contracting Officer Representative and shall be built with labor and materials furnished by the Contractor without expense to the Authority. Such temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon the completion of the Work. With the written consent of the Contracting Officer Representative, such buildings and utilities may be abandoned and need not be removed. Temporary construction facilities are more fully described in Section 01520, Temporary Construction Facilities.

- B. The Contractor shall, under regulations prescribed by the Contracting Officer Representative, use only established roadways or construct and use such temporary roadways as may be authorized by the Contracting Officer Representative. Where materials are transported in the prosecution of the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, protection against damage shall be provided by the Contractor, and damaged roads, curbs, or sidewalks shall be repaired by or at the expense of the Contractor.

00738 Accident Prevention

- A. To provide safety controls for protection to the life and health of employees and other persons, for prevention of damage to property, materials, supplies, equipment, and for avoidance of work interruptions in the performance of this Contract, the Contractor shall comply with all pertinent provisions of Authority safety requirements as specified in Section 01114, Safety/Environmental Requirements, and shall also take or cause to be taken such additional measures as the Contracting Officer Representative may determine to be reasonably necessary for that purpose.
- B. All construction work under this Contract shall be performed in a skillful and workmanlike manner. The Contracting Officer Representative may, in writing, require the Contractor to remove from the Project any employee the Contracting Officer Representative deems to be incompetent, careless, or objectionable on other reasonable grounds related to the advancement of the Project.
- C. The Contractor shall maintain an accurate record of and shall report to the Contracting Officer Representative in the manner and on the forms prescribed by the Contracting Officer Representative in accordance with Section 01330, Submittal Procedures, exposure data and all accidents resulting in death, traumatic injury, occupational disease, and damage to property, materials, supplies, and equipment incidental to work performed under this Contract immediately after of such incident.
- D. The Contracting Officer Representative will notify the Contractor of noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the Contractor or its representative at the Site of the Work, shall be deemed sufficient for the purpose. If the Contractor fails or refuses to comply promptly, the Contracting Officer Representative may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of Claim for extension of time or for excess costs or damages by the Contractor.
- E. Compliance with the provisions of this Section by Subcontractors shall be the responsibility of the Contractor.
- F. Prior to commencement of the Work, the Contractor shall:
 - 1. Submit in writing in accordance with Section 01330, Submittal Procedures, proposals for effectuating this provision for accident prevention;
 - 2. Meet in conference in accordance with Section 01312, Project Meetings, with the Authority to discuss and develop mutual understanding relative to administration of the overall safety program.

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00739 Fire Protection Equipment and Life Safety Agreement

The Contractor shall submit, in accordance with Section 01330, Submittal Procedures, a plan for a temporary fire protection system with provisions for fire protection systems and equipment as specified in Section 01114, Safety/Environmental Requirements, for use during the term of the Contract.

00740 Protection of Persons and Property

The Contractor shall be responsible for ensuring compliance with the most stringent provisions of the applicable occupational safety and health statutes and regulations of the District of Columbia, State of Maryland, Commonwealth of Virginia, or political subdivision in which the Work is being performed and the Department of Labor OSHA standards. The Contractor shall comply with the approved Organizational Health and Safety Program as specified in Section 01114, Safety/Environmental Requirements, which is to be submitted by the Contractor prior to commencement of construction work in accordance with Section 01330, Submittal Procedures. Further, the Contractor shall ensure that all methods of performing the Work do not involve danger to the personnel employed thereon, the public, or private property, whether or not these methods are cited or indicated in the Contract Documents. Should charges of violation of any of the above be issued to the Contractor in the course of the Work, a copy of each charge shall be immediately forwarded to the Contracting Officer Representative. The Contractor shall promptly notify the Authority of all damage to property of the Authority or others and of injuries sustained by any persons, of which the Contractor becomes aware, including but not limited to, employees of the Contractor, in any manner relating directly or indirectly to the Work or otherwise to this Contract.

00741 Consideration and Basis of Payment

- A. In consideration of its undertaking under this Contract, the Contractor will be paid the sums set forth in this Contract, which shall constitute complete payment for all work and services required to be performed under this Contract and for all expenditures, which may be made and expenses incurred. The basis of payment will be the Contract Price, as shown on Section 00521, Construction Contract Form, and which shall constitute complete compensation for performance of all work required by the Contract.
- B. The Approved Monthly Progress Report and updated 90-Day Schedule as specified in Section 01322, Contract Progress Reporting, and the Approved Quality Manager's Statement of Compliance Quality Certification for Payment Verification shall be the basis for progress payments to the Contractor.
- C. The basis of payment will be the Total Base Price as negotiated and accepted. The basis of payment will include any Options exercised and any Modifications to the Contract in addition to the Total Base Price, which shall constitute complete compensation for performance of all Work required by the Contract.

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00742 Contract Prices and Bid Schedule

Payment for the various Bid items listed in the Bid Schedule shall constitute full compensation for furnishing all plant, labor, equipment, appliances, and material and for performing all operations required to complete the Work in conformity with the Contract Documents. All costs for work not specifically mentioned in the Bid Schedule shall be included in the Contract prices for the items listed.

00743 Variation in Estimated Quantities

Where the quantity of a pay item in this Contract is an estimated quantity provided by the Authority, and where the actual quantity of such pay item varies more than 25 percent above or below the estimated quantity stated in this Contract, an equitable adjustment in the Contract Price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 125 percent or below 75 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contracting Officer Representative will, upon receipt of a written request submitted in accordance with Section 01330, Submittal Procedures, for an extension of time within 10 Days from the beginning of such delay, or within such further period of time, which may be granted by the Contracting Officer Representative prior to the date of Final Payment of the Contract, ascertain the facts and make such adjustment for extending the Period of Performance as in the Contracting Officer Representative's judgment the findings justify.

00744 Method of Payment

- A. The Authority will make progress payments monthly as the Work proceeds on estimates approved by the Contracting Officer Representative for design related work and by estimates reviewed and approved by the Contracting Officer Representative for construction-related work. At least 5 Days before submission of any Application for Payment, a Preliminary Monthly Progress and Quality Status Report Review meeting will be held to review for acceptability of the schedules and the Quality System. The Contractor shall have an additional 5 Days to make corrections and adjustments and to complete and resubmit the schedules. A Formal Progress and Quality Status Report Review meeting will be held to approve the schedules. No progress payment will be made to Contractor until the schedules are provided and accepted by the Contracting Officer Representative, whose acceptance will not be unreasonably withheld. The progress schedule shall be acceptable to Authority as providing an orderly progression of the Work to completion within any specified Milestones and the Period of Performance, but acceptance of the progress schedule shall neither impose on Authority responsibility for the sequencing, scheduling, or work progress nor interfere with or relieve the Contractor from Contractor's full responsibility for the Work. The format and structure of the progress schedule shall be as set forth in Section 01322, Contract Progress Reporting. The Authority's acceptance shall not be deemed to confirm that the schedule is a reasonable plan for performing the Work.
- B. The Contractor's progress payment requests will be reviewed based on the scheduled and actual progress of the Work as reflected on the construction schedule, cost-loaded progress schedule or bar graph as applicable, and monthly updates. The Contractor shall not be entitled to progress payments, and the Authority shall have no obligation to review or approve progress payment requests if the Contractor has failed to submit or update the schedules, if the applicable schedule or update submitted by the Contractor fails to accurately reflect the actual progress of the Work, or if the Contracting Officer Representative declines to approve the submitted schedules for any of the reasons stated in this Contract. A decision not to approve a request for progress payments based upon the Contractor's failure to comply with the schedule and update submission requirements as committed under this Contract shall be at the sole and absolute discretion of the Contracting Officer Representative.
- C. Furnish a breakdown of the total Contract Price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates, the Contracting Officer Representative may authorize material delivered to the Site and preparatory work completed to be taken into consideration. Material delivered to the Contractor at locations other than the Site may also be taken into consideration if the Contractor furnishes satisfactory evidence that the Contractor has acquired title to such material and that it will be utilized on the Work covered by this Contract.
- D. If the Contract Price is more than \$50,000, material delivered that will be incorporated into the Project will be taken into consideration in computing progress payments, provided the material is delivered on the Site, or is delivered to the Contractor and properly stored in a warehouse, storage yard, or similar suitable place within 25 miles of the Site or such reasonable distance in excess of 25 miles as may be approved by the Contracting Officer Representative, provided, however, that the Contractor has the proper storage facilities, security, and insurance for the stored material as Approved by the Contracting Officer Representative. Before each such payment is made for delivered material on the Site, furnish to the Contracting Officer Representative such evidence as may be required as proof of the ownership, quantity, and value of such materials. Before each such payment is made for delivered materials off the Site, furnish the Contracting Officer Representative evidence of ownership and properly executed bills of sale to the Authority for the delivered material upon which payment is being made.
- E. In determining progress accomplished, the Authority will allow as an element of work accomplished, i.e., progress toward completion, only 50 percent of the invoiced cost of materials or equipment delivered to the Site, or suitable location as described in Paragraph D above, but not incorporated in the construction up to the time the materials or equipment are actually incorporated in the Work.
- F. In making such progress payments, 5 percent of the estimated amount of work completed will be retained until final completion and Acceptance of the Contract Work. Also, whenever the Work is substantially

complete, and the Contractor is in compliance with all provisions of the Contract, if the Contracting Officer Representative considers the amount retained to be in excess of the amount adequate for the protection of the Authority, the Contracting Officer Representative may use discretion in releasing to the Contractor all or a portion of such excess amount.

- G. Where the time originally specified for completion of this Contract exceeds 1 year, the Contracting Officer Representative, at any time after 50 percent of the Work has been completed, if the Contracting Officer Representative finds that satisfactory progress (satisfactory progress includes prosecution of physical work, adherence to DBE requirements if applicable, quality assurance, and all other provisions of the Contract) is being made, may reduce the total amount retained from progress payments to the minimum level necessary to protect the interest of the Authority.
- H. All material and work covered by progress payments made shall thereupon become the sole property of the Authority but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the Authority to require the fulfillment of all of the terms of the Contract.
- I. See Section 01775, Closeout, for Final Inspection requirements.
- J. Upon completion and Acceptance of all work, the amount due the Contractor under this Contract will be paid upon the presentation of a properly executed voucher as specified in Section 01775, Closeout, and after the Contractor shall have furnished the Authority with a release of all Claims against the Authority arising by virtue of this Contract other than Claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release. If the Contractor's claim to amounts payable under the Contract has been assigned, a release may also be required of the assignee.
- K. The Authority may, at its sole discretion, withhold payment to the Contractor at the appropriate percentage for work, or portions thereof, that it deems to be defective or in nonconformance with the requirements of the Contract Documents.
- L. Satisfactory records for design, inspection, testing, or other quality elements required under the approved Quality System; operation and maintenance manuals; As-Built Drawings and As-Built Specifications; electronic media; as-built Project Schedule; spare parts list, delivery information and distribution of spare parts; configuration management system; training manual, lesson plans, and student's training manual and electronic media of such, as applicable; survey record log; correspondence file; releases; vouchers; request for Final Payment; certifications, affidavits and warranties and guarantees; and must be submitted in order to receive payment for the completed Work. Final Payment will be made in accordance with this Section and Section 00755, Final Payment.

00745 Progress Payments for Lump Sum Items

If requested, the Contractor shall furnish to the Contracting Officer Representative in a breakdown of the total Contract Price for every lump sum item on the Bid Schedule, showing the amount included therein for each principal category of the Work, in such detail as to provide a basis for determining progress payments. The breakdown shall be supported by such data to substantiate its correctness as the Contracting Officer Representative may require.

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00746 Garnishment of Payments

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

00747 Subcontract Payments

- A. Establish procedures to ensure timely payment of amounts due pursuant to the terms of the Subcontracts. Pay each Subcontractor for satisfactory performance of its contract, no later than 10 Days from the date of the Contractor's receipt of payment from the Authority for work by that Subcontractor. Release, within 10 Days of satisfactory completion of all work required by the Subcontractor, any retention withheld from the Subcontractor.
- B. Certify on each payment request submitted to the Authority that payment has been or will be made to all Subcontractors in accordance with Paragraph A above. Notify the Contracting Officer Representative with each payment request, of any situation in which scheduled Subcontractor payments have not been made.
- C. If a Subcontractor alleges that the Contractor has failed to comply with this Section, the Contractor agrees to support any Authority investigation, and, if deemed appropriate by the Authority, to consent to remedial measures to ensure Subcontractor payment that is due.
- D. The Contractor agrees that the Authority may provide appropriate information to interested Subcontractors who want to determine the status of Authority payments to the Contractor.
- E. Nothing in this Section is intended to create a contractual obligation between the Authority and any Subcontractor or to alter or affect traditional concepts of privity of contract between all parties.

00748 Changes

- A. The Contracting Officer Representative (or Contracting Officer, depending on the level of authority required) may, at any time, and without notice to the sureties, by written order designated or indicated to be a Modification, make any change in the Work within the general scope of the Contract including, but not limited to, changes:
1. In the Scope of the Work or Contract Documents;
 2. In the method or manner of performance of the Work;
 3. In the Authority-furnished facilities, equipment, materials, services, or Site; or
 4. Directing acceleration in the performance of work.
- B. Any other written order or an oral order, which terms as used in this Paragraph B, shall include direction, instruction, interpretation, or determination from the Contracting Officer Representative or Contracting Officer, which causes any such change, shall be treated as a Modification under this Section, provided that the Contractor gives the Contracting Officer Representative written notice in accordance with Section 01330, Submittal Procedures, stating the date, circumstances, and source of the order and that the Contractor regards the order as a Modification.
- C. Except as herein provided, no order, statement, or conduct of the Contracting Officer Representative or Contracting Officer shall be treated as a change under this Section or entitle the Contractor to an equitable adjustment hereunder.
- D. If any change under this Section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work under this Contract, whether or not changed by any order, an equitable adjustment will be made and the Contract modified in writing accordingly: Provided, however, that no Claim for any change under Paragraph B above will be allowed for any costs incurred more than 20 Days before the Contractor gives written notice as therein required. This 20-Day limitation will be strictly applied regardless of whether the Authority is prejudiced by any lack of notice.
- E. If the Contractor intends to request an equitable adjustment under this Section, it must, within 30 Days after receipt of a written Modification under Paragraph A above or furnishing of a written notice under Paragraph B above, submit to the Contracting Officer Representative in accordance with Section 01330, Submittal Procedures, a written proposal in accordance with this Changes Section, unless this period is extended by the Contracting Officer Representative. The proposal hereunder may be included in the notice under Paragraph B above.
- F. No Claim by the Contractor or an equitable adjustment hereunder will be allowed if asserted after Final Payment under this Contract.
- G. For additional Modification procedures see Section 01250, Contract Modification Procedures.

00749 Pricing of Adjustments

- A. When costs are a factor in any determination of a Contract Price adjustment pursuant to Section 00748, Changes, or any other Section of this Contract, such costs shall be in accordance with the contract cost principles and procedures in Subpart 31.1 of the Federal Acquisition Regulations (48 CFR 31.1). Where general and administrative expense is recoverable as part of any pricing adjustment under this Contract, the adjustment shall be based on the relationship between the entity's total general and administrative expenses allowable under FAR cost principles for all construction-type operations during the fiscal or calendar year covering the actual performance period of the work included in this pricing adjustment, and the entity's total cost input (excluding General and Administrative costs) for construction-type operations during the same period, expressed as a percentage, applied to the direct and overhead Contract costs included in the pricing adjustment; i.e., general and administration expenses will be paid on a percentage of cost basis, not on a daily rate type basis.
- B. Notwithstanding any interpretation of the aforementioned contract cost principles and procedures to the contrary, the Authority shall not be liable for interest, however represented, on or as a part of any Claim, request, proposal, or adjustment (including equitable adjustments) whether said Claim, request, proposal or adjustment (including equitable adjustments) arises under the Contract or otherwise.

00750 Accounting and Recording Keeping

- A. **Applicability.** This Section shall become effective for and shall apply to any adjustment in the price of this Contract initiated by the Contractor or the Authority. However, where the original amount of this Contract is less than \$1,000,000, Paragraph C of this Section does not apply unless the adjustment is expected to exceed \$50,000.
- B. **Forward Price Adjustments.** Unless expressly waived in writing in advance by the Contracting Officer Representative, the Contractor shall furnish to the Contracting Officer Representative in accordance with Section 01330, Submittal Procedures, a cost proposal in advance of performance of any work for which a price adjustment is requested under this Contract. The proposal format shall be as detailed in Section 00748, Changes. The Contractor shall initiate such records as are necessary to substantiate all elements of the pricing proposal. Such records supporting the costs of each pricing adjustment request shall be specifically segregated and identified in the Contractor's accounting system as being applicable to the pricing adjustment request.
- C. **Post-Pricing Adjustments.**
1. In addition to the records required to be originated under Paragraph B above, in the event pricing of an adjustment under this Contract is not agreed upon between the Contractor and the Contracting Officer Representative prior to the commencement of work for which the pricing adjustment is requested, the Contractor and any Subcontractor engaged in work for which the pricing adjustment is requested, shall maintain accounts and original cost records specifically segregated and identified by job order or other appropriate accounting procedures approved by the Contracting Officer Representative of all incurred separated costs related to the work for which the pricing adjustment is requested. Proposed cost records and accounting procedures shall be submitted to the Contracting Officer Representative in accordance with Section 01330, Submittal Procedures, for approval. The Contractor shall maintain accounts and records, which segregate and account for the costs of all work associated with that part of the Project for which the pricing adjustment is requested and shall allocate among:
 - a. Work required under the base Contract or under any Option if applicable;
 - b. Work requested to be reimbursed under the pricing adjustment; and
 - c. Other claim, including but not limited to, changes, differing Site conditions, and the like.
 2. In addition to the accounting system established to segregate and account for Contract Price adjustments, which shall accumulate such costs by work activity under logical cost groups, such as material, labor, equipment, Subcontracts, field overhead, and the like, the Contractor shall maintain field records associated with these costs on a form approved by the Contracting Officer Representative. Subject to agreement between the Contractor and the Contracting Officer Representative, or upon direction of the Contracting Officer Representative for work under Section 00748, Changes, the Contractor shall use Authority Forms (Daily Report - Labor, Materials, and Equipment), to be supplied by the Authority at the request of the Contractor and submitted in accordance with Section 01330, Submittal Procedures. The terms of Section 00748, Changes, shall apply regardless of the form used. The use of Authority Forms to segregate Modification costs does not, in and of itself, invoke the provisions of Section 00748, Changes.
- D. **Availability.** The accounts, records, and costs information required to be originated under Paragraphs B and C above together with all other accounts, records, and costs information related to this Contract, shall be maintained and made available by the Contractor or Subcontractor(s):
1. At the office of the Contractor or Subcontractor(s) at all reasonable times for inspection, audit, reproduction, or such other purposes as may be required by the Contracting Officer Representative, or pursuant to any other Sections of this Contract;

2. Until the expiration of three years from the date of payment of the final \$100 (Final Payment) under this Contract or such lesser time as is specified in Contractor Records Retention, Subpart 4.7 of the Federal Acquisition Regulations (48 C.F.R. 4.7) and for such longer period, if any, as is required by applicable statute, or by any other Sections of this Contract, or by Paragraphs D.2.a and D.2.b below:
 - a. If the Contract is completely or partially terminated, for a period of 3 years from the date of Final Payment; and
 - b. If a pricing adjustment is involved in any appeal under Section 00730, Dispute Resolution, or in any litigation related to this Contract, for a period of 1 year following the final disposition of the appeal or litigation.
- E. When asserting a Claim under the various Sections of this Contract, the Contractor shall grant the Authority access to review and ascertain the validity of the accounting records being maintained for segregation of costs, including base cost records, and to audit such costs as are deemed appropriate by the Contracting Officer Representative. No payment will be made to the Contractor on its Claim until such records are made available and access is permitted.
- F. Limitation on Pricing Adjustment
 1. In the event the Contractor or any Subcontractor fails to originate or to maintain, or to make available any accounts or records as required under this or any other Section of the Contract, any pricing adjustment or portion thereof previously granted by the Contracting Officer Representative for which records are not available, shall be rescinded and re-computed, or if a pricing adjustment has not yet been granted, shall be computed, in an amount not to exceed the direct costs for which accounts or records are not available, plus a single markup for indirect expenses not to exceed 10 percent of the direct costs so determined by the Contracting Officer Representative. The adjustment will be established by the Contracting Officer Representative based upon, at its election, one of the following:
 - a. An audit of any existing books and records of the Contractor or Subcontractor; or
 - b. An Authority estimate adopted by the Contracting Officer Representative; or
 - c. A combination of Paragraphs F.1 and F.2 above.
 2. The Contractor and Subcontractors will not be allowed any profit for the work for which the Contractor or Subcontractor fails to originate, maintain, or to make available any accounts or records as required under this Contract.
- G. The Contractor shall insert a clause containing all the provisions of this Section in all Subcontracts issued under this Contract, modified as necessary, for proper identification of the contracting parties and the Contracting Officer Representative under this Contract.

00751 Audit – Price Adjustments

- A. General: The Contracting Officer and his or her representatives, including representative of the Authority's governing jurisdictions, any federal, state, or local entity providing funding for this Contract and the Comptroller General of the United States, shall have access and inspection rights as described in the applicable Paragraphs B, C, and D below.
- B. Examination of costs: If this is a cost-reimbursement type, incentive, time and materials, labor hour or price re-determinable contract, or any combination thereof, the Contractor shall maintain, and the Authority shall have the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred for the performance of this Contract. Such right of examination shall include inspection at all reasonable times of the Contractor's plant, or such parts thereof, as may be engaged in the performance of this Contract.
- C. Cost or pricing data: If the Contractor submitted cost or pricing data in connection with the pricing of this Contract or any change or modification thereto submitted in accordance with Section 01330, Submittal Procedures, unless such pricing was based on adequate price competition, established catalog, market prices of commercial items sold in substantial quantities to the public, prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, the Authority shall have the right to examine all books, records, documents, and other data of the Contractor related to the negotiation, pricing, or performance or such Contract change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted along with the computations and projections used therein.
- D. The accounts, records and cost information required to be originated under this Contract, together with all other accounts, records and cost information related to this Contract, shall be maintained and made available by the Contractor and subcontractor(s):
 - 1. At their offices at all reasonable times, for inspection, audit, reproduction or such other purpose as may be required by the Contracting Officer, by anyone he or she authorizes or pursuant to any other provision of this Contract; and
 - 2. Except to the extent otherwise expressly set forth in this Contract, until three (3) years from the date of final payment under this Contract. If this Contract is completely or partially terminated, such records shall be maintained for a period of three (3) years from either the date of any resulting final settlement or the date of final payment, whichever is later. If a pricing adjustment results in any dispute or litigation related to this Contract, such records shall be maintained for a period equal to the later of three (3) years from the date of final payment or one (1) year following the final disposition of the dispute or litigation.
- E. The Contractor shall insert a clause containing all the provisions of this Section, including Paragraph D in all subcontracts hereunder except altered as necessary for proper identification of the contracting parties and the Contracting Officer Representative under this Contract.

00752 Certificate of Current Cost or Pricing Data

The Contractor shall provide a Certificate of Current Cost or Pricing Data to the Authority in accordance with Section 01330, Submittal Procedures, on a form suitable to the Contracting Officer as required in Subpart 15.403 of the Federal Acquisition Regulations (48 CFR 15.403) in support of any negotiated contract expected to exceed \$100,000 or any modification to a formally advertised or negotiated contract on which the aggregate of the increases and decreases in cost are expected to exceed \$100,000. The Contracting Officer Representative at its discretion may request cost or pricing data for modifications on which costs are less than \$100,000 and an attendant certificate of current cost or pricing data. Cost or Pricing data submittal procedures are specified in Section 00201, General Instructions, and Section 00748, Changes.

00753 Price Reduction for Defective Cost or Pricing Data – Price Adjustments

- A. This Section shall become operative only with respect to Modifications of this Contract, which involve aggregate increases, decreases, or both in cost plus applicable profits in excess of \$100,000 unless the modification is priced on the basis of adequate competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation. The right to price reduction under this Section is limited to defects in data relating to such Modification.
- B. If any price, including profit or fee, negotiated in connection with any price adjustment under this Contract was increased by any significant sums because:
1. The Contractor furnished cost or pricing data in accordance with Section 01330, Submittal Procedures, which was not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data;
 2. A Subcontractor, pursuant to the Section 00754, Subcontractor Cost Or Pricing Data, or any Subcontract provision therein required, furnished cost or pricing data in accordance with Section 01330, Submittal Procedures, which was not complete, accurate, and current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data;
 3. A Subcontractor or prospective Subcontractor furnished cost or pricing data in accordance with Section 01330, Submittal Procedures, which was required to be complete, accurate, and current and to be submitted to support a Subcontract cost estimate furnished by the Contractor in accordance with Section 01330, Submittal Procedures, but which was not complete, accurate, and current as of the date certified in the Contractor's Certificate of Current Cost or Pricing Data; or
 4. The Contractor or a Subcontractor or prospective Subcontractor furnished any data, not within Paragraphs B.1, B.2, or B.3 above in accordance with Section 01330, Submittal Procedures, which was not accurate, as submitted; then the price shall be reduced accordingly and the Contract shall be modified in writing as may be necessary to reflect such reduction. However, any reduction in the Contract Price due to defective Subcontract data of a prospective Subcontractor, when the Subcontract was not subsequently awarded to such Subcontractor, will be limited to the amount, plus applicable overhead and profit markup, by which the actual Subcontract, or actual cost to the Contractor if there was not a Subcontract, was less than the prospective Subcontract cost estimate submitted by the Contractor in accordance with Section 01330, Submittal Procedures, provided the actual Subcontract price was not affected by defective cost or pricing data. (Note: Since the Contract is subject to reduction under this Section by reason of defective cost or pricing data submitted in connection with certain Subcontracts, it is expected that the Contractor may wish to include an article in each such Subcontract requiring the Subcontractor to appropriately indemnify the Contractor. However, the inclusion of such an article and the terms thereof are matters of negotiation and agreement between the Contractor and the Subcontractor, provided that they are consistent with disputes provisions in Subcontracts. It is also expected that any Subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by its lower tier Subcontractors.)

00754 Subcontractor Cost or Pricing Data

- A. The Contractor shall require Subcontractors hereunder to submit cost or pricing data in accordance with Section 01330, Submittal Procedures, prior to award of any negotiated lump sum or cost-reimbursement type, incentive, or price re-determinable Subcontract over \$100,000. The Contractor shall require Subcontractors to certify that to the best of their knowledge and belief, the cost and pricing data submitted under this Paragraph is accurate, complete, and current as of the date of execution, which date shall be as close as possible to the date of agreement on the negotiated price of the Subcontract. The Contractor shall insert the substance of this Section in each of its negotiated lump sum or cost reimbursement type, price re-determinable, or incentive Subcontracts over \$100,000 hereunder. The Contractor also shall insert the substance of this Section in each Subcontract with respect to any change or other modification made pursuant to one or more Sections of this Contract, which involves a price adjustment greater than \$100,000. The Contractor shall conduct a cost analysis of all negotiated Subcontracts.
- B. The requirements that follow shall become operative only with respect to any change or other modification made pursuant to one or more Sections of this Contract, which involves a price adjustment in excess of \$100,000. The requirements of this Section shall be limited to such price adjustments:
1. The Contractor shall require Subcontractors hereunder to submit cost or pricing data in accordance with Section 01330, Submittal Procedures:
 - a. Prior to award of any cost-reimbursement type, incentive, or price re-determinable Subcontract;
 - b. Prior to the award of any Subcontract the price of which is expected to exceed \$100,000; or,
 - c. Prior to the pricing of any Subcontract change or other modification for which the price adjustment is expected to exceed \$100,000; except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public or prices set by law or regulation.
 2. The Contractor shall require Subcontractors to certify that to the best of their knowledge and belief the cost and pricing data submitted under this Paragraph B is accurate, complete, and current as of the date of execution, which date shall be as close as possible to the date of agreement on the negotiated price of the Contract Modification.
- C. The Contractor shall insert the substance of this Section in each Subcontract hereunder, which exceeds \$100,000.

00755 Final Payment

- A. The Authority will make Final Payment to the Contractor following Acceptance of Work, including receipt of releases from owners of property affected by the Contractor's performance under this Contract, and submittal of a final Affidavit of Amounts Paid to all businesses participating under the Contract. Final Payment shall include the entire sum found to be due hereunder after deducting therefrom such amounts as the terms of this Contract permit. Prior estimates and payments, including those relating to extra work or work omitted, shall be subject to correction by the Final Payment. Final Payment will be made only for materials actually incorporated in the Work; and, all materials remaining for which progress payments have been made shall revert to the Contractor, unless otherwise agreed, and progress payments made for these items shall be deducted from the Final Payment for the Work.

- B. By accepting Final Payment, the Contractor will be deemed thereby to have released the Authority from all Claims of the Contractor and all liability to the Contractor for things done or furnished in connection with the Work and for every act and neglect of the Authority and others relating to or arising out of the Work.

00756 Access and Examination of Records

- A. The Contractor agrees to provide the Authority, the FTA Administrator, the Comptroller General of the United States, or any of their authorized representatives' access to any books, documents, papers, and records of the Contractor, which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor also agrees, pursuant to 49 CFR. 633.17 to provide the FTA Administrator or its authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U. S. C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U. S. C. 5307, 5309 or 5311.
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than 3 years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of Claims arising from the performance of this Contract, in which case the Contractor agrees to maintain same until the Authority, the FTA Administrator, the U.S. Secretary of Transportation, 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).
- D. The Contractor agrees that the Contracting Officer, and the Comptroller General of the United States and the United States Secretary of Transportation if applicable, or their duly authorized representatives, shall, until the expiration of 3 years after Final Payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this Contract, for the purpose of making audit, examination, excerpts, and transcription.
- E. The Contractor further agrees to include in all its Subcontracts hereunder, a provision to the effect that the Subcontractor agrees that the Contracting Officer, and the Comptroller General of the United States and the United States Secretary of Transportation if applicable, or their duly authorized representatives, shall until the expiration of 3 years after Final Payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Subcontractor involving transactions related to the Subcontract, for the purpose of making audit, examination, excerpts, and transcription. The term "Subcontract," as used in this Section, excludes:
 - 1. Purchase Orders Not Exceeding \$2,500 and,
 - 2. Subcontracts or purchase orders for public utility services at rates established from standard costs applicable to the public.

00757 Warranty/Guarantee of Construction

- A. Unless otherwise specifically provided for in the Contract, the Contractor, notwithstanding any final inspection, acceptance, or payment guarantees that all work performed and materials and equipment furnished under this Contract are in accordance with the Contract requirements. The Contractor also guarantees that when installed all materials and equipment were free from defects and will remain so for a period of at least 2 years from the date of Acceptance by the Authority.
- B. If defects of any kind should develop during the period such guarantees are in force, the Contracting Officer will immediately notify the Contractor in writing of such defects. The Authority thereupon shall have the right, by a written notice to that effect, to require the Contractor to repair or replace all inferior or defective work, material, or equipment or permit it to remain in place and assess the Contractor the costs it (the Contractor) would have incurred had the Contractor been required to effect repair or replacement.
- C. Corrections or replacement of parts, materials, equipment, supplies or construction made pursuant to the provisions of this Section shall also be subject to the provisions of the Contract including this clause to the same extent as parts, material, equipment, supplies, or construction originally installed. The warranty, with respect to such new or corrected parts, materials, equipment, supplies, or construction, shall be equal in duration as that set forth in Paragraph A above and shall run from the date that such parts, materials, equipment, supplies, or construction are replaced or corrected and accepted by the Authority.
- D. The Contractor guarantees to reimburse the Authority for, or to repair or replace, damages to the Site, buildings, or contents thereof that are caused by inferior or defective workmanship, or the use of inferior or defective materials or equipment in the performance of this Contract. The Contracting Officer will immediately notify the Contractor in writing when such damage occurs. The Authority shall have the right to require the Contractor to repair or replace such damaged areas or equipment, or elect to permit such damage to remain as is and assess the Contractor the costs it would have incurred had it been required to effect repair or replacement.
- E. Should the Contractor fail to proceed promptly, after notification by the Contracting Officer, to repair or replace inferior or defective work, material, or equipment, or damage to the Site, buildings, or contents, thereof, caused by inferior or defective work, or the use of inferior or defective materials, or equipment, the Authority may have such work, material, equipment, or damage repaired or replaced and charge all costs incident thereto to the Contractor.
- F. Special guarantees that may be required under the Contract shall be subject to the elections set forth above unless otherwise provided in such special guarantees.
- G. Should the Contractor fail to prosecute the Work or fail to proceed promptly to provide guarantee period services after notification by the Contracting Officer, the Authority may, subject to Section 00727, Termination For Default, Damages For Delay And Time Extensions, contained in this Contract, and after allowing the Contractor 10 Days to correct and comply with the Contract, terminate the right to proceed with the Work (or the separable part of the Work) that has been delayed or unsatisfactorily performed. In this event, the Authority may take over the Work and complete it by contract or otherwise, and may take possession of and use any materials, appliance, and plant on the Work Site necessary for completing the Work. The Contractor and its sureties shall be liable for damages to the Authority resulting from the Contractor's refusal or failure to complete the Work within this specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes increased costs incurred by the Authority in completing the Work.
- H. The decision of the Contracting Officer as to liability of the Contractor under this Section is subject to the appeal procedure provided for in Section 00730, Dispute Resolution, of this Contract.
- I. All Subcontractor's, manufacturers', and Suppliers' warranties and guarantees, expressed or implied, respecting any part of the Work and any material used therein shall be deemed obtained in accordance with Section 01775, Closeout, and shall be enforced by the Contractor for the benefit of the Authority without the necessity of separate transfer or assignment thereof, provided that, if directed by the Authority, the Contractor

shall require such Subcontractor's, manufacturers and Suppliers to execute such warranties and guarantees in writing to the Authority in accordance with Section 01775, Closeout. In connection therewith, the Contractor further agrees to perform the Work in such a manner or consistent with and so as to preserve all such warranties and guarantees.

- J. Certain specifications Sections and General Requirements provide for a warranty longer than the general warranty provided in this Contract, or commence from dates other than Final Completion and Acceptance of the Work. Where such warranties are specified as both in addition to the general warranty and in total years, the total years shall govern, and the warranty period shall commence from Final Completion and Acceptance of the Work.

00758 Correction of Deficiencies

- A. This Section shall apply only to those deficiencies discovered by either the Authority or the Contractor within 2 years after Acceptance. Materials or equipment will be regarded as having a deficiency if a type of material or equipment in like service accumulates a failure rate greater than 5 percent within a period of 2 years following Acceptance by the Authority. Systems or subsystems will be regarded as having a deficiency if they exhibit conditions or characteristics, which are not in compliance with the Contract Documents, and intent of this Contract anytime during a period extending for 2 years following their Acceptance by the Authority.
- B. Notice of deficiency to Contractor: If the Authority determines that a deficiency exists in any of the materials, equipment, systems, or subsystems provided the Authority under this Contract, it will promptly notify the Contractor of the deficiency, in writing, within 30 Days.
- C. Recommendation for correction: Upon timely notification of the existence of such a deficiency, or if the Contractor independently discovers a deficiency in accepted materials, equipment, systems, or subsystems, the Contractor shall promptly submit to the Authority its recommendation for corrective actions, together with supporting information in sufficient detail for the Authority to determine what corrective action, if any, shall be undertaken in accordance with Section 01775, Closeout. The recommendation shall be submitted to the Authority within 15 working days of discovery or receipt of notice of the deficiency.
- D. Direction to Contractor concerning correction of deficiencies: Within 30 Days after receipt of the Contractor's recommendations for corrective action and adequate supporting information, the Contracting Officer, at its sole discretion, will give the Contractor written notice not to correct any deficiency, or to correct or partially correct any deficiency within a reasonable time and at a specified location.
- E. Schedule of deficiency corrections: The Contractor shall prepare Schedule of Deficiency Corrections and deliver it to the Authority for approval in accordance with Section 01775, Closeout, within 15 working days of discovery of deficiency by the Contractor or receipt of notice of discovery of a deficiency by the Authority.
- F. Correction of deficiencies by Contractor: The Contractor shall promptly comply with all timely written directions by the Contracting Officer to correct or partially correct a deficiency, at no increase in the Contract Price. The Contractor shall also prepare and furnish to the Authority in accordance with Section 01775, Closeout, data and reports applicable to corrections required under this Section (including revision and updating of all other affected data called for under this Contract) at no increase in the Contract Price.
- G. Modification of Contract with respect to uncorrected deficiencies: In the event of timely notice of a decision not to correct or only to partially correct a deficiency, the Contractor shall submit to the Authority within 15 working days, a technical and cost proposal to amend the Contract in accordance with Section 01775, Closeout, to permit acceptance of the affected materials, equipment, systems, or subsystems in accordance with the revised requirements, and an equitable reduction in Contract Price shall promptly be negotiated by the parties and stated in a Modification to this Contract.
- H. Failure to correct: If the Contractor fails or refuses to present a detailed recommendation for corrective action and to prepare and furnish data and reports as required in Paragraph G above, then the Contracting Officer will give the Contractor written notice specifying the failure or refusal and setting a period after receipt of the notice within which it must be corrected. If the failure or refusal is not corrected within the specified period, the Contracting Officer may, by contract or otherwise, as required:
 - 1. Obtain detailed recommendations for corrective action;
 - 2. Either:
 - a. Correct the materials, equipment, systems or subsystems, or
 - b. Replace the materials, equipment, systems or subsystems; and if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of non-conforming materials, equipment,

systems or subsystems for the Contractor's account in a reasonable manner, in which case the Authority is entitled to reimbursement from the Contractor or from the proceeds for the reasonable expense of care and disposition, as well as for excess costs incurred or to be incurred;

3. and obtain applicable data and reports.
 4. Charge to the Contractor the cost occasioned to the Authority thereby.
- I. Correction of deficient replacements and re-performances: Materials or equipment corrected or furnished in replacement and systems or subsystems revised pursuant to this Section shall also be subject to all the provisions of the Contract to the same extent as materials, equipment, systems, or subsystems initially accepted.
- J. The correction of materials or equipment exhibiting a failure rate greater than 5 percent means taking of any and all actions necessary to correct the deficiencies, including removal and replacement of all pieces of material or equipment in like service in a manner satisfactory to the Contracting Officer Representative. The correction of systems or subsystems exhibiting one or more deficiencies means taking any and all actions necessary to eliminate any and all deficiencies in a manner satisfactory to the Authority.
1. Disassembly/reassembly expense: The Contractor shall be liable for reasonable cost of disassembly/reassembly of larger items necessary to remove the materials or equipment to be inspected and/or returned for correction or replacement.
 2. Transportation charges:
 - a. When the Authority returns supplies to the Contractor for correction or replacement pursuant to this Section, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the designated destination point under this Contract to the Contractor's plant, in addition to any charges provided for in Paragraph J.2.b below. The Contractor shall also bear the responsibility for the supplies while in transit.
 - b. When compliance with the terms of this Section by the Contractor involves shipment of corrected or replacement supplies from the Contractor to the Authority, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the Contractor's plant to the designated destination point under this Contract, in addition to any charges provided for Paragraph J.2.a above. The Contractor shall also bear the responsibility for the supplies while in transit.
- K. No extension in time for performance; no increase in Contract Price: In no event shall the
- L. Authority be responsible for extension or delays in the scheduled deliveries or periods of performance under this Contract as a result of the Contractor's obligations to correct deficiencies, nor shall there be any adjustment of the delivery schedule or Period of Performance as a result of such correction of deficiencies, except as may be agreed to by the Authority in a supplemental agreement with adequate consideration.
- M. The Contractor shall not be responsible under this Section for the correction of deficiencies in Authority-furnished property, except for deficiencies in installation, unless the Contractor performs or is obligated to perform any modifications or other work on such property. In that event, the Contractor shall be responsible for correction of deficiencies to the extent of such modifications or other work.
- N. The Contractor shall not be responsible under this Section for the correction of deficiencies caused by the Authority.

00759 Covenant against Contingent Fees

- A. 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 utilized by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Contracting Officer shall have the right to annul this Contract without liability or in his or her discretion to deduct from the Contract Price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

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

00760 Officials not to Benefit

- A. No member of Congress or resident commissioner shall be admitted to any share or part of this Contract, or to any benefit that may arise therefrom; but this Paragraph shall not be construed to extend to this Contract if made with a corporation for its general benefit.
- B. No member, officer, or employee of the Authority or of a local public body during tenure with the Authority or with another local public body and 1 year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

00761 Gratuities

In connection with performance of work required under this Contract, or any changes or Modifications relative thereto, the giving of or offering to give gratuities (in the form of entertainment, gifts, or otherwise) by the Contractor, or any agent, representative, or other person deemed to be acting on behalf of the Contractor, or any Supplier or Subcontractor furnishing material to or performing work under this Contract, or any agent, representative or other person deemed to be acting on behalf of such Supplier or Subcontractor, to any Director, Officer, or employee of the Authority; or to any Director, Officer, employee, or agent of any of the Authority's agents, consultants, representatives, or other persons deemed to be acting for or on behalf of the Authority, with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract is expressly forbidden. The terms of this Section 00761, Gratuities, shall be strictly construed and enforced in the event of violations hereto.

00762 Conflict of Interest

- A. An organizational conflict of interest (OCI) exists when the nature of the work to be performed under a proposed contract or a subcontract may, without some restriction on future activities result in an unfair competitive advantage to the Contractor or subcontractor; because of (1) unequal access to information, (2) biased ground rules or (3) impaired objectivity. An unequal access to information OCI may exist if in performing a Contract, a Contractor obtains access to non-public information that provides a competitive advantage to it in a later competition. A biased ground rules OCI may exist if the Contractor has a role in setting rules for a source selection in which it will compete. An impaired objectivity OCI may exist if, in performing a Contract, a Contractor is called upon to evaluate an offer from or performance by itself or an affiliated entity.
- B. If, during the performance of this Contract and any extension thereof, the Contractor becomes aware of any relationship, financial interest, or other activity in which it or an affiliated person or company is involved, which is not in compliance with the provisions of this Section 00762, Conflict Of Interest, it shall promptly notify the Contracting Officer in writing in accordance with Section 01330, Submittal Procedures, and fully disclose all circumstances thereof. Should the Contracting Officer not grant an exception to the requirements of this Section 00762, Conflict Of Interest, the Contractor shall, within 10 Days of written notice from the Contracting Officer to do so, take all action necessary to comply with the terms of this Section.
- C. If the Contractor fails to comply with the terms of this Section 00762, Conflict Of Interest, the Contracting Officer may withhold payments due under the Contract until such time as the Contractor is in compliance or, should the non-compliance remain uncorrected at the expiration of 10 Days from written notice from the Contracting Officer as provided in this Section, terminate the Contract for default pursuant to Section 00727, Termination For Default, Damages For Delay, And Time Extensions, of this Contract.
- D. The Contractor, in performing this Contract, shall avoid all conduct, which might result in or give the appearance of creating for Directors, Officers, or employees of the Authority in their relationship with the Contractor any conflicts of interest or favoritism or the appearance thereof and shall avoid any conduct, which might result in a Director, Officer, or employee failing to adhere to the Standards of Conduct adopted by the Authority's Board of Directors.
- E. The Contractor shall not, during the period of performance of the Contract, engage in any other contracts where its customary role would or might:
 - 1. Impair the actual or potential ability of the Contractor to render impartial assistance or advice to the Authority;
 - 2. Impair the Contractor's objectivity in performing this Contract or any other Authority contract, and
 - 3. Give the Contractor an unfair competitive advantage with respect to the work under another proposed Authority contract.
- F. Any determination by the Contracting Officer under this Section shall be final and shall be subject to Section 00730, Dispute Resolution.

00763 Employment Restriction Warranty

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

00764 Civil Rights

- A. Nondiscrimination Assurance: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000(d), section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the American with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit law at 49 U.S.C. §5332, the Contractor, sub-recipient, or subcontractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, sex, age, sexual preference or disability. In addition, the Contractor, sub-recipient, or subcontractor agrees to comply with applicable Federal implementing regulations and other regulations that FTA may issue.
- B. Equal Employment Opportunity: The following equal employment opportunity requirements apply to this Contract.
1. Race, Color, Creed, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49 U.S.C. §5332, the Contractor agrees to comply with all applicable equal opportunity requirements of the U. S. Department of Labor (U.S. DOL) including, but not limited to the "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, " 41 C.F.R. Part 60 et seq., (implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. §2000e note), and with all applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of this Contract. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with all implementing requirements that FTA may issue.
 2. Age: In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. §5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with all implementing requirements that FTA may issue.
 3. Disabilities: In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the Contractor agrees that it will comply with the requirements of U. S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with all implementing requirements that FTA may issue.
 4. Special DOL EEO Clause for Construction Projects: The equal opportunity clause published at 41 CFR 60-1.4(a) of this chapter is required to be included in, and is part of, all nonexempt Federal contracts and subcontracts, including construction contracts and subcontracts. The equal opportunity clause published at 41 CFR 60-1.4(b) is required to be included in, and is a part of, all nonexempt federally assisted construction contracts and subcontracts. In addition to the clauses described above, all Federal contracting officers, all applicants and all nonconstruction contractors, as applicable, shall include the specifications set forth in this section in all Federal and federally assisted construction contracts in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to §60-4.6 of this part and in construction subcontracts in excess of \$10,000 necessary in whole or in part to the performance of nonconstruction Federal contracts and subcontracts covered under the Executive order.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. "Minority" includes:
 - i. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - ii. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - iii. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands; and
 - iv. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
 3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
 4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the FEDERAL REGISTER in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
 5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
 - d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
 - f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
 - g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
 - i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
 - j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally,

the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.
 11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
 12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
 13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
 14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
 15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).
- C. The Contractor also agrees to include these requirements in each Subcontract, financed in whole or in part, with federal assistance provide by the FTA, modified only, if necessary, to identify the affected parties.
- D. Failure by the Contractor, sub-recipient, or subcontractor to carry out these requirements is a material breach of this Contract, that may result in the termination or such other remedy as the Authority deems appropriate.

00765 Disadvantaged Business Enterprise

- A. In connection with the performance of this Contract, the Contractor agrees to cooperate with the Authority in meeting its commitments and goals with regard to the maximum utilization of Disadvantaged Business Enterprises (DBE) and further agrees to exert good faith efforts to satisfy the requirements of Section 00453, DBE Data, by subcontracting portions of the Work to disadvantaged firms, by entering into joint ventures with disadvantaged firms, or both.
- B. The DBE policy of the Authority underwent a complete revision October 1, 1999 to meet revised Federal requirements. The DBE provisions of this RFP are subject to revision by Amendment.
- C. For federally funded contracts that exceed \$150,000 and to which the Disadvantaged Business Enterprise (DBE) Requirements (Attachment J.4) apply, the failure to perform in accordance with requirements of Attachment J.4 may result in a partial or full suspension of payment, including progress payments, if applicable.
- D. If the Contractor is found to be in noncompliance with the DBE requirements of Attachment J.4, the progress of the work shall also be deemed to be unsatisfactory, and an amount equal to the DBE participation in the Contract shall be retained from payment (or progress payments, if any) made to the Contractor.
- E. If the Contract value is over \$150,000, the prime contractor will be responsible for submitting a monthly report of the status of its DBE subcontractors as outlined in Attachment J.4 to the Contracting Officer.
- F. If the Contractor fails to submit the required monthly DBE reports, the Contracting Officer may suspend payments (or progress payments), until such time as the monthly reports are submitted and accepted by the Authority.
- G. The goal for this Contract is as specified in Section 00865, Disadvantaged Business Enterprise.

00766 Utilization of Small Business Concerns

1. It is the policy of the Authority that a fair proportion of the purchases and contracts for supplies and services for the Authority be placed with small business concerns.
2. The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this Contract.

00767 Labor Provisions

The following Paragraphs B through M apply only to the Construction portion of the Contract.

A. Minimum Wages:

1. All laborers and mechanics employed or working upon the Site of the Work (or under the United States Housing Act of 1937 or under the Housing-Act of 1949 in the construction or development of the project), shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act, 29 C.F.R. Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the Wage Determination of the Secretary of Labor, which is attached hereto and made a part hereof as specified in APPENDIX D to Section 00800, regardless of any contractual relationship which may be alleged-to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 C.F.R. §5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs that cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided at 29 C.F.R. §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 C.F.R. §5.5(a)(1)(ii) And the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its Subcontractor at the Site of the Work in a prominent and accessible place where it can be easily seen by the workers.
 - a. The Authority will require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Authority will approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - 1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - 2) The classification is utilized in the area by the construction industry, and
 - 3) The proposed wage rate, including bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
 - b. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Authority agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the Contracting Officer Representative to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 Days of receipt and so advise the Authority or will notify the Authority within the 30-Day period that additional time is necessary.
 - c. In the event the Contractor, the laborers, or mechanics to be employed in the classification or their representatives, and the Authority do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Authority will refer the questions, including the views of all interested parties and the recommendation of the Authority to the

Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 Days of receipt and so advise the Authority or will notify the Authority within the 30-Day period that additional time is necessary.

- d. The wage rate (including fringe benefits where appropriate) determined pursuant to Paragraphs A.1.b and A.1.c above, shall be paid to all workers including helpers performing work in the classification under this Contract from the first day on which work is performed in the classification.
2. Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit, which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
 3. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor submitted through the Contracting Officer Representative in accordance with Section 01330, Submittal Procedures, that the applicable standards of the Davis-Bacon act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- B. Withholding: The Authority will, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor, under this agreement or any other Authority contract with the same recipient, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the Site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Authority may, after written notice to the Contractor, sponsor, applicant, or owner take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee or funds until such violations have ceased.
- C. Payrolls and Basic Records
1. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at the Site of the Work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the Project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(b) of the Davis-Bacon act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. §5 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(b) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records, which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
 2. The Contractor shall submit weekly in accordance with Section 01330, Submittal Procedures, for each week in which any Contract work is performed, a copy of all payrolls to the Authority. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under

29 C.F.R. §5.5(a)(3)(i). This information may be submitted in any form desired. Optional form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock no. 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The Contractor is responsible for the submission of copies of payrolls by all Subcontractors in accordance with Section 01330, Submittal Procedures.

- a. Each payroll submitted shall be accompanied by a "Statement of Compliance" signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and submit in accordance with Section 01330, Submittal Procedures and shall certify the following:
 - 1) That the payroll for the payroll period contains the information required to be maintained under 29 C.F.R. §5.5.(a)(3)(i), and that such information is correct and complete;
 - 2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth at 29 C.F.R. Part 3;
 - 3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.
- b. The weekly submission in accordance with Section 01330, Submittal Procedures, of a properly executed certification set forth on the reverse side of optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by 29 C.F.R. §5.5(a)(3)(ii)(B).
- c. The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under 18 U.S.C. §1001 and 31 U.S.C. §3729.

D. Apprentices and Trainees

1. The Contractor or Subcontractor shall make the records required under 29 C.F.R. §5.5(a)(3)(i) available for inspection, copying, or transcription by authorized representatives of the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records in accordance with Section 01330, Submittal Procedures, or make them available, the Authority may, after written notice to the Contractor, sponsor, applicant, or owner take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or make such records available may be grounds for debarment action pursuant to 29 C.F.R. §5.12.
 - a. Apprentices: Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship, Training and Employer Labor Services, or with a State apprenticeship agency recognized by the Office, or if a person is employed in his or her first 90 Days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship, Training and Employer Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage on the wage, determination for the classification of work actually performed. In addition, any apprentice performing work on the job Site in excess of the ratio

permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall be paid in accordance with that determination. In the event the Office of Apprenticeship, Training and Employer Labor Services, or a state apprenticeship agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

2. Trainees: Except as provided in 29 C.F.R. §5.16, trainees shall not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the Site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate, who is not registered and participating in a training plan approved by the employment and training administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the employment and training administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
 3. Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under 29 C.F.R. Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order No. 11246, as amended 29 C.F.R. Part 30.
 4. Helpers: Helpers will be permitted to work on a project if the helper classification is specified on an applicable wage determination or is approved pursuant to the conformance procedure set forth in 29 C.F.R. §5.5(a)(1)(ii). The allowable ratio of helpers to journeyman employed by the Contractor or Subcontractor on the job site shall not be greater than two helpers for every three journeymen (in other words, not more than 40 percent of the total number of journeymen and helpers in each Contractor's or in each Subcontractor's own work force employed on the job site.) Any worker listed on a payroll at a helper wage rate, who is not a helper as defined in 29 C.F.R. §5.2(n)(4), shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any helper performing work on the job site in excess of the ratio permitted shall be paid not less than the applicable journeyman's (or laborer's, where appropriate) wage rate on the wage determination for the work actually performed.
- E. Compliance with Copeland Act Requirements. The Contractor shall comply with the requirements of 29 C.F.R. Part 3, which are incorporated herein by reference.

- F. **Contract Termination: Debarment.** A breach of the Contract clauses in 29 C.F.R. §5.5 may be grounds for termination of the Contract, and for debarment as a Contractor or a Subcontractor as provided in 29 C.F.R. §5.12.
- G. **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are incorporated herein by reference.
- H. **Disputes Concerning Labor Standards:** Disputes arising out of the Labor Standards provisions of this Contract shall not be subject to Section 00730, Dispute Resolution, of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this Section include disputes between the Contractor (or any of its Subcontractors) and the Contracting Agency, the U.S. Department of Labor, or the employees or their representatives.
- I. **Certification of Eligibility:**
1. By entering into this agreement or a third party contract financed under this agreement the Contractor certifies that neither it (nor he nor she) nor any person or firm that has an interest in the Contractor's firm is a person or firm ineligible to be awarded government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. §5.12(a)(1).
 2. No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. §5.12(a)(1).
 3. The penalty for making false statement is prescribed in the U.S. Criminal code, 18 U.S.C.1001.
- J. **Overtime Requirements:** Neither the Contractor nor any Subcontractor contracting for any part of the Contract work, which may require or involve the employment of laborers or mechanics, shall require or permit any such laborer or mechanics in any work week in which he or she is employed on such work to work in excess of 40 hours in such work week unless such laborer or mechanics receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such work week.
- K. **Violation: Liability for Unpaid Wages: Liquidated Damages:** In the event of any violation of the requirements of 29 C.F.R. §5.5(b)(1), the Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such district or to such territory) if the Contract is funded by the FTA, and if not, to the Authority for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of 29 C.F.R. §5.5(b)(1) In the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by 29 C.F.R. §5.5(b)(1).
- L. **Withholding for Unpaid Wages and Liquidated Damages:** The FTA or the recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract, or any other Authority contract with the same Contractor or any federally-assisted contract subject to the Contract Work Hours and Safety Standards Act if FTA funding is provided for the Contract, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth at 29 C.F.R. §5.5(b)(2).
- M. **Wage Rates:**
1. The minimum wages, which in addition to basic hourly rate of pay, include fringe benefit payments to be paid laborers and mechanics on this Project pursuant to this Section as determined by the Secretary of

Labor to prevail for corresponding classes of laborers and mechanics employed on projects similar in character to the Contract work in the pertinent locality, are set forth as an attachment to this Contract.

2. All classes of laborers and mechanics not listed but employed on this Contract shall be classified or reclassified conformably to the schedule set out therein by mutual agreement between the Contractor and class of labor concerned, subject to prior approval of the Contracting Officer Representative. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborer and mechanics to be used, the question, accompanied by the recommendation of the Contracting Officer Representative, shall be referred to the Secretary of Labor for final determination.
 3. For Current Wage Modifications, Refer to Appendix D - Wage Determination of the Secretary Of Labor, included as an Appendix to Section 00800, Supplementary Conditions.
- N. Subcontracts: The Contractor or Subcontractor shall insert in all Subcontracts, the clauses set forth in Paragraphs A through M of this Section 00767, Labor Provisions, and a clause requiring the Subcontractor to include these clauses in all lower tier Subcontracts. The Contractor shall be responsible for compliance by all Subcontractors with Paragraphs A through N of this Section 00767, Labor Provisions.

00768 Walsh-Healey Public Contracts Act

- A. If this Contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount, which exceeds or may exceed \$10,000 and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:
1. All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may be hereafter, be in effect.
 2. All employees whose work relates to this Contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped worker may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

00770 Convict Labor

- A. Except as provided in clause I.19.2, the Contractor shall not employ, in the performance of this Contract, any person undergoing a sentence of imprisonment imposed by any court of the federal government, a state, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam or the U.S. Virgin Islands.
1. The Contractor is not prohibited from employing persons:
 - a. On parole or probation to work at paid employment during the term of their sentence;
 - b. Who have been pardoned or who have served their terms; or
 - c. Confined for violation of the laws of the federal government, the states, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if:
 - 1) The worker is paid or is in an approved work or training program on a voluntary basis.
 - 2) Representatives of the local union's central bodies or similar labor union organizations have been consulted;
 - a) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades where there is a surplus of available gainful labor in the locality, or impair existing contracts or services;
 - b) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality where the work is being performed; and
 - c) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.
- B. In connection with the performance of work under this Contract, the Contractor agrees not to employ any person serving a sentence of imprisonment at hard labor.

00769 Notice to the Authority of Labor Disputes

- A. Whenever the Contractor has knowledge that an actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice thereof in accordance with Section 01330, Submittal Procedures, including all relevant information with respect thereto, to the Contracting Officer Representative.

- B. The Contractor agrees to insert the substance of this Section 00769, Notice to the Authority of Labor Disputes, in all Subcontracts hereunder as to which a labor dispute may delay the timely performance of this Contract; except that each such Subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor shall immediately notify its next higher tier Subcontractor, or the Contractor, as the case may be, of all relevant information with respect to such dispute.

00771 Federal, State, and Local Taxes

- A. The Contract Price includes all applicable Federal, State, and local taxes and duties.
- B. Nevertheless, with respect to any Federal excise tax or duty on the transactions or property covered by this Contract, if a statute, court decision, written ruling, or regulation takes effect after the Contract date and results in the following:
 - 1. The Contractor being required to pay or bear the burden of any such Federal excise tax or duty or increase in the rate thereof, which would not otherwise have been payable on such transactions or property, the Contract Price shall be increased by the amount of such tax or duty or rate increase, provided the Contractor warrants in writing in accordance with Section 01330, Submittal Procedures, that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the Contract Price as a contingency reserve or otherwise; or
 - 2. The Contractor not being required to pay or bear the burden of, or in its obtaining a refund or drawback of, any such Federal excise tax or duty which would otherwise have been payable on such transactions or property or which was the basis of an increase in the Contract price, the Contract Price shall be decreased by the amount of the relief, refund, or drawback, or that amount of the relief, refund, or drawback, or that amount that shall be paid to the Authority, as directed by the Contracting Officer Representative. The Contract Price shall be similarly decreased if the Contractor, through its fault or negligence or its failure to follow instructions of the Contracting Officer Representative, is required to pay or bear the burden of, or does not obtain a refund or drawback or, any such Federal excise tax or duty.
- C. Paragraph B above shall not be applicable to Social Security taxes or to any other employment tax.
- D. No adjustment of less than \$100 shall be made in the Contract Price pursuant to Paragraph B above.
- E. As used in Paragraph B above, the term Contract date means the date set for Proposal opening, except if this is a negotiated Contract, the date that the Contractor submits its Best and Final Offer. As to additional supplies or services procured by modification to this Contract, the term Contract date means the date of such Modification.
- F. Unless there does not exist any reasonable basis to sustain an exemption, the Contracting Officer Representative, upon the request of the Contractor in accordance with Section 01330, Submittal Procedures, shall, without further liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax; provided that, evidence appropriate to establish exemption from and Federal excise tax or duty, which may give rise to either increase or decrease in the Contract Price will be furnished only at the discretion of the Contracting Officer Representative.
- H. The Contractor shall promptly notify the Contracting Officer Representative in accordance with Section 01330, Submittal Procedures, of matters, which will result in either an increase or decrease in the Contract Price, and shall take action with respect thereto as directed by the Contracting Officer Representative.

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IFB No. FQ18119/ST

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00772 Additional Bond Security

For information on Additional Bond Security, see Section 00613, Performance and Payment Bonds (Additional Bond Security).

00773 Patent and Copyright Indemnity

- A. In addition to any other indemnification provided in this Contract, the Contractor shall indemnify the Authority and its Board members, agents and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. §181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property under this Contract. If the Contractor is not the original equipment manufacturer (OEM) for a manufactured product, it will ensure that the patent holder provides indemnity to WMATA under this clause. This indemnity shall not apply unless the Contractor is informed as soon as practicable by the Authority of the suit or action alleging such infringement, and is given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to:
1. An infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner or performance of the Contract not normally used by the Contractor.
 2. An infringement resulting from addition to, or change in, such supplies or components furnished or construction work performed that was made subsequent to delivery or performance by the Contractor; or
 3. A claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

AGREES TO DEFEND, HOLD HARMLESS, AND INDEMNIFY THE AUTHORITY AND ITS OFFICERS, REPRESENTATIVES, AGENTS, AND EMPLOYEES ACTING WITHIN THE SCOPE OF THEIR OFFICIAL DUTIES, FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LIABILITIES, DAMAGES, LOSSES, COSTS, AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, COURT COSTS, AND REASONABLE ATTORNEY'S FEES AND EXPENSES) OF ANY NATURE WHATSOEVER IN ANY WAY ARISING OUT OF INFRINGEMENT UPON ANY LETTERS OF 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 THE AUTHORITY OF SUPPLIES FURNISHED OR WORK PERFORMED HEREUNDER. SIMILARLY, THE CONTRACTOR INDEMNIFIES THE AUTHORITY FROM ALL CLAIMS OF COPYRIGHT INFRINGEMENT RESULTANT FROM ACTIONS OF THE CONTRACTOR OR ANY OF ITS SUBCONTRACTORS OR SUPPLIERS. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE ANY INDEMNIFICATION, WHICH WOULD MAKE THIS SECTION VOID OR UNENFORCEABLE OR TO ELIMINATE OR REDUCE ANY INDEMNIFICATION OR RIGHTS, WHICH THE AUTHORITY OR CONTRACTOR HAS BY LAW.

00774 Notice and Assistance Regarding Patent and Copyright Infringement

- A. The Contractor shall report to the Contracting Officer Representative in accordance with Section 01330, Submittal Procedures, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.
- B. In the event of any action, Claim, or suit against the Authority on account of any alleged patent or copyright infringement arising out of or related to the performance of this Contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Authority in accordance with Section 01330, Submittal Procedures, when requested by the Contracting Officer Representative, all evidence and information in possession of the Contractor pertaining to such action, suit, or Claim. Such evidence and information shall be furnished at the expense of the Authority except where the Contractor has agreed to defend, indemnify, or hold harmless the Authority. This Section shall be included in all Subcontracts.

00775 Authority Rights in Technical Data

- A. All, designs, Design Drawings, Design Specifications, Samples, processes (including Computer Software), laboratory testing analyses and reports, notes, As-Built Drawings produced during and after completion of construction and other work produced in the performance of this Contract, or in the contemplation or implementation thereof shall be and remain the sole property of the Authority and may be used on any other work without additional cost to the Authority. Any re-use of design services shall be at the Authority's sole risk and with respect thereto, the Contractor agrees not to assert any rights or to establish any claim under the design patent or copyright laws and not to publish or reproduce such matter in whole or in part or in any manner or form, or authorize others so to do, without the written consent of the Authority until such time as the Authority may have released such matter to the public. Further, with respect to any design or process, which the Authority desires to protect by applying for and prosecuting a design patent application, or otherwise, the Contractor agrees to furnish the Authority such duly executed instruments and other papers (prepared by the Authority) as are deemed necessary to vest in the Authority the rights granted it pursuant to this Section. The Contractor, for a period of 3 years after completion of the Project or task, agrees to furnish and to provide access to the originals or copies of all such materials on the request of the Authority.
- B. Rights in Technical Data:
1. The Authority shall have the right to use, duplicate, or disclose Technical Data, which includes, without limitation, computer software and other items listed below, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so:
 - a. All manuals, instructional materials prepared for installation, operation, maintenance or training purposes;
 - b. Technical Data pertaining to end items, components or processes, which were prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements ("form, fit and function" data; e.g., specification control drawings, catalog sheets, outline drawing; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software);
 - c. Other technical data, which has been, or is normally furnished without restriction by the Contractor or Subcontractor;
 - d. Other specifically described technical data, which the parties have agreed will be furnished without restriction.
- C. The Authority shall have the right to use, duplicate, or disclose technical data other than that defined in Paragraph B.1.a above, in whole or in part, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be:
1. Released or disclosed in whole or in part outside the Authority;
 2. Used in whole or in part by the Authority for manufacture; or
 3. Used by a party other than the Authority except for emergency repair or overhaul work only, by or for the Authority where the item or process concerned is not otherwise reasonably available to enable timely performance of the Work; provided, that the release or disclosure thereof outside the Authority shall be made subject to a prohibition against further use, release, or disclosure.
 4. Technical Data provided in accordance with the provisions of Paragraph B.1.b above shall be identified by a legend, which suitably recites the aforesaid limitation. Nothing herein shall impair the right of the Authority to use similar or identical data acquired from other sources.

5. The term Technical Data as used in this Section means technical writing, Computer Software, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether or not copyrighted, which are specified to be delivered pursuant to this Contract in accordance with Section 01330, Submittal Procedures, and Section 01775, Closeout. The term does not include financial reports, cost analyses, and other information incidental to Contract administration. Computer Software as used in this Section means computer programs, computer databases, and documentation thereof.
6. Material covered by copyright:
 - a. The Contractor agrees to and does hereby grant to the Authority, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive, and irrevocable license throughout the world for Authority purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all Technical Data now or hereafter covered by copyright.
 - b. No such copyrighted matter shall be included in Technical Data furnished hereunder without the written permission of the copyright owner for the Authority to use such copyrighted matter in the manner above described.
 - c. The Contractor shall report to the Authority promptly, and in reasonable written detail, each notice or claim of copyright infringement received by the Contractor with respect to any Technical Data delivered hereunder.
 - d. Relation to patents: Nothing contained in this Section shall imply a license to the Authority under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Authority under any patent.
 - e. Any dispute under this Section shall be subject to Section 00730, Dispute Resolution.
 - f. Notwithstanding any other payment provision in this Contract, the Authority may retain from payment up to 10 percent of the Contract price until final delivery and acceptance of the technical data defined in this Section and as required to be furnished by the RFP Documents.

00776 Technical Data – Withholding of Payment

- A. If technical data, specified to be delivered under this Contract, is not delivered within the time specified by this Contract or is deficient upon delivery (including having restrictive markings not specifically authorized by this Contract), the Authority may until such data is accepted by the Authority, withhold payment to the Contractor of 10 percent of the total Contract Price or amount unless a lesser withholding is specified in the Contract. Payments will not be withheld nor any other action taken pursuant to this Paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arises out of or is beyond the control and without the fault or negligence of the Contractor.
- B. After payments total 90 percent of the total Contract Price or amount and if all technical data specified to be delivered under this Contract has not been accepted, the Authority may withhold from further payment, in addition to other withholdings specified elsewhere, such sum as it considers appropriate, not exceeding 10 percent of the total Contract Price or amount unless a lesser withholding limit is specified in the Contract.
- C. The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Authority under this Contract.

00777 Indemnification and Insurance Requirements

A. Indemnification:

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

B. The Contractor shall provide the Authority with evidence of its Contractor's insurance coverage for the exposures listed.

1. The Contractor shall have its insurance agent or broker forward to the Authority's Contracting Officer an insurance certificate or certificates evidencing the required insurance, and the Additional Insured endorsement adding Authority as Additional Insured covering Contractor's ongoing and completed operations. Insurance companies providing the coverage must have an A.M. Best rating of at least "A-/VII." Authority's Contracting Officer shall be provided 30 days written notice if any required insurance is canceled, materially changed, or non-renewed. The Contractor shall furnish the Contracting Officer (prior to NTP) or the Contracting Officer Representative (after NTP) with a certified copy of each insurance policy upon request.
2. The initial and subsequent certificates of insurance shall include a description of the Contract Work and the assigned Contract number. Prior to beginning any Project Work, the insurance requirements as outlined by Authority's Office of Insurance must be approved in writing.
3. Procure all insurance from insurance companies licensed and authorized to conduct business in the District of Columbia, State of Maryland, and Commonwealth of Virginia. Authority approval or disapproval of insurance furnished by the Contractor shall not release the Contractor of full responsibility for liability for damage and accidents.

4. If at any time the above required insurance policies should be canceled or materially modified so that the insurance is not in full force and effect as required herein, the Authority reserves the right to terminate this Contract between Authority and Contractor.
5. Require each Subcontractor, at all tiers, to provide evidence of insurance coverage with types and limits of insurance as the Contractor sees fit for the work the Subcontractor is performing, and with the Authority added as an Additional Insured on Subcontractors' Commercial General Liability and Auto Liability certificates of insurance. Provide Subcontractor certificates of insurance and Additional Insured endorsements to the Contracting Officer Representative prior to commencement of work.
6. Furnish the required certificates of insurance and Additional Insured endorsement as specified herein within 10 Days after the date of receipt of Award. If the required certificates of insurance and Additional Insured endorsement as specified herein are not furnished within 10 Days after the date of receipt of Award, the Authority may elect to issue NTP to the Contractor but the Contractor will not be permitted to enter upon the Site to perform the Work until all required insurance certificates or evidence of self-insurance have been received.
7. The Contractor will not be paid for providing insurance for this Project as prescribed in this Contract, but the insurance cost thereof shall be included in the prices for the various items as set forth in the Price Proposal.

C. Required Insurance:

1. Commercial General Liability Insurance with limits of \$2,000,000 per occurrence/aggregate, written on an occurrence form. If the required limits can only be met when applying an umbrella/excess liability policy, the umbrella/excess liability policy must follow form of the underlying policy and be extended to "drop down" to become primary in the event the primary limits are reduced or aggregate limits are exhausted. Commercial General Liability Insurance shall include:
 - a. The Contractual Liability Exclusion (applicable to work to be performed within 50 feet of railroad property) must be removed.
 - b. The coverage under such an insurance policy or policies shall be maintained throughout the contract period and for 3 years following acceptance of the work if the CGL insurance is written on a claims made form.
 - c. WMATA shall be named an Additional Insured with respect to this agreement on all certificates of insurance (COI), and the Additional Insured endorsement shall include completed operations and be submitted to the Authority.
 - d. Terrorism coverage: XCU coverage (explosion, collapse, and underground hazards) shall be included if the Work involves excavation or blasting.
2. Workers' Compensation Insurance meeting the statutory requirements of the jurisdiction where the work will be performed, including Employer's Liability coverage with limits of \$1,000,000 each accident or disease.
3. Business Automobile Liability Insurance with minimum combined single limits of \$2,000,000 per occurrence covering contractor against claims for bodily injury and property damage arising out of the ownership, maintenance or use of any owned, hired, or non-owned motor vehicle. The Authority shall be added as an additional insured on the policy.
4. Railroad Protective Liability Insurance (RRP) issued to the Authority as the Named Insured with minimum limits of \$2,000,000 per occurrence/\$6,000,000 aggregate and covering the liability of the Authority arising from all Contracting Parties' work to be performed within fifty (50) feet (on, above, adjacent to or underneath) of the Authority's railroad tracks or within Authority rail stations for any personal injuries or

deaths or any damage to the property, equipment and facilities caused by the activities of any Contractor or Subcontractor resulting from performance of the Work.

5. Authority Blanket RRP Program Option for Contracts under \$5,000,000: The Authority will offer to waive the requirement for the Contractor to procure RRP if 1) the work can be covered under the Authority's blanket RRP program, and 2) the Contractor prepays the premium which shall be determined by the rate schedule promulgated by the insurer in effect as of the effective date of this Contract. Contractor shall be advised of and pay the applicable premium, or procure a standalone RRP policy on the Authority's behalf. Contracts over \$5,000,000 may be covered under the Blanket Program, but must first be reviewed by the underwriter.
6. Terrorism coverage
 - a. Said policy shall remain in force until the construction is completed and Accepted. The policy shall name Authority as an Additional Named Insured and Loss Payee as its interest may appear. The endorsement adding the Authority should state that the First Named Insured is solely responsible for premium payment.

00778 Liquidated Damages

- A. The Contractor understands that if it fails to complete portions or all of the Work as described in Section 00724, Period of Performance and Project Schedule, the Authority will suffer damages, which have been estimated and are specified in Section 00878, Liquidated Damages.
- B. The Contractor agrees that if it does not complete the Work within the specified Contract Performance Time, then the Contractor shall pay to the Authority as liquidated damages, pursuant to Section 00727, Termination for Default, Damages for Delay, and Time Extensions, the sums per Day as separate damages for each specified completion requirement. Milestones are as defined in Section 00724, Period of Performance and Project Schedule.

00779 Compliance with Copeland Act Requirements

- A. The Contractor agrees to comply with section 1 of the Copeland “Anti-Kickback Act,” 18 U.S.C. § 874 that prohibits anyone from inducing, by any means, any person employed on construction, prosecution, completion or repair of a federally assisted building or work, to give up any part of his or her compensation to which he or she is entitled. Contractor further agrees to comply with section 2 of the Act, 40 U.S.C. § 3145, as amended, and implementing DOL regulations, “Contractors and Subcontractors on Public Buildings or Public Works Financed in Whole or in Part, by Loans or Grants from the United States.” Contractor agrees to comply with 29 C.F.R. Part 3 which imposes record keeping requirements for all such contracts in excess of \$2,000.
- B. Contractor shall insert clause I.20.1 in all subcontracts, and require that subcontractors insert this clause in any and all of their subcontracts, at any tier.

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.

00780 Contract Work Hours and Safety Standards Act

- A. Overtime requirements: Neither the Contractor nor any Subcontractor contracting for any part of the Contract Work, which may require or involve the employment of laborers, mechanics, apprentices, trainees, watchmen, and guards shall require or permit any laborer, mechanic apprentice, trainee, watchman, or guard in any work week in which he or she is employed on such work to work in excess of 40 hours in such work week on work subject to the provisions of the Contract Work Hours and Safety Standards Act, unless such laborer, mechanic, apprentice, trainee, watchman, or guard receives compensation at a rate not less than one and one-half times his or her basic rate of pay for all such hours worked in excess of 40 hours in such work week.
- B. Violation, liability for unpaid wages, and liquidated damages. In the event of any violation of the provisions of Paragraph A above, the Contractor and any Subcontractor responsible therefor shall be liable to any affected employee for unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the Authority for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, apprentice, trainee, watchman, or guard employed in violation of the provisions of Paragraph A in the sum of 10 dollars for each Day on which such employee was required or permitted to be employed on such work in excess of his or her standard work week of 40 hours without payment of the overtime wages required by Paragraph A.
- C. Withholding for unpaid wages and liquidated damages: The Contracting Officer Representative may withhold from the Contractor, from any moneys payable on account of work performed by the Contractor or Subcontractor, such sums as may be administratively determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the provisions of Paragraph B.
- D. Subcontracts: The Contractor shall insert Paragraphs A through E of this Section in all Subcontracts and shall require their inclusion in all Subcontracts of any tier.
- E. Records: The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three years from completion of this Contract.

00781 Equitable Adjustment for Minor Contract Modifications

- A. Where the Contracting Officer and Contractor agree to a net additional or deductive amount of direct costs for a Modification to this Contract made pursuant to articles of this Contract titled Changes, Differing Site Conditions, or Value Engineering Incentive, which amount does not exceed \$100,000 and further agree to an adjustment in Contract Performance Time resulting from said Modification which increases or decreases the completion date 10 Days or less, the equitable adjustment in Contract Price shall consist of the following:
1. Direct costs as agreed to by the Contracting Officer and Contractor.
 2. Job Office Overhead costs, the sum of which shall be limited to a maximum of 10 percent labor costs, including fringe benefits, but excluding FICA, FUTA, and State Unemployment Insurance (SUI); 10 percent of direct material costs; 5 percent of direct equipment costs (small tools, defined as equipment less than \$1,000 in acquisition costs, are included and computed at 5 percent of direct base labor wages.); 5 percent of Subcontract costs.
 3. Home Office General and Administrative (G&A) costs, the sum of which shall be limited to a maximum of 3 percent of the direct costs plus job office overhead costs computed as above.
 4. Profit will be determined in accordance with the guidelines specified in the Section 00748, Changes.
- B. In using the above rates, the following shall apply:
1. Payroll Tax (FICA, FUTA, and SUI) amounts are added immediately after direct and indirect costs are totaled.
 2. Subcontractors' indirect costs and profit shall be computed in the same manner as above.
 3. Indirect costs shall not be duplicated in direct costs.
 4. When the change in Contract Performance Time is increased, the change in Contract Price for direct and indirect costs computed by application of the above rates includes costs of impact and extended performance due to the time extension and no further consideration of costs arising from the specific Modification and cited Pending Change Orders (PCOs) will be given.
 5. Bond will be allowed at actual cost without markup.

00782 Drug and Alcohol Testing (for Safety Sensitive Functions Only) – FTA

1. Contractors who perform safety sensitive functions shall be subject to compliance with a drug and alcohol testing program according to federal guidelines published in FTA regulations and WMATA Drug and Alcohol Program Policy. The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Parts 40 and 655 and WMATA Drug and Alcohol Program Policy 7.7.3/5, produce any documentation necessary to establish its compliance with these regulations, and policy and permit any authorized representative of the U.S. Department of Transportation or its operating administrations, applicable state oversight agency, or the Authority to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. Part 655 and WMATA policy and review the testing process. The Contractor further agrees as follows:
2. To certify its compliance with 49 C.F.R. Parts 40 and 655 and to submit an annual Management Information System (MIS) report, as required by federal regulations, to WMATA's Medical Compliance Monitor (MCM) and the Contracting Officer before February 15th of each year. To certify compliance, the Contractor shall use the "Alcohol and Controlled Substances Testing" certification contained in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," that is published annually in the Federal Register.
3. To submit to the MCM and the Contracting Officer before February 15th of each year, a copy of the Policy Statement developed to implement its drug and alcohol testing program.
4. To provide to the MCM and the Contracting Officer before February 15th of each year the following:
 - a. Employee and supervisor training documentation;
 - b. The name and location of the collection site(s), laboratory(ies), Medical Review Officer(s), Breath Alcohol Technician(s), Collector(s), and Substance Abuse Professional(s); and a description of their random selection drug and alcohol testing process.
5. The Contractor further agrees to submit quarterly reports summarizing program compliance and test results to the MCM and the Contracting Officer by the 15th of the month following the end of each quarter.
 - a. Quarter Management Information System (MIS) reports of DOT/FTA tests conducted
 - b. Quarterly DOT/FTA drug and alcohol testing logs
 - c. DOT/FTA testing pool data

00783 No Federal Government Obligations to Third-Parties by use of a Disclaimer

- A. The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Authority, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B. The Contractor agrees to include this clause in each Subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

00784 Program 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 and affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this Contract Work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to.
- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U. S. C. 5307, the Government reserves the right to impose the penalties of 18 U. S. C. 1001 and 49 U. S. C. 5307 (n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- C. The Contractor agrees to include this clause in each Subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

00785 Federal Changes

- A. The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (14) dated October 1, 2007) between the Authority and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

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

00786 Incorporation of FTA Terms

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

00787 Energy Conservation

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

00788 Government-Wide Debarment and Suspension

- A. The Contractor is bound by its certification contained in its offer to the Authority that the Contractor and none of its principals or affiliates are excluded or disqualified, as defined at 49 C.F.R. 29.940 and 29.945. The certification is a material representation of fact, relied upon by the Authority in entering into this Contract. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 49 C.F.R. 29, Subpart C, throughout the term of this Contract.
- B. The Contractor agrees to include this requirement in all Subcontracts at all tiers under this Contract.

Washington Metropolitan Area Transit Authority
IFB No. FQ18119/ST

Contract Number: FQ18119
July 11th, 2018

00789 Survival

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

00790 Choice of Law

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

00791 Whistleblower Protection – Federal

1. The Contractor and its subcontractors shall encourage their employees and independent contractors to report information without fear of actual or threatened discrimination, retaliation or reprisal that they in good faith reasonably believe is evidence of gross mismanagement; gross misuse or waste of public resources or funds; fraud; violation of law; abuse of authority in connection with the conduct of WMATA operations or contracts; or a substantial and specific danger to health, security or safety. The Contractor and its subcontractors shall notify their employees that they may make reports under this clause to:
 - a. WMATA's Office of Inspector General (OIG), in person, in writing, through the OIG Hotline (888-234-2374) or email wmata-oig-hotline@verizon.net or by any other reasonable means;
 - b. WMATA's Metro Transit Police Department (MTPD), in person, by telephone (202-962-2121) or by any other reasonable means, or to the OIG, if the information constitutes a potential violation of criminal law;
 - c. WMATA's Chief Safety Officer, in person, in writing, through the SAFE Hotline (202-249-7233) or email safety@wmata.com, or by any other reasonable means; or
 - d. Any other official, office or agency within WMATA or outside WMATA that the employee or independent contractor reasonably believes has the authority to act on the matter.
2. The Contractor, its employees, independent contractors and subcontractors shall cooperate with any inquiry or review by an authorized official of WMATA, or by the federal government or any other governmental entity with jurisdiction over WMATA, regarding a matter that would constitute a report under paragraph (a) or a violation of this or any whistleblower provision of this Contract, and with any enforcement or judicial proceeding arising from such inquiry or review.
3. The Contractor and its subcontractors shall not interfere with or deny the right of any employee or independent contractor of either the Contractor or any of its subcontractors to make a report under clause I.86.1. The Contractor and its subcontractors shall not recommend, take or threaten to take any action having a negative or adverse impact on any employee or independent contractor of either the Contractor or any of its subcontractors because he or she:
 - a. made or is perceived to have made a report under clause I.86.1;
 - b. sought a remedy under applicable law after making a report under clause I.86.1.
 - c. participated in or cooperated with an inquiry or review by an authorized official of WMATA, or by the federal government or any other governmental entity with jurisdiction over WMATA, regarding a matter that would constitute a report under clause I.86.1 or a violation of this or any whistleblower provision of this Contract, or with an enforcement or judicial proceeding arising from such inquiry or review;
 - d. refused to obey an order that would violate law; or
 - e. refused to work or authorize work when a hazardous safety or security condition presents an imminent danger of death or serious injury, there was no reasonable alternative to refusal, there was not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, notified the Contractor or subcontractor of the condition and of his or her intent not to perform or authorize work.
4. The Contractor shall include, or shall cause to be included, the substance of this clause, including this clause I.86.4, in its subcontracts at all tiers.
5. The Contractor and its subcontractors shall comply with the National Transit Systems Security Act (NTSSA) 6 U.S.C. §1142, which prohibits discharging, demoting, suspending, reprimanding or in any other way discriminating against an employee as a reprisal for the employee lawfully and in good faith:

- a. reporting a hazardous safety or security condition;
 - b. refusing to work when a hazardous safety or security condition presents an imminent death or serious injury, there is no reasonable alternative to refusal, there is not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, has notified the Contractor or subcontractor of the condition and of his or her intent to not perform work;
 - c. refusing to authorize the use of any safety or security related equipment, track or structures, if the individual is responsible for their inspection or repair and reasonably believes they are in a hazardous safety or security condition, there is no reasonable alternative to refusal, there is not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, has notified the Contractor or subcontractor of the condition and of his or her intent not to authorize use of hazardous equipment or infrastructure unless corrected;
 - d. providing information for or directly assisting in an investigation of conduct that the individual reasonably believes to be in violation of federal law regarding safety, security or fraud, waste or abuse of funds intended for safety or security;
 - e. refusing to violate or assist in violation of federal public transportation safety or security law;
 - f. cooperating with a safety or security investigation by the U.S. Secretary of Transportation, U.S. Secretary of Homeland Security or the National Transportation Safety Board;
 - g. furnishing information to law enforcement agencies relating to an accident or incident resulting in damage to property, injury or death; or
 - h. filing a complaint under the NTSSA (6 U.S.C. §1142), or testifying regarding such complaint.
6. The Contractor shall notify the Authority of any instance of reports or refusal under this clause.
 7. The enforcement, filing and investigation of complaints, and remedies under this clause shall be governed by the NTSSA (6 U.S.C. §1142), applicable federal regulations and federal law.
 8. This clause shall be interpreted in accordance with the NTSSA (6 U.S.C. §1142). If any provision is found to be in conflict with the NTSSA, the NTSSA shall govern.
 9. The Contractor shall include, or shall cause to be included, this clause, including this sub-clause, in its subcontracts at all tiers.

00792 Workplace Violence – Zero Tolerance

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

00793 Additional Federal Regulations and Clauses

A. Lobbying

1. The Contractor is bound by its certification contained in its Offer to the Authority regarding the use of Federal or non-Federal funds to influence, or attempt to influence any Federal officer or employee, member of Congress or employee of Congress regarding the award, execution, continuation, or any similar action of any Federal grant or other activities as defined in 31 U.S.C. § 1352, 49 CFR Part 19, or 49 C.F.R. Part 20. The Contractor agrees to comply with this requirement throughout the term of the Contract.
2. The Contractor agrees that it will comply with 31 U.S.C. § 1352, as amended, U.S. DOT regulations “New Restrictions on Lobbying” 49 C.F.R, Part 20, to the extent consistent with 31 U.S.C. § 1352, as amended and other applicable Federal laws, regulations and guidance prohibiting the use of Federal funds for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature unless an exception exists in current Federal law.
3. The Contractor agrees to include these requirements in all Subcontracts at all tiers under this Contract.

B. Clean Air Act

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 the Authority and understands and agrees that the Authority will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.
2. The Contractor will comply with U.S. EPA Regulations “Control of Air Pollution from Mobile Sources,” 40 C.F.R. Part 85; “Control of Emissions from New and In-Use Highway Vehicles and Engines,” 40 C.F.R. Part 86; “Fuel Economy and Greenhouse Gas Exhaust Emissions of Motor Vehicles,” 40 C.F.R. Part 600, as well as any applicable State Implementation Plans (SIP), and EPA regulations “Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or Federal Transit Laws” 40 C.F.R. Part 93, along with other applicable Federal regulations.
3. The Contractor also agrees to include these requirements in each Subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

C. Clean Water Act

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Water Act, as amended, 33 U. S. C. 1251 et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor will protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§300 (f)-(j).
3. The Contractor will comply with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368.
4. The Contractor will facilitate compliance with Executive Order 11738, “Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants or Loans,” 42 U.S.C. §7606 note.
5. The Contractor also agrees to include these requirements in each Subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

D. Cargo Preference Requirements

1. The Contractor agrees to the following:

- a. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping equipment, materials, or commodities pursuant to this Contract to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- b. To furnish within 20 working days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in Paragraph D above to WMATA (through the Contractor in the case of a Subcontractor's bills-of-lading) and to the Office of Cargo Preference, Maritime Administration (MAR-590), 400 Seventh Street SW, Washington, DC 20590.
- c. To include these requirements in all Subcontracts issued pursuant to this Contract when the Subcontract may involve the transport of equipment, material, or commodities by ocean liner.

E. Fly America

1. The Contractor agrees to comply with 49 U. S. C. § 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. § 301-10, which provide that recipients and sub-recipients of Federal funds and their Contractors are required to use U. S. Flag carriers for U. S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. 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 Paragraph in all Subcontracts that may involve international air transportation.

F. Buy America

The Buy America Act requirements apply to the following types of contracts: construction contracts, the acquisition of goods or rolling stock valued at more than \$150,000.00.

1. The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. §661.7, Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.
2. The Contractor is responsible for flowing down these requirements to subcontractors at every tier. The dollar threshold only applies to the prime contract. All subcontracts thereunder are subject the Buy America Act Requirements.
3. A Bidder must submit to WMATA the appropriate Buy America Act certification with all offers on FTA funded contracts, except those subject to a general waiver. Bids that are not accompanied by the appropriate Buy America Act certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors

G. Contracts Involving Federal Privacy Act Requirements

1. The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:
 - 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. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
 - 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 FTA.

H. Recovered Material/Recycled Products

1. The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA) as amended (42 U. S. C. 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.
2. The Contractor also agrees to include these requirements in each Subcontract financed in whole or in part with Federal assistance provided by FTA.

I. Seismic Safety

1. The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a Subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

J. Seat Belt Use Policy and Distracted Driving

1. The Contractor agrees to comply with terms of Executive Order No. 13043 "Increasing Seat Belt Use in the United States" and is encouraged to include those requirements in each Subcontract awarded for work relating to this Contract.
2. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

K. Americans with Disabilities Act Accessibility – FTA

1. The Contractor agrees that it will operate public transportation services in compliance with 42 U.S.C. § 12101 et seq.; DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)" using facilities and equipment that comply with 49 C.F.R. Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38. Private entities must comply with the requirements of 49 C.F.R. Part 37 applicable to public entities with which they contract to provide public transportation services.

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

L. Mandatory Disclosure

1. The Contractor shall timely disclose, in writing, to WMATA's Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this Contract or any subcontract hereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed—
 - a) A violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or
 - b) A violation of the civil False Claims Act (31 U.S.C. §§ 3729-3733).
2. WMATA, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by the law and regulation, such information will not be released by WMATA to the public pursuant to a Public Access to Records (PARP) request. WMATA may transfer documents provided by the Contractor to any department or agency within the state, federal or local government, if the information relates to matters within the organization's jurisdiction.
3. If the violation relates to an order against a government-wide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor shall notify the OIG of the ordering agency and the OIG of the agency responsible for the basic contract.

M. National Intelligent Transportation Systems Architecture And Standards – FTA

1. The Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), as amended by MAP-21, unless it obtains an exemption from those requirements;
2. The Contractor agrees to follow:

FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455, January 8, 2001, and

All other applicable Federal guidance, and
3. The Contractor agrees to Flow this provision down to all applicable subcontracts.

N. Veterans Preference

1. As provided by 49 U.S.C. §5325(k), to the extent practicable, The Contractor will:
 - a. Give a hiring preference to veterans, as defined in 5 U.S.C. §2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and
 - b. Will not require an employer to give a preference to any veteran over an equally qualified applicant who is a member of any racial or ethnic minority, female, and individual with a disability, or former employee.

O. Notification of Federal Participation

This Project is being funded in whole or part with Federal Funds.

P. Access to Records and Reports

1. The Contractor agrees to provide the Authority, the FTA Administrator, the Comptroller General of the United States, or any of their authorized representatives, access to any books, documents, papers and records of the Contractor, which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor also agrees, pursuant to 49 C.F.R. § 633.17 to provide the FTA Administrator or its 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.
2. 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.
3. Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than 3 years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of Claims arising from the performance of this Contract, in which case the Contractor agrees to maintain same until the Authority, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, Claims, or exceptions related thereto.
4. The Contractor further agrees to include in all its Subcontracts hereunder, a provision to the effect that the Subcontractor agrees that the Contracting Officer, and the Comptroller General of the United States and the United States Secretary of Transportation if applicable, or their duly authorized representatives, shall until the expiration of 3 years after Final Payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Subcontractor involving transactions related to the Subcontract, for the purpose of making audit, examination, excerpts, and transcription.

Q. No Government Obligation to Third Parties

1. The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Authority, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The Contractor agrees to include this clause in each Subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

R. Requests for Records

1. The Washington Metropolitan Area Transit Authority (WMATA), in the regular course of business, may receive from the public, including prospective vendors and bidders, requests for records on a variety of topics. It is WMATA's policy to make official agency records, including electronic records, available to the public, unless specifically prohibited by WMATA's policy or applicable laws.
2. "Records" means any existing writings, drawings, maps, recordings, tapes, film, microfilm, correspondence, forms, cards, photographs, optical disks, photo copies, and records stored by computer (electronic records) that are made or received by WMATA in connection with a public contract. A record does not include uncirculated personal notes, papers, electronic records and any other records that were

created and retained solely as work papers for personal use of the Contracting Officer, Contract Administrator or other WMATA employee.

3. WMATA's contracting process allows for the release/posting of certain information concerning this Contract after its award. This includes the name of the successful bidder and the amount of the award. This information is available on WMATA's website under "Business with Metro" or directly from the Contract Administrator.
4. Upon WMATA's request, the successful bidder shall be required to provide a redacted copy of its bid with confidential and proprietary information redacted.
5. After the award is announced, the winning proposal may be subject to release under WMATA's Public Access to Records Policy (PARP).
6. When WMATA determines that a bid will be of wide public interest, WMATA will post the redacted bid on its website. When WMATA receives three (3) or more requests for a successful bid, WMATA will post it on its website.
7. Requests for Records that are not made available during the procurement process will be submitted in accordance with the PARP. Requests must be in writing and sent by mail to the Office of General Counsel, Washington Metropolitan Area Transit Authority, 600 Fifth Street, NW, Washington, D.C. 20001, or by electronic mail at parprivreq@wmata.com or by facsimile to the attention of the PARP Administrator at (202) 962-2550. If a request for records is sent directly from the requestor to a Contract Administrator, department, or independent office, that entity shall immediately forward the request to the PARP Administrator in the Office of General Counsel. If records are subject to a PARP request, a member of the PARP team will contact the company to begin the PARP document review process, which includes providing detailed written justifications for any information for which exemptions are claimed.
8. Neither WMATA's bidding process nor the PARP process generally allow for the release of information that would cause competitive harm to the bidders, other organizations, WMATA's employees, or interests. Information that will be withheld includes the following:
 - (1) The names of unsuccessful bidders;
 - (2) The bids of unsuccessful bidders;
 - (3) Personal information (this does not include education and qualifications which are released) about the successful bidder or its employees that is not available to the public on the website of the successful bidder;
 - (4) Unit price details of the successful bid (this does not include the bottom line price, which is released);
 - (5) The names of the vendors who file a protest to the solicitation or its award;
 - (6) The written adjudication of any protests;
 - (7) Personal information concerning WMATA's employees; and
 - (8) Trade secrets and confidential commercial or financial information obtained from a bidder.
9. If your company's records are subject to a PARP request (i.e., if it is the successful bidder), a broad claim of confidentiality for the entire bid is rarely acceptable, and will likely be rejected during the PARP process. Therefore, WMATA suggests that you narrowly identify your confidential/proprietary information based on the following guidance:
10. Information that may be withheld/redacted: Detailed pricing except bottom line offer amounts;
11. Public information subject to release:
 - (1) Any information on your company's website;
 - (2) Publicly known information (even if not on your company's website);
 - (3) General company background;
 - (4) Mere compliance with IFB requirements; and

- (5) Anything standard to the industry.

S. Title and Risk of Loss

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

T. Set-off

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

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

V. Laws and regulations

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

W. Metric System

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

X. Contractor Personnel

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

Y. Public Communication

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

Z. All Necessary Federal Provisions Deemed Included- Fta

1. It is the intent of the parties that each and every provision of law required to be inserted in this Contract should be and is hereby inserted herein.

AA. Rights In Data And Copyrights — FTA

- (a) The term "subject data" used in this article means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists; specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to Contract administration.
- (b) The following restrictions apply to all subject data first produced in the performance of this contract:
 - (1) Except for its or WMATA's own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of the U.S. Government, until such time as the Government may have either released or approved the release of such data to the public. This restriction on publication, does not apply to agreements with academic institutions;
 - (2) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, the following subject data for its purposes:
 - (i) Any subject data developed under this contract whether or not a copyright has been obtained; and
 - (ii) Any rights of copyright to which the contractor purchases ownership with Federal assistance.
- (c) When the Federal Transit Administration (FTA) provides financial assistance for a planning, research, development, or a demonstration project, it is FTA's general intention to increase mass transportation knowledge, rather than limit the benefits to participants in the project. Therefore, unless FTA determines otherwise, the Contractor agrees that, in addition to the rights set forth in subsection (b)(2) of this article, FTA may make available to any FTA recipient, sub-recipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the subject data derived under this Contract or a copy of the subject data first produced under this Contract. If this Contract is not completed for any reason whatsoever, all data developed under this Contract shall become subject data as defined in subsection (a) and shall be delivered as the Federal Government may direct.
- (d) Unless prohibited by state law, the Contractor agrees to indemnify, save, and hold harmless WMATA and the Federal Government, their officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from the Contractor's willful or intentional violation of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Contract. The Contractor shall not be required to indemnify WMATA and the Federal Government for any such liability arising out of the wrongful acts of their employees or agents.
- (e) Nothing contained in this article shall imply a license to WMATA or the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to WMATA or the Federal Government under any patent.

- (f) The requirements of paragraphs (b) and (c), do not apply to material furnished by the Authority to the Contractor and incorporated in the work carried out under the contract provided that the Contractor identifies the incorporated material at the time of delivery of the work.
- (g) Any dispute arising under this article shall be subject to the "Disputes" article of this Contract.
- (h) Notwithstanding any other payment provision in this Contract, the Contracting Officer may retain from payments due and owing the Contractor up to 10 percent (10 %) of the contract price until final delivery and acceptance of the subject data defined in this article and as required to be furnished by the Price Schedule or the Contract's specifications.

AB. Retainage

1. Final Payment Only Retainage, unless instructed differently in 00744 Method of Payment. All amounts withheld from Contractor as retainage, based on a percentage of the work completed, or as a line item tied to the completion of the work shall be retained solely out of the Contractor's final payment. Payment of any fund withheld from Contractor's final payment shall be released to Contractor within thirty (30) days after completion of Contractor's Work and Closeout Release.

AC. Payment Deductions - Noncompliance With DBE Requirements- FTA

- (a) For Federally funded contracts that exceed \$150,000 and to which the Disadvantage Business Enterprise (DBE) Requirements (Appendix B) apply, the failure to perform in accordance with requirements of Appendix B may result in a partial or full suspension of payment, including progress payments, if applicable.
- (b) If the Contractor is found to be in noncompliance with the DBE requirements of Appendix B, the progress of the work shall also be deemed to be unsatisfactory, and an amount equal to the DBE participation in the Contract shall be retained from payment (or progress payments, if any) made to the Contractor.
- (c) If the contract value is over \$150,000, the prime contractor will be responsible for submitting a monthly report of the status of its DBE subcontractors as outlined in Appendix B to the Contracting Officer.
- (d) If the Contractor fails to submit the required monthly DBE reports, the Contracting Officer may suspend payment (or progress payments) until such time as the monthly reports are submitted and accepted by the Authority.

AD. Bonding For Construction Projects Exceeding \$150,000 – FTA

The Contractor agrees to comply with applicable bonding requirements as follows:

- (a) Proposal Security. A proposal bond must be issued by a fully qualified surety company acceptable to WMATA and listed as a company currently authorized under 31 C.F.R. Part 223 as possessing a Certificate of Authority as described thereunder.
- (b) Rights Reserved. In submitting its offer, it is understood and agreed by offeror that the right is reserved by WMATA to reject any and all offers, or part of any offer. It is also understood and agreed that if the offeror refuses or is unable to enter into this Contract, or refuses or is unable to furnish adequate and acceptable performance bonds and labor and material payments bonds, or refuses or is unable to furnish adequate and acceptable insurance, it shall forfeit its security to the extent of WMATA's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefore.

It is further understood and agreed that to the extent that the defaulting offeror's proposal bond, certified check, cashier's check, treasurer's check, and/or official bank check (excluding any income generated thereby that was retained by WMATA) shall prove inadequate to fully compensate WMATA for the damages occasioned by default, then the offeror agrees to indemnify WMATA and pay over to WMATA

the difference between the proposal security and WMATA's total damages, so as to make WMATA whole.

- (c) Performance and Payment Bonding Requirements (Construction). The Contractor shall be required to obtain performance and payment bonds as follows:
- (1) Performance bonds. The penal amount of performance bonds shall be one hundred percent (100%) of the original Contract price, unless WMATA determines that a lesser amount would be adequate for its protection.
 - (2) WMATA may require additional performance bond protection when the Contract price is increased. The increase in protection shall generally equal one hundred percent (100%) of the increase in Contract price. WMATA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- (d) Payment bonds. The penal amount of the payment bonds shall equal:
- (1) Fifty percent (50%) of the Contract price, if it is not more than \$1,000,000.
 - (2) Forty percent (40%) of the Contract price, if it is more than \$1,000,000, but not more than \$5,000,000;
or
 - (3) Two and one half million (\$2,500,000), if the Contract price is more than \$5,000,000.

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

AE. Criminal Background Check Requirement

1. Pursuant to Metro Policy Instruction 7. 2.3/2, "Criminal Background Checks," the Contractor shall have the sole responsibility for, and shall assure, adequate criminal background screenings on a routine basis for all persons that the Contractor considers for work under this Contract, if the person would have access to WMATA's customers, the general public, WMATA's property, or WMATA's information. In conducting these screenings, the Contractor shall take due regard for the nature of the person's job, with particular regard for the person's exposure to and interaction with WMATA's customers and the general public. Screenings should be job related for the position in question and consistent with business necessity. The Contractor shall not place or otherwise engage any person to work under this Contract, who has not passed a criminal background check, if that person would have access to WMATA's customers, property, or information or if the person would interact with the general public on WMATA's behalf. This includes all Contractor personnel who will work on WMATA's premises, who will be denied Contractors' access badges, unless and until adequate criminal background screenings are performed. At the end of each calendar quarter, the Contractor shall certify to the Contracting Officer, its compliance with this criminal background screening requirement. All persons required to be screened, which includes all Contractor personnel who require a Contractors' badge to access a WMATA facility shall pass the Contractor's criminal background screening before working on this Contract, and before being issued a Contractors' access badge.
2. The Contractor shall indemnify and hold WMATA harmless from any and all claims, demands, damages, costs and expenses, including attorneys' fees and other costs and expenses associated with any claims, demands, requests for relief, and/or other liabilities arising out of or resulting from the Contractor's criminal background screening obligations and processes.

END OF SECTION

Section 00800 – Supplementary Conditions

This Section includes Modifications to the Section 00700, General Conditions, for requirements unique to a specific project and is hereby incorporated into the General Conditions by reference. This Section 00800, Supplementary Conditions, which specifies modifications to the General Conditions, shall be read in conjunction with Section 00700, General Conditions, and which will be cited in Section 00700, General Conditions, using the same last two digits of the Section number; i.e., a modification to Section 00725, Commencing The Work, is indicated as Section 00825, Commencing The Work

00810 Work by Contractor

Modify Clause 00710, Work by Contractor to delete Paragraph A. and substitute with the following Paragraph:

- A. The Contractor shall perform, with its own organization, work equivalent to at least 70% of the value for the construction work.

00824 Project Schedule

Modify Clause 00724, Project Schedule to delete Paragraph A. and substitute with the following paragraph and subparagraphs:

- A. The Contractor shall perform, complete, and advance all Work under this Contract in accordance with the schedule set out. The Contractor must have all work completed within NTP + 1100 Calendar Days from issuance of Notice to Proceed. When possible, work should be performed concurrently.

MILESTONE	DELIVERABLE	DUE DATE
MS-1	Preliminary Actions - Submit Qualifications - Submit Project Schedule - Presentation	NTP+20
MS-2	Design / Specs	NTP+40
MS-3	Test Plan - Factory Test Procedure - Acceptance Test Procedure - Field test & Adjustment Procedure	NTP+60
MS-4	Acceptance of Factory Test Results	NTP+70
MS-5	Manuals - O&M Manual Approval - Shop Manual Approval - Programming Manual (if applicable)	NTP+80
MS-6	Delivery & Acceptance of Test Platform	NTP+110
MS-7	Training	NTP+120
MS-8	25% Delivery & Installation of Supplies	NTP+255
MS-9	50% Delivery & Installation of Supplies	NTP+440
MS-10	75% Delivery & Installation of Supplies	NTP+620
MS-11	100% Delivery & Installation of Supplies	NTP+800
MS-12	Delivery of Spare Supplies	NTP+980
MS-13	BOP Updates & Salvage Delivery	NTP+990

00833 Authority-Furnished Property

Modify Clause 00733, Authority-Furnished Property to delete Paragraphs A through D and substitute the following Paragraph:

- A. The Authority will not furnish property, real or otherwise, through the terms of this Contract. The Contractor is required to purchase or lease any property needed for, but not limited to, laydown, storage, or employee parking in its obligations to comply with the Project requirements.

00841 Consideration and Basis of Payment

Modify Clause 00741, Consideration and Basis of Payment, in its entirety, and substitute the following:

- A. In consideration of its undertaking under this Contract, the Contractor will be paid the sums set forth in this Contract, which shall constitute complete payment for all work and services required to be performed under this Contract and for all expenditures, which may be made and expenses incurred. The basis of payment will be the Contract Price, as shown on Section 00510, CONSTRUCTION CONTRACT FORM, and which shall constitute complete compensation for performance of all work required by the Contract.
- B. Standby cost for delayed or cancelled Site access: In the event the Contractor is delayed in the performance of the Work due to Authority delayed or cancelled Site access, the following basis of payment shall apply:
1. The "Hours of Work" is the period during which the Contractor has use of the work area. The "Hours of Work" will exclude the periods required by the Authority to safely secure the work area before the start of the "Hours of Work" and to restore the work area to an operational state after completion of the "Hours of Work".
 2. Delay will be measured relative to "Hours of Work" only. The "Hours of Work" shall be determined based upon weekly coordination between the Contracting Officer Representative (COR) and the Contractor.
 3. Delays caused by actions of the Authority may occur at the start of the "Hours of Work", during the "Hours of Work", or at the end of the "Hours of Work".
 - a. A delay at the start of the "Hours of Work" occurs when the Authority does not grant access to the work area by the scheduled start time. A delay at the start of the "Hours of Work" will be measured from the scheduled start of the "Hours of Work" until the time the Contractor is granted access to the work area.
 - b. A delay during the "Hours of Work" occurs when the Authority requests the Contractor to vacate the work area and the Contractor is later allowed to return to the work area. A delay during the "Hours of Work" will begin when the Contractor is directed to stop work to vacate the work area and will end when the Contractor returns to the work area and resumes work.
 - c. A delay at the end of the "Hours of Work" occurs when the Authority requests the Contractor to vacate the work area early. A delay at the end of the "Hours of Work" will be measured from the time the Contractor is directed to vacate the work area until the scheduled end of the "Hours of Work".
 4. The Contractor will be compensated for the direct labor costs incurred for the aggregate of delays that exceed 30 minutes relative to the "Hours of Work". For payment purposes,

delays will be rounded to the nearest 30 minutes provided the Contractor remains mobilized until granted access or until the Contractor elects to cancel the work, or the Contracting Officer Representative cancels access for the period. However, if the Contractor elects to cancel work due to a lack of time remaining in the "Hours of Work" period to complete the planned work element, as verified by the Period of Delay form, the Contractor will be compensated for the aggregate of delays that exceed 30 minutes rounded to the nearest 30 minutes from the time access was cancelled to the scheduled end of the "Hours of Work" period.

5. When access to the work area is cancelled by the Contracting Officer Representative with less notice than noted below, the Authority will pay standby cost of not more than the scheduled "Hours of Work" period or 4 hours, whichever is less. However, if Contractor is able to reassign the work crew to other work, regardless of the time of the notice given by the Contracting Officer Representative, no payment will be made.
 - a. Weeknights: Five hours before the planned start time of the scheduled "Hours of Work."
 - b. Weekends: Twenty-four hours before the planned start time of the scheduled "Hours of Work."
6. No payment will be made in those cases where:
 - a. A delay at the start of the "Hours of Work" is less than 1 hour and the Authority grants access but the Contractor elects to cancel work, except that payment for delay cost will be made in accordance with Paragraph B.4 above if the scheduled "Hours of Work" period is 3 hours or less.
 - b. A delay at the start of the "Hours of Work" is less than 1 hour and the Authority grants access and the Contractor proceeds working and then elects to cease working and leaves the worksite prior to the scheduled end of the "Hours of Work".
7. Prior to the completion of each shift, the Contractor and the Contracting Officer Representative or designee shall sign a Period of Delay form, which shall document the work start and completion times, the duration of the delay, the reason for the delay, the reason for the Contractor leaving the Site prior to the scheduled end of the "Hours of Work" period, and the names of the crew members present, including foremen, but excluding salaried supervision. The Contractor shall not be entitled to compensation for equipment, overhead, profit or extended overhead costs under this Section; however, this Section does not prohibit the Contractor from seeking an equitable adjustment for equipment costs under other sections of the Contract and access delays may provide a basis to grant a non-compensable extension to the Period of Performance. Certified payrolls shall establish the hourly rates of the crewmembers. All requests for payment for delay costs shall be submitted to the Contracting Officer Representative with the next progress payment or within 30 Days, whichever is longer. The Contractor waives any right to delay costs where the delays are not documented prior to the completion of the shift and the request for payment is not submitted to the Contracting Officer Representative with the next progress payment or within 30 Days, whichever is longer.
8. If the Contractor is not ready to start work at the start of the "Hours of Work" or does not return the work area to the Authority on time at the end of the "Hours of Work," the Contractor shall compensate the Authority for the Authority staff and other Authority direct costs for supporting the non-revenue or Revenue Service Adjustment event.

Notification of Cancellation	Occurrence	Requirement	Terms of Payment
Week Night	COTR cancels full shift	The COTR notifies Contractor 5 hours or more before the planned start	No delay payment due
Week Night	COTR Cancels full shift	The COTR notifies Contractor less than 5 hours before the planned start	Pay 4 hours ¹
Weekend Single Track/Shutdown	COTR cancels full shift or the full weekend of work	The COTR notifies Contractor 24 hours or more before the planned start	No delay payment due
Weekend Single Track/Shutdown	COTR cancels full shift or the full weekend of work	The COTR notifies Contractor less than 24 hours before the planned start	Pay 4 hours ¹

¹No payment will be made if the Contractor is able to reassign the work crew to other work.

Hours of Work	Actual Hours Worked	Contractor	Terms of Payment
Weeknight Early Out Hours of Work: 2200 to 0400 (Weeknight Nonrevenue Similar)	Start Delayed 35 minutes to 2235	Contractor is on Site ready to work Contractor elects not to go to work	Under 1 hour delay; no Payment due
Weeknight Non-Revenue Hours of Work: 0100 to 0400 (Weeknight Nonrevenue Similar)	Start Delayed 35 minutes to 0135	Contractor is on Site ready to work Contractor elects not to go to work since remaining time does not allow completion of work element	Pay 2 hours and 30 minutes delay
Weeknight Early Out Hours of Work: 2200 to 0400 (Weeknight Nonrevenue Similar)	Start Delayed 65 minutes to 2305	Contractor is on Site ready to work Contractor elects not to go to work	Over 1 hour delay; pay 5 hours and 30 minutes delay
Weeknight Early Out Hours of Work: 2200 to 0400 (Weeknight Nonrevenue Similar)	Start delay / End delay 2225 to 0345 Start delay 25 minutes End delay 15 minutes Total delay 40 minutes	Contractor is on Site ready to work Works during time permitted	Pay 30 minutes delay
Weeknight Early Out Hours of Work: 2200 to 0400 (Weeknight Nonrevenue Similar)	Delay during "Hours of Work" 2330 to 0035 Start delay 0 minutes End delay 0 minutes Total delay 65 minutes	Contractor is on Site ready to work Works during time permitted	Over 1 hour delay; pay 60 minutes delay

Hours of Work	Actual Hours Worked	Contractor	Terms of Payment
Weekend Hours of Work: Fri 2200 to Mon 0400	Delay during "Hours of Work" Sat 0200 to Mon 0300 Start delay 4.25 hours End delay 1.25 hours Total delay 5.5 hours	Contractor is on Site ready to work Works during time permitted	Pay 5 hours and 30 minutes delay
Weeknight Early Out Hours of Work: 2200 to 0400	Start delayed to 0200 hours then COR cancels access	Contractor is on site ready to work	Pay 5 hours and 30 minutes delay
Weeknight Nonrevenue Hours of Work: 0100 to 0400	Start delayed to 0245, then COR cancels access	Contractor is on Site ready to work	Pay 2 hours and 30 minutes delay
Weekend Hours of Work: Friday 2200 to Monday 0400	Delay Friday 2200 to Saturday 0630. First shift cancelled at 0230. Work begins at 0630	Contractor 1st shift is on Site ready to work until shift cancelled at 0230	Pay 8 hours delay

00865 Disadvantaged Business Enterprise

Modify Section 00765, Disadvantaged Business Enterprise, to delete paragraph G., add Appendix B

1.The goal of DBE Participation established for this Contract is eighteen (18%) of the Contract Price.

00877 Indemnification and Insurance Requirements

Supplement Clause 00777, Indemnification and Insurance with the following:

I. MINIMUM REQUIRED INSURANCE: MINIMUM LIMITS OF INSURANCE

INSURANCE TYPE	LIMITS	BASIS
Workers' Compensation	Statutory	
Employers' Liability	\$500,000	Each Accident
	\$500,000	Disease Policy Limit
	\$500,000	Disease Each Employee
Commercial General Liability		
	\$2,000,000	Each Occurrence Limit

	\$4,000,000	General Aggregate Limit
	\$2,000,000	Products-Completed Operations Limit
Business Auto Liability		
	\$2,000,000	Combined Single Limit

Railroad Protective Liability Insurance (RRP)		
	\$2,000,000	Each Occurrence Limit
	\$4,000,000	Aggregate Limit

II. MINIMUM REQUIRED INSURANCE: MINIMUM INSURANCE COVERAGES AND COVERAGE PROVISIONS

- 1) Contractor is required to maintain the prescribed insurance outlined in this Exhibit A during the entire period of performance under this contract. Notice to Proceed (NTP) will not be issued until all required insurance has been accepted by WMATA.
- 2) The prescribed insurance coverage and limits of insurance are minimum required coverages and limits. Contractor is encouraged, at its sole cost and expense, to purchase any additional insurance coverages and or limits of insurance that Contractor deems prudent and necessary to manage risk in the completion of this contract.
- 3) Upon written request from WMATA, contractor shall provide copies of any requested insurance policies, including applicable endorsements, within five (5) business days of such request.
- 4) Receipt, review or communications regarding certificates of insurance (COI), insurance policies, endorsements, or other materials utilized to document compliance with these Minimum Insurance Requirements does not constitute acceptance by WMATA.
- 5) Insurance companies must be acceptable to WMATA and must have an A. M. Best rating of at least A- VII.
- 6) Unless otherwise noted, "Claims Made" insurance policies are not acceptable.
- 7) Any insurance policy utilizing a Self-Insured Retention (SIR) requires written approval from WMATA.
- 8) Contractor must incorporate these Minimum Insurance Requirements into contract requirements of all subcontractors of every tier; however, Contractor, at its sole peril, may amend these Minimum Insurance Requirements for its subcontractors, but doing so does not relieve Contractor from its respective liability to WMATA.
- 9) Compliance with these Minimum Insurance Requirements does not relieve Contractor from Contractor's respective liability to WMATA, even if that liability exceeds the Minimum Insurance Requirements.

III. COVERAGE-SPECIFIC REQUIREMENTS

Commercial General Liability

- 1) Commercial General Liability (CGL) shall be written on ISO Occurrence Form CG0001 (12/04) or its equivalent. Equivalency determination shall be made in WMATA's sole and unreviewable discretion.
- 2) Required minimum limits of coverage may be achieved through a combination of the aforementioned CGL coverage form and an Umbrella/Excess Liability coverage form(s), provided that the Umbrella/Excess Liability coverage form(s) provides the same or broader coverage than the prescribed CGL coverage form.
- 3) Policy shall be endorsed with Additional Insured Endorsement(s) in compliance with the "Additional Insured" Section below.
- 4) Policy shall be endorsed with a Waiver of Subrogation Endent(s) in compliance with the Waiver of Subrogation" section below.
- 5) The definition of "Insured Contract" shall be modified to provide coverage for contractual liability for any contracts involving construction or demolition operations that are within 50 feet of a railroad, and sidetrack agreements. Evidence of this modification shall be provided to WMATA along with all other required documents.
- 6) Defense Costs (Allocated Loss Adjustment Expense) must be included and outside of the policy limits for all primary liability and Umbrella/Excess Liability policies.

Business Auto Liability

- 1) Business Auto Liability insurance shall be written on ISO Business Auto Coverage Form CA 00 01 03 06, or its equivalent. Equivalency determination shall be made in WMATA's sole and unreviewable discretion.
- 2) Policy shall be endorsed with Additional Insured Endorsement(s) in compliance with the "Additional Insured" Section below.
- 3) Policy shall be endorsed with a Waiver of Subrogation Endorsement(s) in compliance with the Waiver of Subrogation" section below.
- 4) Business Auto Liability minimum Combined Single Limit requirements may be obtained through the combination of a primary business auto liability policy and an Umbrella/Excess Liability policy provided that the Umbrella/Excess Liability policy complies with items 2 and 3 above.
- 5) MCS-90 Endorsement for work involving the transportation or disposal of any hazardous material or waste off of the jobsite. If the MCS-90 Endorsement is required, minimum auto liability limits of \$5,000,000 per occurrence are also required as is form CA 99 48, broadened coverage for pollution liability.
- 6) Non-Owned Disposal Site (NODS) Endorsement providing coverage for the Contractor's legal liability arising out of pollution conditions at the designated non-owned disposal site.

Professional Liability Insurance

WMATA may require professional liability insurance (Errors and Omissions) for the work of Permittee or its subcontractors for certain types of consulting services.

Railroad Protective Liability

Railroad Protective Liability Insurance is required for any work within 50 feet of WMATA railroad tracks or work within WMATA rail stations.

- 1) The Railroad Protective Liability (RRP) policy must be on a policy form and with an insurance company that is acceptable to WMATA.
- 2) WMATA shall be the Named Insured.
- 3) The original RRP policy shall be sent to WMATA at following address:

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

WMATA Blanket RRP Program Option

WMATA may offer to waive the requirement for the Contractor to procure RRP if 1) the work qualifies for coverage under WMATA's blanket RRP program, and 2) the Contractor prepays the RRP premium which shall be determined by the rate schedule promulgated by the insurer in effect as of the effective date of this Contract.

Professional Liability Insurance

WMATA may require professional liability insurance (Errors and Omissions) for the work of Permittee or its subcontractors for certain types of consulting services.

Pollution Liability Insurance

Permittee, any subcontractor of any tier, or any supplier performing work that may in any way involve contact with, exposure to or release of hazardous materials including but not limited to construction, soil testing and demolition, is required to maintain Pollution Liability insurance as follows:

- 1) Coverage can be written on an "occurrence" or "claims-made" basis.
- 2) Coverage can be written on "non-admitted" paper.
- 3) Policy shall be endorsed with Additional Insured Endorsement(s) in compliance with the "Additional Insured" section below.

Technology Errors and Omissions Insurance

Contractor must procure and maintain Technology Errors and Omissions insurance covering actual or alleged negligent acts, errors or omissions committed by the Contractor in the provision of information technology services performance of activities under this agreement, regardless of the type of damages. If the insurance is on a claims made basis, Contractor shall maintain continuous insurance coverage during the term of this agreement. The policy retroactive date must coincide with or precede the effective date of Contractor's services under the agreement and shall continue until the termination of the agreement. The policy must allow for reporting of circumstances or

incidents that might give rise to future claims, and an extended reporting period of at least one year must be purchased in the event ongoing coverage is not maintained.

IV. OTHER

Additional Insured

- 1) Contractor and subcontractors of every tier are required to add WMATA and WMATA Board of Directors as additional insured on all required insurance including excess liability policies, with the exception of Workers' Compensation and Professional Liability.
- 2) Coverage provided to Additional Insured shall be primary and non-contributory to any other insurance available to the Additional Insured, including coverage afforded to the WMATA as an additional insured by subcontractors, and from other third parties.
- 3) Coverage provided to any Additional Insured shall be for claims arising out of both ongoing operations and products and completed operations hazard.
- 4) Coverage available to any Additional Insured under the products and completed operations hazard can only be limited to the applicable statute of repose in the jurisdiction(s) where the contract scope of work takes place.
- 5) Commercial General Liability and Umbrella/Excess Liability forms must provide defense coverage for additional insureds. The Additional Insured Endorsement shall provide coverage for Ongoing as well as Products and Completed Operations with no limitation on when claims can be made.

Waiver of Subrogation

Contractor and subcontractors of every tier are required to have all insurance policies except Professional Liability endorsed to waive the respective insurance company's rights of recovery against WMATA, and the WMATA Board of Directors.

- 1) Waiver shall be provided on an endorsement that is acceptable to WMATA.

Certificate of Insurance (COI)

Contractor shall provide WMATA an ACORD Certificate of Insurance (COI) and copies of all required endorsements as evidence that the insurance requirements of this Section have been satisfied. Certificates of Insurance shall be sent to WMATA.

The Certificate Holder box should read:

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

Additionally:

- 1) Proposed material modifications to required insurance, including notice of cancellation, must be received by WMATA in writing at least 30 days prior to the effective date of such change or cancellation.
- 2) WMATA's receipt of copies of any COI, policy endorsements or policies does not relieve Contractor of the obligation to remain in compliance with the requirements of this Section at all times. Contractor's failure to comply with these insurance requirements shall constitute a material breach of this Contract.
- 3) Receipt of the COI does not constitute acceptance of the insurance outlined above.

00878 Liquidated Damages

Modify Clause 00778, Liquidated Damages, to delete Paragraph A. and substitute with the following paragraph and subparagraphs:

A. *Time is of the essence to this Contract.* In the event of a delay under this Contract beyond the period of performance or beyond the period (as described in Section 00724) to which such time may be extended by the Contracting Officer, the Authority shall be paid damages for such delay. Since the amount of such damages and the loss of the Authority will be extremely difficult to ascertain, it is hereby expressly agreed that such damages will be liquidated and paid as follows:

B. The liquidated damages for each and every day (per day), of unexcused delay, the sum of one thousand fifteen-hundred dollars and zero cents. (\$1,500.00) that is hereby agreed upon not as a penalty, but as liquidated damages.

C. The Authority shall have the right to deduct such liquidated damages from any monies due or which may become due to the Contractor under this Contract. If the amount that becomes due is less than liquidated damages due to the Authority, the Contractor or its Surety or Sureties shall pay the difference any deficiencies in such monies within thirty (30) days of written notice upon the Contracting Officer's demand.

D. The remedies provided herein are not exclusive and are in addition to any other rights and remedies provided by law or under the contract. The Contractor agrees that if it does not complete the Work within the specified Contract Performance Time, then the Contractor shall pay to the Authority as liquidated damages, pursuant to Section 00727, Termination for Default, Damages for Delay, and Time Extensions, the sums per Day as separate damages for each specified completion requirement. If applicable; Milestones are as defined in Section 00724, Period of Performance and Project Schedule.

00894 Notification of Federal Participation

Modify Section 00700, General Conditions to add the following Clause:

A. This Project is being funded in whole or in part with Federal Funds.

Section 00900 – Amendments and Modifications

00910 Amendments

00920 Claims

00930 Clarifications and Proposals

00940 Modifications